S. HRG. 107–289

IMPLEMENTATION OF THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

S. 1210

TO REAUTHORIZE THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996

FEBRUARY 13, 2002
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

77–784 PDF WASHINGTON : 2002

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CONTENTS

	Page
S. 1210, text of	2
Statements:	
Begaye, Kelsey, president, Navajo Nation	17
Campbell, Hon. Ben Nighthorse, U.S. Senator from Colorado, vice chairman, Committee on Indian Affairs	4
Cantwell, Hon. Maria, U.S. Senator from Washington	6
Carl, Chester, president, National American Indian Housing Council	28
Garcia, Joe, first vice president, National Congress of American Indians	31
Gauthier, Robert, executive director, Salish-Kootenai Housing Authority	22
Inouye, Hon. Daniel K., U.S. Senator from Hawaii, chairman, Committee on Indian Affairs	1
Johnson, Hon. Tim, U.S. Senator from South Dakota	5
Liu, Michael, assistant secretary, Office of Public and Indian Housing, Department of Housing and Urban Development	6

APPENDIX

Prepared statements:	
Adams, Gus, executive director, Baranof Island Housing Authority	69
Begaye, Kelsey (with attachment)	43
Bush, Phil, Nevada/California Indian Housing Association and the Southwest Indian Housing Association	41
Cantwell, Hon. Maria, U.S. Senator from Washington	39
Capoeman-Baller, Pearl, president, Quinault Indian Nation	73
Carl, Chester	65
Conrad, Hon. Kent, U.S. Senator from North Dakota	39
Gauthier, Robert (with attachments)	69
Garcia, Joe (with attachments)	82
Johnson, Hon. Tim, U.S. Senator from South Dakota	40
Liu, Michael (with attachments)	45
Pauma-Yuima Band of Mission Indians	64
Pueblo of Acoma Housing Authority	76
Pyle, Gregory E., chairman, Choctaw Nation, Oklahoma	72
Smith, Chadwick, principal chief, Cherokee Nation	42
Additional material submitted for the record:	
New Mexico Indian Housing Entities Position Paper	64

IMPLEMENTATION OF THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT

WEDNESDAY, FEBRUARY 13, 2002

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

The committee met, pursuant to other business, at 2:05 p.m. in room 485, Senate Russell Building, Hon. Daniel K. Inouye (chairman of the committee), presiding.

Present: Senators Inouye, Campbell, Cantwell, and Johnson.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The committee now meets to receive testimony on the implementation of the Native American Housing Assistance and Self-Determination Act.

Although the act has been in place for only a few years, tribal governments and their designated housing authorities have identified the circumstances in which the act seems to be working well, and where the act may need amendment. The Inspector General conducted a review of the implementation of the act and made some recommendations as to how the Department might better assist tribes in assuring that the programs authorized by the act are administered with maximum efficiency and effectiveness.

The Inspector General's report emphasized the value of training and technical assistance, but unfortunately the President's budget request calls for a $2-million reduction in funds devoted to training and technical assistance.

There seems to be a dispute between the Department and tribal governments as to whether the act's requirement of negotiated rulemaking applies not only to the initial promulgation of regulations, but to the subsequent additions or amendments to the regulations. Some tribes are experiencing problems with section 184 loan guarantees, and small tribes have an especially difficult challenge with operating programs under the Act, given the smaller allocation of funds they receive.

These are just some of the issues that we anticipate hearing from the witnesses who will present testimony to the committee today.

[Text of S. 1210 follows:]

II

107TH CONGRESS
1ST SESSION

S. 1210

To reauthorize the Native American Housing Assistance and Self-Determination Act of 1996.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2001

Mr. CAMPBELL (for himself, Mr. INOUYE, Mr. DASCHLE, Mr. JOHNSON, and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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A BILL

To reauthorize the Native American Housing Assistance and Self-Determination Act of 1996.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native American Housing Assistance and Self-Determination Reauthorization Act of 2001".

SEC. 2. REAUTHORIZATION OF THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996.

(a) BLOCK GRANTS.—Section 108 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4117) is amended by striking ", 1999, 2000, and 2001" and inserting "through 2006".

(b) FEDERAL GUARANTEES.—Subsections (a) and (b) of section 605 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4195) are each amended by striking ", 1998, 1999, 2000, and 2001" and inserting "through 2006".

(c) TRAINING AND TECHNICAL ASSISTANCE.—Section 703 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4212) is amended by striking ", 1998, 1999, 2000, and 2001" and inserting "through 2006".

○

The CHAIRMAN. So without further ado, may I call upon a gentleman that we came to know well in Hawaii, and who appears before the committee today for the first time in his capacity as assistant secretary for Public and Indian Housing, Michael Liu.

Before we do that, may I recognize the vice chairman of this committee, Senator Campbell.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator CAMPBELL. Before we hear from Mr. Liu, Mr. Chairman, thank you for holding this hearing on the implementation of NAHASDA.

I believe that the bill has had a profound effect on the ability of the tribes to implement housing plans tailored to local needs, rather than having Federal officials make all those decisions. The act is due for reauthorization this year, and I was very happy to join with you, Mr. Chairman, in introducing the reauthorization last year. There were, as you mentioned, a few problems that I think that we will be able to iron out with this bill.

In the years since NAHASDA was enacted, the number of housing units built has increased substantially. The block grant approach of the NAHASDA: First, respects tribal sovereignty in decisionmaking; second, provides tribes with flexibility in housing plans; and third, eliminates unnecessary red tape and obstacles to housing construction in Native communities.

Though the NAHASDA has worked well, it is only now getting off the ground, and I believe its best days lie ahead. I am hopeful, Mr. Chairman, with the support of the tribes and the Administration, we can effect a long-term change and view housing not just as an item for annual appropriations, but as an engine of economic growth in Indian communities.

As the recent Native American Lending Study released by the Community Development Financial Institution shows, there are great needs in Native communities for capital and liquidity. Those unmet needs are holding back the growth of Indian economies. The "National Mortgage News" has reported a quantifiable pent-up mortgage demand in Indian country of close to $2.7 billion. One of our goals ought to be to encourage home ownership in Indian communities as a way to bring stability, equity and economic growth to those communities.

I believe we have that opportunity with this reauthorization bill, and I look forward to working with both the Department and with the tribes in seeking innovative ways to finance housing and homeownership, and new and creative ways to encourage economic growth throughout Indian lands.

The Chickasaw Nation, Mr. Chairman, of Oklahoma, to use one example, has done just this in a partnership with both Freddie Mac and Fannie Mae. We ought to be looking for ways to replicate that success.

With that, Mr. Chairman, I ask unanimous consent to insert into the hearing record both the news article I referenced, as well as the executive summary of the Native American Lending Study prepared by the CDFI.

The CHAIRMAN. Without objection, so ordered.
[Referenced documents appear in appendix.]
Senator CAMPBELL. Thank you, Mr. Chairman.
The CHAIRMAN. Senator Johnson.

STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Senator JOHNSON. Thank you, Chairman Inouye and Vice Chairman Campbell, members of the committee.

I am pleased to be here today to receive testimony on the reauthorization of the Indian housing block grant. For over 5 years, tribes in Alaska Native villages have been living through the experimentation of using block grants to provide housing assistance to Native Americans. The Native American Housing Assistance and Self-Determination Act has proven to be a vast improvement over the prior way that housing was provided to tribes in some respects, and frankly a failure in some other respects.

We are here today to further review the program so that the proper improvements may in fact be made.

It remains clear that Congress needs to further clarify the consultation process that is pivotal to the government-to-government relationship that exists between tribes, villages, rancherias and the Federal Government. Tribes should be afforded a thorough and meaningful consultation process when the Federal Government attempts to change the regulations governing specific Native American programs.

Only once has this been seen by the tribes throughout the past 5 years on housing issues. There remains a lot of discussion between the Department of Housing and Urban Development and Native peoples of this Nation on what was the actual intention, and I can say that the Administration must consult with tribes as part of its Federal obligation to them.

Throughout my 16 years of service in Congress, I have been dismayed by the living conditions of our first Americans. On numerous occasions, it has been documented that Native Americans have the worst housing conditions in the United States. There is rampant overcrowding, homelessness and crumbling housing stock. In my home State of South Dakota, we see some of the worst conditions overall. There is anywhere from 50 to 80 percent unemployment on many of our 9 Indian reservations, and according to the Housing Assistance Council, South Dakota contains 10 counties that are inhabited by 30 to 65 percent of persons below poverty. Nine of these counties are fully contained or directly adjacent to reservations.

The Federal Government has both treaty and trust obligations to provide basic services. This has been far from the case in most instances, including in housing. I appreciate this opportunity to continue to shape the face of Indian housing and further improve access to safe and decent housing for Native people throughout our Nation.

Mr. Chairman, I thank you for holding this important hearing and look forward to receiving the testimony of our witnesses today. I am pleased that joining us today are representatives of the

Sisseton-Wahpeton Housing Authority, and pleased that we could have a South Dakota presence at our hearing today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, sir.

Senator Cantwell.

STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman.

Sorry I missed our executive session on S. 1851. So I think I voted by proxy on that, but would like to be on record in support of that legislation.

I think what I will do in the interest of time is enter this statement in the record about today's important hearing.

The CHAIRMAN. Without objection it will be made part of the record.

[Prepared statement of Senator Cantwell appears in appendix.]

The CHAIRMAN. And now, Secretary Liu. Welcome, sir.

STATEMENT OF MICHAEL LIU, ASSISTANT SECRETARY, OFFICE OF PUBLIC AND INDIAN HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. LIU. Thank you very much, Mr. Chairman. Thank you for the greeting and aloha.

Mr. Vice Chairman and members of the committee, thank you for inviting me to provide comments on the implementation of the Native American Housing Assistance and Self-Determination Act of 1996. My name is Michael Liu and I am HUD's assistant secretary for Public and Indian Housing. I am responsible for the management, operation and oversight of HUD's Native American programs. These programs are available to 582 federally recognized, and a limited number of State-recognized Indian tribes. We serve these tribes directly or through their tribally designated housing entities by providing grants and loan guarantees designed to support affordable housing activities and viable community and economic development.

Our clientele is diverse. They are located on Indian reservations, in Alaska Native villages, and in other traditional Indian areas, and with the latest amendments to NAHASDA, now Native Hawaiians.

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 Indians and Alaska Native peoples. Although progress is being made, more needs to be done. At the outset, let me reaffirm the Department of Housing and Urban Development's support for the principle of government-to-government relations with Indian tribes. HUD is committed to honoring these fundamental precepts in our work with American Indians and Alaska Natives.

In general, NAHASDA is a success. It has been successful in changing the way Indian tribes conduct their housing business. Tribes and their tribally designated housing entities are no longer mired in a regulatory morass of competitive categorical programs, many with redundant requirements. Today, tribes submit an an-

nual Indian housing plan. Once it is reviewed for compliance with the appropriate requirements, recipients can draw on their funds to engage in the eligible affordable housing activities they have outlined in their IHP.

They can also choose to supplement their Indian housing block grant, IHBG, funds with the title 6 tribal housing activities loan guarantee program. At the end of a grant year, results are reported in the annual performance report. We then conduct monitoring and oversight remotely, with periodic on-site visits. Training and technical assistance is available both from HUD and our partners through a variety of media.

You will hear testimony that improvements needs to be made both to the program and to our management of it. We will work with our clients, and we are listening to their suggestions on how to improve the program. As an example, we met last July in St. Paul, MN for several days of tribal consultation. Some tribal leaders expressed their dissatisfaction with how we wish to implement certain aspects of the most recent NAHASDA amendments. We listened and affirmed that many of those amendments could be implemented after consultation in a time-efficient manner.

In other instances, such as revision of the IHBG allocation formula, we believe it is necessary to establish a full negotiated rulemaking committee.

I believe that although we may disagree on certain procedural matters, we do not disagree that this program provides unprecedented fundamental improvements in the way tribes, TDHE's, plan and execute their housing programs and projects. The direct results of these improvements are more homes for low-income Native American families.

An often-recurring topic is tribal consultation. The Department has had a tribal consultation policy since June 26, 1994. In 1998 and again in 2000, executive orders on tribal consultation were issued. To ensure compliance with them, the Department developed revised draft consultation policies. We first engaged in consultation with tribes on a draft of our proposed policy in March 1999. At the request of tribes, we subsequently rescinded the draft policy, revised it again, and reissued it in July of 1999. From September 1999 to February 2000, we sponsored eight regional consultation sessions and a final national consultation session in Washington, DC on the policy.

We continued to discuss it with tribal leaders into the fall of 2000, when the most recent executive order was issued. The White House staff convened meetings to set direction and ensure consistency across all Federal agencies on the tribal consultation policies.

We had further discussions with tribal leaders and within the Department, culminating in the issuance of the Department's revised tribal government-to-government consultation policy, which was signed by Secretary Martinez on June 28, 2001. The Secretary's policy contains a new and important provision: the authority to create an advisory committee made up of tribal leaders to advise on how to proceed with tribal consultation matters.

Another subject of related concern is that of negotiated rulemaking. On December 27, 2000, amendments to NAHASDA were signed into law. Early in calendar year 2001, HUD again held a se-

ries of eight regional consultation sessions for the express purpose of obtaining tribal priorities and proposed solutions to issues surrounding the implementation of NAHASDA, including on how to proceed with implementing the amendments. Every written and oral comment received from all sessions was collated and distributed to every tribe and TDHE in the country. We asked tribes to comment on these sessions and on the written materials, and we asked our clients to establish 10 priority national issues for discussion at a subsequent national tribal consultation session which was held July 2001 in St. Paul, MN.

Indian housing leaders are aware that our tribal consultation policy provides for the use of a broad array of mechanisms, from tribal, regional and national forums, to notice and comment rulemaking, to the negotiated rulemaking, depending on the nature of the issue to be discussed, the need for rapid response, and other factors.

Many tribal leaders participated in discussions on how to implement both the amendments and the 10 national priority issues. A number of attendees were opposed to implementation of any regulatory change without negotiated rulemaking. Others offered suggestions across the entire range of consultation possibilities in the policy.

In response to the comments we received in St. Paul, the Office of Native American Programs constructed a consultation document with suggested methodologies to implement all of the NAHASDA amendments. We mailed the document to all tribal and Indian housing leaders on November 28, 2001, asking for their comments by the end of December. At the request of the Native American Indian Housing Council and others, we subsequently extended the deadline for comments to February 11, 2002. Our next steps are to review those comments and provide feedback on how we will proceed.

A good example of this process is the NAHASDA amendment concerning the establishment of tribally determined wage rates in lieu of Davis-Bacon wage rates. Consensus was reached in the consultation work group that it should be implemented as quickly as possible. The November 28, 2001 tribal consultation document states that a regulatory change is required, and that the Department will engage in tribal consultation on that regulation.

The Office of Native American programs has been working with HUD's Office of General Counsel and the Office of Labor Relations to develop a draft regulation. All written and oral comments received at the regional and national consultation sessions were considered when drafting the proposed regulation. A draft will be released very soon asking for tribal feedback. And should the committee so desire, we will keep you informed of our progress on this and all tribal consultation matters.

In regard to the formula allocation and negotiated rulemaking committee, the NAHASDA's Indian housing block grant program regulations provide that the allocation formula shall be reviewed within 5 years after issuance, which would be this coming March 2003. The recent NAHASDA amendments make several changes to the formula. HUD believes that this is an appropriate time to begin the review of the formula, both to implement the statutory changes

and to hear from our clients about whether they believe other revisions should be made.

We also believe that pursuant to HUD's tribal consultation policy, the formula allocation issue is of sufficient magnitude to require negotiated rulemaking. In July 2001, we published a Federal Register notice requesting nominations and establishing the minimum qualification criteria for membership on that committee. We received 44 nominations. Approximately one-half of the nominees were missing one or more pieces of required information. So to give nominees every opportunity to comply, in November 2002 we wrote to all nominees, informing those that had provided all the necessary information that their applications were complete, and notifying others that they were missing one or more pieces of required information.

To date, we have received replies from approximately one-third of those deficient applications. There may be good reason for this. As the committee and all of us in this room know all too well, after September 11 our mail service has experienced significant delays. For example, one nominee mailed his reply to us on December 12 and we just received it on January 23. As a result, we are being extremely flexible about accepting additional information.

We are also preparing for publication of a followup Federal Register notice announcing the names of the successful nominees. It is important to note that they remain nominees. No committee members have yet been selected. We did not receive, in our estimation, a broad enough geographic distribution of nominees. Therefore, the next notice will give tribes another chance to add to the list of potential participants.

If a nominee is not listed in the notice, it means that they either did not reply to the request for additional information or the information they provided was not sufficient. They may also reapply under that notice. Once the second round of nominees have been submitted, the Department will again review each nominee's information to ensure it is complete, notify those with deficient applications, as well as those with complete applications, and then make final decisions. We will solicit the participation of our partners in the selection process.

I have a great deal of more information about our program that I would like to share with you, but of course time is running short. I would like to just make two final points. On Native Hawaiian housing, I am very excited about a recent development—the passage of legislation creating a new title 8 under NAHASDA that I referenced to in my opening comments. We may now serve those Native Hawaiian families who are eligible to reside on Hawaiian homelands with two new programs: A Native Hawaiian housing block grant program, and the Native Hawaiian housing loan guarantee section 184(a) program.

In President Bush's fiscal year 2003 budget proposal, we have requested funding of $10 million and $1 million respectively under accounts completely separate from NAHASDA's Indian housing block grant in the section 184 Indian Housing Loan Guarantee Fund. I am pleased to inform you, Mr. Chairman and members of the committee, that the Department will soon publish an interim rule for public comment. Current year appropriations can be re-

leased for use following the submission of the appropriate housing plan as described in the interim regulation.

Finally, let me state for the record that the Department supports the passage of S.R. 1210 and H.R. 1873—bills that would reauthorize NAHASDA.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Secretary.

If I may, I would like to ask a few questions. NAHASDA requires HUD to develop and promulgate regulations following negotiated rulemaking procedures. However, we have been advised that the Department has taken the position that the negotiated rulemaking requirements of the act do not apply to any amendments or additions to NAHASDA regulations. Number one, is that the case? If so, what is the source of authority for the Department's position?

Mr. LIU. According to an opinion by our General Counsel's office, sir, section 106 of NAHASDA, quote, under regulations, provides in subsection (a), transition requirements from the 1937 Housing Act. Subsection (b) provides that a negotiating rulemaking committee be established to develop proposed regulations to implement the act. And it is our Office of General Counsel's opinion, and they have consistently, apparently, since the time of the enactment of NAHASDA, has advised us that the requirements of section 106 are legally satisfied with the proposed regulations that were issued for public comment.

To the extent, however, that the Department, of course, has discretion to work with the tribes and other interested parties in regard to negotiated rulemaking for further development of regulations attendant to further amendments to NAHASDA, I stand open to work with the tribes in that regard. I think, as I mentioned to them in comments I made before them in a speech yesterday morning, I think what we can do and should do is get to more specific language related to the concern over the word "all." Let's get a consensus definition of what we mean by "all."

And perhaps we need to also balance our concerns about the process, depending on the need to get guidance out and the complexity. There are certain things where there is general consensus on. For instance, the tribally determined wage issue relative to Davis-Bacon. And if there is that consensus, there may be different forms of negotiated rulemaking where we can put things on a fast track, and then for more complex and more substantive issues, for instance the allocation formula for the IHBG, we can have a negotiated rulemaking which is certainly more full and more developed as we move forward.

So I stand ready, sir, to discuss and dialog with the tribes to develop a workable consensus and solution to the concerns about negotiated rulemaking.

The CHAIRMAN. Are you also suggesting amendments to the act itself?

Mr. LIU. Not at this time, not at this time.

The CHAIRMAN. Because there is much tribal opposition to the position that was taken in refusing to follow negotiated rulemaking procedures. But you are open to the suggestion?

Mr. LIU. Yes, sir.

The CHAIRMAN. We have been advised by many tribes of their frustration with the inconsistent way in which HUD handles tribal environmental review requirements. For example, they tell us that when the Department conducts an environmental review, HUD will waive its technical errors. But when tribes conduct their own environmental reviews, HUD has refused to waive any technical errors. How do you explain this, sir?

Mr. LIU. The statutory provision which provides for tribes to assume the Secretary's environmental decisionmaking—that's done in NAHASDA section 105—includes very specific procedural requirements. There is no corresponding statutory requirement for the Department. Prior to the enactment of the NAHASDA amendments in December 2000, the Department was not authorized by law to waive technical errors made by tribes in conducting environmental reviews.

The environmental waiver provisions of Public Law 106–538 have been administratively implemented by the Department for tribal recipients. Prior to December 27, 2000, the Department had developed procedures for HUD to assume environmental responsibility when a tribe made technical errors in the environmental review process that did not adversely affect the environment.

While the process for converting responsibility from a tribe to the Department was time consuming, 12 conversions were made to avoid mandated statutory remedies for purely technical reasons. There are a number of tribes who actually benefitted from that waiver process which was in place at that point in time. A few of them include the Nome Eskimo Community, the Menominee Indian Tribe of Wisconsin, the Lummi Tribe, the Sac and Fox Tribe of Oklahoma. There are host of others.

But currently, with the new provisions under NAHASDA which does provide for secretarial waiver authority, we fully intend and our working on a set of regulations to implement that waiver possibility.

So the bottomline, sir, is that both before December 27, 2000 we had worked to provide a mechanism to deal with this issue, which was a statutory sort of disconnect. And now currently, with that resolution having come to bear with the December 27, 2000 amendments, we are in very good shape to work with the tribes to deal with this issue.

The CHAIRMAN. So you don't think that the tribal concerns are valid?

Mr. LIU. Perhaps I think there is more current information available which deals with those concerns and addressed those issues.

The CHAIRMAN. If the tribes insist that the concerns are not fully resolved, would you be amenable to certain amendments to the act to carry this out?

Mr. LIU. Either amendments or administrative procedures, new regulations to assist to resolve the issue.

The CHAIRMAN. Several Indian organizations have expressed concern that HUD is considering reclassifying the Deputy Assistant Secretary of Native American Programs from Senior Executive Service to a GS–15 career position, which requires only one year of experience. Does this mean that the Department is downgrading the Deputy Assistant Secretary to a GS–15?

Mr. LIU. Mr. Chairman, the position has always been officially authorized on budget plans, both before and with this Administration as a GS–15. With the past Administration, it was at a SES level. The current classification by no means in any way should not be taken as a signal that we are downgrading what we consider a very important position. From a management and resource standpoint, we believe that at a GS–15, and we fully expect to get qualified candidates that will qualify for the highest grade, the highest step, that at $120,000, which is what their base pay would be, in addition with approximately $30,000 in benefits, at $150,000 compensation package, that we can attract very well qualified individuals for this position.

Also, by way of information, the 1-year requirement deals with specialized experience which is an Office of Personnel Management requirement. But we have the ability to look for the quality of experience, which makes it very unlikely that anyone with just one year of specialized experience to qualify for the position.

For the Senior Executive Service, we would be locked into that same requirement. It is against Office of Personnel Management rules and regulations to require a longer than 1-year requirement for specialized experience. Where we get beyond that is looking at the quality of experience that the person brings in the application process, and we certainly will be looking for people with both specific program experience, financial experience, and management experience to deal with the heavy responsibilities that the position carries.

The CHAIRMAN. Don't you believe that taking away a title might be interpreted by many as a downgrade?

Mr. LIU. I would hope that it would not be, Mr. Chairman, and we will strive—I will personally make the effort to assure the tribes that the person selected for this position has every available access to my office. I will be definitely fully engaged in the issues that come before the Office of Native American Programs. I think that I perhaps bring some more specific background and experience with sovereignty issues than perhaps prior Assistant Secretaries, which certainly I think will assist us in making sure that these issues gain the attention that it needs with the Secretary and the Administration.

The CHAIRMAN. Well, I just hope that the message that we send will not be a negative one, because on one hand, we speak of the critical need for housing in Indian country, and then we take away a position for Native Americans. I hope you will give this matter another look-see.

Mr. LIU. Yes, sir.

The CHAIRMAN. Several tribes have complained that the Office of Native American Programs [ONAP], regional offices are severely understaffed, resulting in little or no guidance or technical assistance from HUD staff. What are your plans for providing adequate funding to hire and train field employees?

Mr. LIU. Mr. Chairman, within the next year I can assure you that there will be increase of staffing levels to the Offices of Indian Housing. It is part of the Secretary's overall initiative to ensure that our field offices throughout HUD are better staffed than they have been.

As you know, the HUD field offices have taken significant cuts in staffing over the past 5 and 6 years, and we are going to attempt to do our best to rectify that within the constraints that we have, of course, with resources.

Specifically to the Office of Native American Programs, we have a number of training programs and documentations of them. For instance, we have the NAHASDA essentials of Indian housing, planning and annual performance reporting—training courses which were developed to address the needs of both grantees and ONAP staff. These sessions include days of training just for ONAP staff to go over internal processing issues.

ONAP staff also have the ability to attend training sessions offered by ONAP in the area of financial management, leveraging, environmental review, and there are a host of others. Grants management and grants evaluation staff have been trained on the business processes developed for each major program area. Staff submit individual requests for training and as long as the request is job-related, the request is approved.

I am also involved now in developing a field office directive which will allow field staff, under the direction of their field office director, to demarcate specific days, anywhere from 2 to 4 days, where staff will have the ability to devote to training. I do believe this is an issue where we can do better and we will.

The CHAIRMAN. Does the President's budget request provide sufficient funds for your office to carryout this training program?

Mr. LIU. Yes; it will, Mr. Chairman. We feel that we can make much better use of the resources that we have in keeping closer attention to the costs of our training. We also intend to utilize greater interactive types of training that connect the use of telephones and the Internet in developing the ability to reach out both to our staff and to tribes in rural areas.

I personally have experience with these systems, when I was with the Federal Home Loan Bank of Chicago, in reaching through training and community development programs to many rural areas in the innermost and northern-most areas of Wisconsin, to the southern-most portions of Illinois—very effective, very user-friendly, and I think something that can be of great assistance to both HUD and our clients.

The CHAIRMAN. I have one more question before I recognize our vice chairman. Several tribes have advised the committee that the ONAP field offices provide conflicting advice and counsel on how to comply with NAHASDA. Have you heard about this?

Mr. LIU. Mr. Chairman, I would be very concerned if there are examples of that. I think the possibility for that occurring in any national program is certainly there. Staff indicates that they think that it is a rare occasion, but I am definitely open to hearing of any specific examples where that is occurring. If I hear about it, I want to fix it.

The CHAIRMAN. We will provide you with examples, sir.

Mr. LIU. Thank you very much.

The CHAIRMAN. Senator Campbell.

Senator CAMPBELL. Thank you, Mr. Chairman.

I certainly want to associate my comments with yours, and tell you, Mr. Liu, I think you are doing a pretty darn good job consider-

ing the problems with 9–11 and the mail and the fact that you have to deal with 561 Federal tribes and a number of State tribes, too. That is not easy getting information out and getting information back. I recognize that.

Mr. LIU. Thank you.

Senator CAMPBELL. But as Senator Inouye has said, we have received some feedback from the tribes that in their view, negotiated rulemaking also includes amendments, which often are not negotiated, but just done through a notice and comment rulemaking.

I would encourage you to err on the side of patience, that many tribes can't come to those eight regional conferences that you told us about. They can't get there for whatever reason. We often hear from tribes that they simply were not informed. Well, maybe they weren't and maybe it just got lost in this terrible problem we have had with the mail or something else, but I would hope that you would recognize that it takes a lot of time to get the word out through any community when we are doing rules and regs.

Let me also add my voice to the Chairman's about the Office of Native American Programs. I don't care how you see that within the Administration. You might see it by saying, well, that is not really a downgrade to reduce the office to a GS–15. Maybe it is not a reduction. We are going to get some qualified people. You mentioned that they will have all the credentials to be able to do that. But I can tell you how it will be read in Indian country. It will be read very simply as a de-emphasis on the importance of their priorities, and I would encourage you not to do that. I think it would be very badly received in Indian country if the office director was reduced to a GS–15.

Let me maybe just ask a couple of questions. I am certainly interested, as many of the members here, in broadening the housing arena to be more of a developmental discussion. Is there a plan now for any cross-agency cooperation to attack the housing and development together?

Mr. LIU. Yes, Senator; there is discussions that are in the planning stages with both USDA, with the BIA, with the GSE's—I think you mentioned them in your comments—to change the discussion, or at least to create another discussion so that it is developmentally oriented, because I think the name of the game ultimately is getting units built that are of the standards that we should all expect in the ground and over the heads of people who need them.

I personally have a strong interest in both the 184 Program and the title 6 program to make them work, because I believe that through a much stronger outreach effort to the private sector financial institutions, done in collaboration with other Federal agencies that have related programs, that we can make significant inroads in revealing to the private sector that there is a real demand and real business to be had on Indian lands. I sincerely believe that and I think we can make that happen.

Senator CAMPBELL. May I also recommend that you work with the Department of Veterans' Affairs. I don't know if you have or not, but a few years ago you may know that we passed a bill in Congress to give the same opportunities to Indian veterans living on reservations that their non-Indian counterparts have in the pri-

vate sector, in getting a home financed. They now—tribes—can sign a memorandum of understanding with the Department of Veterans' Affairs to do that.

I happened to see Secretary Principal couple of months ago and I mentioned that to him, and he said they were very interested in promoting more housing for Indian people through that agreement, in the agreement they could reach with the tribes. It was interesting because 2 years after we passed that bill, we held a hearing on the effectiveness of that act. As I remember, only three Indian veterans nationwide had availed themselves to housing under that agreement that their tribe could have signed with the Department of Veterans' Affairs.

So I would hope that you would also include them in your discussions in trying to get more housing for Indian people.

Let me ask you a couple of other things here before the Chairman goes on with his questioning. One deals with tax-exempt bonds. There is legislation that has been introduced, S. 660, to liberalize the use of tax-exempt bonds by tribes to raise capital in the private markets. Does HUD support the concept of that bill?

Mr. LIU. On its face, Senator, Mr. Vice Chairman, I think the concept is one that we can and should explore. We are looking at bond financing in many areas of HUD. I think it is one that needs to be explored even further.

In the public housing side, we have certainly gone very far in working with public housing authorities to develop their abilities to raise money on the markets through bonds. And I think there is certainly that potential with the Office of Native American Programs.

Senator CAMPBELL. I agree. I think it has huge potential.

Maybe one specific case—Secretarial waivers on local cooperative agreements—the Narragansett Tribe of Rhode Island has informed the committee that it has petitioned for a waiver of the Local Cooperation Agreement under the 2000 NAHASDA amendments. Could you tell the committee the status of that particular petition by the Narragansetts?

Mr. LIU. I don't know the specific status at this time, sir, but we certainly we will get back an answer to you.

Senator CAMPBELL. Could you find that and get that to the committee?

Mr. LIU. Yes.

Senator CAMPBELL. Do you know how many such waivers the Department has processed?

Mr. LIU. I don't believe we have processed any at this stage.

Senator CAMPBELL. I see. All right. Thank you.

Thank you, Mr. Chairman. I have no further questions.

The CHAIRMAN. Thank you.

Mr. Secretary, as you have indicated, NAHASDA has been amended to include block grants to provide housing assistance to low-income Native Hawaiians. Is the Department going to establish a position in the HUD office in Hawaii to administer this?

Mr. LIU. Yes, sir.

The CHAIRMAN. When can we count on that?

Mr. LIU. I hope that it can be done before the end of the spring. Since I took that position, that has been a priority issue for me.

I am looking at it, of course, with the new responsibilities out there.

Senator CAMPBELL. May I ask the witness, Mr. Chairman—are you from Hawaii, Mr. Liu?

Mr. LIU. Yes, sir.

Senator CAMPBELL. Then no excuses, right? [Laughter.]

Mr. LIU. No excuses.

The CHAIRMAN. We will be following up.

This is a question from Senator Conrad. During the last year, three tribes in North Dakota faced a severe crisis when over 200 homes on the Turtle Mountain Reservation were found to be filled with deadly toxic black mold. These homes had been acquired from the Air Force and moved to the reservation. Toxic black mold was also found in homes on the Spirit Lake Reservation and the Three Affiliated Tribes of the Fort Berthold Reservation. Senator Conrad worked to find a way to replace the uninhabitable homes. He discovered that unlike public housing that maintains an emergency housing reserve, no emergency funding is available for Native American housing. The Senator would like to know your thoughts on whether the act should be amended to provide authority for an emergency reserve fund to address these types of housing emergencies.

Mr. LIU. Mr. Chairman, this issue in fact came up during the consultation process in St. Paul, MN and I believe in other forums. The fact of the situation is that the tribes did not come to consensus on whether or not there should be a set aside for emergency purposes within the block grant program. There were varying views discussed and rationales for that. Currently, tribes can amend their plans to deal with emergencies so that there is an ability to get allocations through that mechanism.

Also, we have traditionally set aside through the Indian CDBG Program, the Indian Community Development Block Grant Program, $2 million annually as a set-aside for emergency situation. And in fact, I believe that the Turtle Mountain situation was addressed with a specific $350,000 grant from that $2 million allocation. Then, of course, there was a special set-aside later by legislation to deal with the issue on a larger scale.

Certainly, through the negotiated rulemaking that will be taking place in regards to the allocation formula, should it be the desire of the tribes through that process, through discussions to concur on whether or not there should be an emergency fund, I certainly, the Department certainly could work with that concept.

The CHAIRMAN. Are you satisfied that the problems that Senator Conrad has cited have been resolved by the funding that you have cited?

Mr. LIU. My understanding, and based on reports on monitoring and what is happening out there is that, for now, that there is adequate funding to deal with the initial work which needs to be done to address those issues. But if there is more, that may need to be done, or if there is another mechanism by which funds are believed to be needed to deal with that issue, again, I think through negotiated rulemaking, through a consensus process with all the tribes involved, we certainly stand ready to work with them, if that's the direction that they want to go into.

The CHAIRMAN. Are these homes that were described—are they habitable now?

Mr. LIU. I believe some of them are, but there is still work that needs to be done on others. The work is not complete.

The CHAIRMAN. And we have adequate funds to carry this out?

Mr. LIU. At this stage, I am told that we do, but there is, I believe, there could be more, depending on the level of additional mold which may be found upon further investigation.

The CHAIRMAN. Tribes have expressed the desire that ONAP provide on-site training sessions to supplement its training sessions held in cities like Seattle, Denver, Phoenix, Minneapolis, Boise, Oklahoma City, because many of the tribes don't have adequate funds to have their people travel to these big cities for scheduled training sessions. Do you have capabilities for on-site training?

Mr. LIU. Yes; we do Mr. Chairman. In fact, we have provided on-site training on a regular basis. As I mentioned to you, we will be implementing a plan before the end of the fiscal year, and definitely before the end of the calendar year, the ability for us to reach the hard-to-reach areas through an interactive method using PC and a telephone. We think that we can, in addition to the traditional one-on-one at the request of a tribe, to sending people out to deal with these issues, we think that we can, on an even more effective basis, provide the kind of technical assistance which might be needed on a request basis.

The CHAIRMAN. Under HUD's lead-based paint program, you provide grants. Can Indian tribes apply for these grants for the black mold poisoning?

Mr. LIU. We are in the process of investigating that issue, but I believe that they can. I don't believe that there is any bar to tribes applying for those grants. They come under the Healthy Homes Initiative, under our lead-based unit in HUD. And I do not believe that there is any bar to tribes applying for them. But I need to double-check just to make sure that that is absolutely correct.

The CHAIRMAN. In order to expedite matters, would you suggest that these tribes submit applications now?

Mr. LIU. I am not sure of the timing of the MELFA, but I think they should prepare because I believe the MELFA should be out within probably the next 30 to 60 days for all of HUD's major programs.

The CHAIRMAN. I thank you very much, Mr. Secretary. You have been very helpful, sir.

Mr. LIU. Thank you, Mr. Chairman, Mr. Vice Chairman.

The CHAIRMAN. Our next witness is the president of the Navajo Nation of Window Rock, AZ, Kelsey Begaye.

Mr. President, once again welcome to the committee.

Mr. BEGAYE. Thank you.

STATEMENT OF HON. KELSEY BEGAYE, PRESIDENT, NAVAJO NATION

Mr. BEGAYE. Good afternoon, Mr. Chairman, Mr. Vice Chairman, also members of the committee.

Thank you for allowing me to speak to you today about Indian housing. I am Navajo Nation President Kelsey Begaye. On behalf of the Navajo Nation, I will present Navajo Nation's approaches to

solving our critical housing needs, and our recommendations regarding the reauthorization of NAHASDA that will assist in our continuing efforts.

The Navajo Nation values the work of Congress, what Congress has done to address Indian housing needs with the passage of NAHASDA in 1996. This committee's continued support is needed with the reauthorization of NAHASDA. Providing adequate housing to the Navajo people is one of the priorities of my administration. While Federal assistance is important to Indian housing efforts, as part of our economic development efforts I believe that Navajo Nation must pursue nongovernmental financial assistance and must leverage existing Federal funds to meet our housing needs.

In addition to meeting basic human needs, housing development activities also provide meaningful employment opportunities to the Navajo people. The National Association of Home Builders estimates that the construction of 1,000 new homes generates 2,448 full-time jobs in construction and also in construction-related industries. By contributing to the Navajo Nation's workforce, housing development advances Navajo self-sufficiency. In support of this effort, I have encouraged the creation of a private housing market within the Navajo Nation. With my active support, the Navajo Housing Authority, NHA, has embarked upon an ambitious program that lays the foundation of such a market.

For example, NHA has implemented procedures that will aid in the prompt recordation of titles and acquisitions of land for development. NHA has negotiated new master leases with the BIA that will allow private financing of Navajo homes. They have completed an appraisal of every NHA housing unit to provide financing institutions with sufficient information to improve montages. And NHA has established a mortgage guaranty program that will allow Navajos to finally buy a home for themselves.

In addition, I have directed the consolidation of the Navajo Nation's housing programs to facilitate the prompt development of housing and streamline the delivery of housing services to thereby reduce housing program costs.

I believe this demonstrates that the Navajo Nation is being proactive in addressing our desperate housing need and aggressively pursuing nongovernment private financing to supplement Federal assistance.

To ensure adequate housing for all Americans, the reauthorization of NAHASDA with certain important amendments is necessary. I respectfully request the support of this committee to amend NAHASDA in a manner that will strengthen tribal self-determination and the Navajo Nation's effort to cure our housing needs that will contribute to the advancement of Navajo self-sufficiency.

You will find the Navajo Nation's recommendations in more detail in our submitted written testimony. We believe that our recommendations, if adopted, will reaffirm the Government's commitment to address and increase Indian home ownership.

To strengthen the Federal policy of tribal self-determination and self-government, we recommend that NAHASDA be amended to allow more flexibility to Indian tribes that administer NAHASDA

programs and to undertake Indian housing initiatives and activities. In fact, NAHASDA contains congressional findings that mirror the policy of tribal self-determination and self-government. These findings should be reaffirmed.

As well, it is important that HUD respects and fulfills the United States government-to-government relationships with Indian tribes. Tribal consultation is an important component of this relationship, and is a process of utmost importance to the Navajo Nation and other tribes. Consultation is a process that allows Indian people to be a part of the decisionmaking process that ultimately affects the destiny of our people.

NAHASDA in its current form requires a negotiated rulemaking process. HUD has misinterpreted section 106 of NAHASDA and has taken the position that the negotiated rulemaking is only a one-time process. I request that this committee reaffirm and make clear to HUD that the negotiated rulemaking process is an ongoing requirement for promulgating and modifying all NAHASDA regulations.

It is not right for HUD to misinterpret a statutory obligation in order to avoid meaningful negotiated rulemaking. When enacting NAHASDA, Congress, along with Indian tribes, understood the importance of tribal contributions in the decisionmaking process of addressing Indian housing needs. By consultation, negotiated rulemaking is an important component of our government-to-government relationship, and to the future of mutual respect between our nations.

In closing, I have always viewed Federal funding as a hand-up and not as a hand-out. To continue our success in addressing the deplorable housing needs of Navajo Nation and in Indian country, the Navajo Nation supports the reauthorization of NAHASDA with amendments that will clearly guide HUD and Indian tribes to implement Indian housing programs in a manner that truly respects and affirms Indian self-determination and self-governance.

Once more, Mr. Chairman, Mr. Vice Chairman, committee members, thank you.

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

The CHAIRMAN. Mr. President, I thank you very much.

About 12 years ago, I had the opportunity to visit Navajo land. At that time, in the briefings that I received from the staff of your government, we learned startling statistics. For example, at that time less than 20 percent of Navajo families had telephones in their homes; about less than one-half had running water. What is the situation today?

Mr. BEGAYE. Mr. Chairman, Mr. Vice Chairman, members of the committee, the need for housing is so present and evident. The need for infrastructure is also evident. However, the Navajo Nation has taken steps. We are looking at a comprehensive infrastructure development plan to present to the Navajo Nation Council, and in doing so hopefully getting support from our own tribe and other funding sources.

The CHAIRMAN. You also had another problem that even with the available housing, there were too many occupants per house, such as five people sharing a bedroom. Is that still the situation?

Mr. BEGAYE. Yes, sir; it is still there because for Navajos and I imagine other Indian tribes, we tend to care for other relatives and other families that live with us, and an overcrowding situation is still present. However, we are trying to address that in the consolidation plan.

The CHAIRMAN. You have indicated a problem that really angers me and saddens me, that there are those who are engaging in predatory lending practices. Is this still going on?

Mr. BEGAYE. Sir, in my testimony, I mention the mortgaging process. We are trying to address that problem through that process, and when we get that in place, I imagine some of the problems that are existing in those areas will be addressed.

The CHAIRMAN. Are there many Indians who are cheated out of their hard-earned money?

Mr. BEGAYE. Yes; there are.

The CHAIRMAN. What can we do about that? Is there something we can do?

Mr. BEGAYE. I believe that our trips to Washington, DC and also our dialog with people like yourself and the vice chairman and committee members is one way, and also through an educational process with our own Native people I believe will help.

The CHAIRMAN. Are these people who are responsible being criminally charged for their practices?

Mr. BEGAYE. In some cases, they are. In some cases, it is sad to see that those things, they tend to get away with those activities.

The CHAIRMAN. Could you keep us apprised as to your progress in this, because I hate to see these veterans get cheated out of their money.

Mr. BEGAYE. Yes; I will, sir. As we move forward with the new initiatives with the consolidation plan, we will also make sure that there are applicable laws that apply to situations such as you describe.

The CHAIRMAN. You have suggested that the Department is always asking for environmental reviews, even for minor renovations, but funds are not made available for this. Are the environmental review requirements the same for new housing as well as for renovations?

Mr. BEGAYE. The problem with the environmental assessments and other activities related are usually due to because of unfunded mandates that go along with the housing policies handed down.

The CHAIRMAN. Do you think this matter is something that this committee should be interested in?

Mr. BEGAYE. I would appreciate the committee looking into it, sir.

The CHAIRMAN. You have testified that stimulating investment in tribal communities is essential for tribes to achieve sustainability without Federal subsidy. And particularly, you recognize the need to establish incentives for tribal investors. What sort of incentives would you recommend?

Mr. BEGAYE. As we move forward with the consolidation plan and our plan to promote montages on Navajo Nation, we are hoping that the banks will be more responsive if we have a solid plan in place for mortgaging, and that is what we are doing at this time.

The CHAIRMAN. You have no specific incentive plans?

Mr. BEGAYE. Not at this time, as I sit here. No, we are working on it and some that will come down the pipe soon.

The CHAIRMAN. If you do, will you share it with us, sir?

Mr. BEGAYE. Yes, I will, sir.

The CHAIRMAN. Mr. Vice Chairman.

Senator CAMPBELL. Thank you, Mr. Chairman.

President Begaye, as you know, I don't live very far from the Navajo Reservation in the Four Corners area. I have a lot of friends and people who do business on the Navajo Reservation, and may I commend you on what I hear from them that in your tenure as president, especially the efforts at regulatory reform and you have made the Navajo Nation more business-friendly.

Of course, with increased business, you have increased opportunities and some of those opportunities are very good. Then in the case of predatory lending and other things, some of those opportunities are bad. So I also commend you on trying to make sure that the opportunities that have come through your efforts for the Navajo people are policed and carefully watched for those people who would abuse the system.

Since NAHASDA passed in 1997, could you tell the committee how many units of housing the Navajo Nation has built? And how does it compare with the number of units that were built before NAHASDA?

Mr. BEGAYE. I believe before 1996, we were looking at at least 2,400 units, or 100 units, I'm sorry. And right now we are up to 2,400 units.

Senator CAMPBELL. It was about 100 units before?

Mr. BEGAYE. Yes, sir.

Senator CAMPBELL. And the activities that are funded under NAHASDA, are there other activities also done besides actual building? What percentage of it goes to actual housing construction?

Mr. BEGAYE. Right now, we also are working with the tax credit.

Senator CAMPBELL. Tax credit?

Mr. BEGAYE. Yes; and the percentage that goes back—the other one would be the drug elimination funds, which I understand might be cut. And that is another very important funding.

Senator CAMPBELL. Drug elimination?

Mr. BEGAYE. Drug elimination funds.

Senator CAMPBELL. Yes; that's extremely important to me, and you might be able to offset that through money that we appropriate through the Treasury Department, because I know they are very concerned about drug use on reservations.

Mr. BEGAYE. That's right, sir—a number of concerns, too, because through my efforts, Navajo Nation was looking at 10 Boys and Girls Club sites on Navajo Nation. We were able to get five, and if the funding for the drug elimination is zeroed out, then that means we don't get the other five.

Senator CAMPBELL. I see. Well, hopefully we can try to correct that as we move through the appropriation process.

You talked about predatory lending. Does the tribe perform credit counseling to people that are going to borrow money?

Mr. BEGAYE. That is all built into the present system that we are on right now with the NHA, and of course that will continue.

Senator CAMPBELL. And let me ask you about consolidated funding. This session, I introduced S. 343, which was modeled after the Indian Self-Determination Act, to authorize tribes to consolidate Federal economic development funds and services. Does the Navajo Tribe support that legislation, or have you had time to look at it?

Mr. BEGAYE. We support that legislation and it is something that we are willing to work with.

Senator CAMPBELL. Okay. Thank you.

I have no further questions, Mr. Chairman.

The CHAIRMAN. I can assure you that any bill that the vice chairman introduces is worthy of consideration.

Senator CAMPBELL. Thank you very much. [Laughter.]

The CHAIRMAN. And I thank you, Mr. President.

Mr. BEGAYE. Yes, sir; thank you.

The CHAIRMAN. You have been very helpful.

And now may I call upon the executive director of the Salish-Kootenai Housing Authority of Pablo, Montana, Robert Gauthier.

Is that how you pronounce your name?

Mr. GAUTHIER. My compliments, Mr. Chairman. Your memory serves you well.

STATEMENT OF ROBERT GAUTHIER, EXECUTIVE DIRECTOR, SALISH-KOOTENAI HOUSING AUTHORITY

Mr. GAUTHIER. It is an honor to be here, Mr. Chairman, Mr. Vice Chairman, members of the committee and staff, because I am here to report on what I think is an exciting time in Indian country. While I will not downplay the huge unmet need that we are still facing, there is much good news that is to be reported.

I would also, Mr. Chairman, like to acknowledge the staff of this committee, both current staff members and past staff members because they have worked tirelessly on your behalf. I am always amazed at the insight they have and the helpfulness and the encouragement they have given us. It is certain that we would not be where we are without their good work.

I would like to also compliment you for your vision, leadership and willingness to partner with us to achieve many of the dreams that we talked about more than 10 years ago when this committee sponsored the National Commission on American Indian and Alaska Native and Native Hawaiian Housing. I think that Commission, it's work and it's report, and the support by this committee for that report, set into change many of the programs that we have developed since that report was received, now over 10 years ago.

For example, the funding, Mr. Chairman, that you assured us would be protected while we worked to assure new programs for Native Hawaiians, you have kept your word. Those funds have not been lessened. We now have, this year a proposed $646 million NAHASDA block grant, significantly more funding than we had 10 years ago. I am happy to report one of the agencies that we met with during the Commission's work in the early 1990's, Rural Development, Farmers Home Administration, has answered the call and the challenge that we gave them. This year, they provided nearly $150 million to Indians through their programs. They are promising more. That is a significant improvement in our ability to get our job done.

It was reported recently that last year there were $50 million in tax credit projects on reservations—over 1,000 new units utilizing a resource that was never dreamed of prior to recent events. The Federal Loan Home Banks now call us. They are interested in projects. They are interested in title 6. I think we are very early in what is likely to happen with good planning and good partners.

The tribes themselves are committing new dollars, unlike we have ever seen before, because NAHASDA encouraged and invited the tribes to take charge of their housing programs, which is right. And they are now seeing how they fit into the overall economic development and well-being of their tribal members. More tribal dollars than ever before are being invested in housing and infrastructure.

And most importantly, and without this group, we will never have success, and that is the individual initiative of hard-working, dedicated Indian people across this country who are willing to step up and pay for their own houses, if given the opportunity. Our job is to make sure they have that opportunity. I think together we are going to get that done.

I have quite a few specific recommendations that are listed in my testimony that I would like the committee to consider. By and large, I think, given the overwhelming task of changing from a program like the 1937 Housing Act, that was never designed for reservations, to NAHASDA, everybody has done a commendable job.

There are problems. We have been at odds with HUD on further negotiations of the regulations. But I would just ask, if we wouldn't have negotiated the original regulations and the 48 tribal unpaid negotiators who spent over 200 hours trying to come up with the best regulations we could, I am asking how successful this program would be? I am suggesting maybe that it would not be as well-received and as—it wouldn't be creating as much excitement as it is if there wouldn't have been negotiated rulemaking. So I think HUD should welcome that continued input. I was pleased to hear Assistant Secretary Liu's comments this morning.

Just one issue that I think is worth mentioning. There have been a couple of instances where HUD has taken a very rigorous interpretation of the statute and regulation. One is their interpretation that no economic development of any kind can take place when NAHASDA dollars are involved. That, in my opinion, kind of defeats one of the things we hope to do, and that is to give the tribes a little money to bring to the table when they sit down to do business. Because of HUD's position, we have not been able to do mixed-use housing, a lot of the innovative housing delivery systems that are taking place everywhere else. We would like to have that relax some.

And the other thing is HUD has taken a rigid interpretation of eligible participants. They say that unless an eligible Indian lives in assisted housing, they cannot participate in NAHASDA's programs. I, for the life of me, cannot figure out from where that interpretation comes.

Basically what they are saying is if a child wants to come and play on a baseball field built on a reservation with NAHASDA funds, if they live in a HUD-funded unit they are eligible to use it, but if they happen to live in a tar paper shack with their grand-

ma and grandpa, they can't. So I think we need a little bit more attention to that interpretation.

But other than that, my comments are attached and I welcome any questions the committee might have.

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

The CHAIRMAN. Mr. Gauthier, I thank you very much. It was heartwarming to learn that there are success stories involved.

Do you think that your successes in securing funds, other than those available under NAHASDA, could be duplicated in other tribes?

Mr. GAUTHIER. Oh, I think they are. Everyday when I pick up Indian Country News or one of the other Indian newsletters, I read about new and innovative things that are happening. I think there is going to be a groundswell of innovation now that tribes are learning from each other. It takes a little while to pollinate.

This morning, one of our tribal leaders told us a story about planting a fruit tree, and it takes a little while for that tree to take root and start bearing fruit. It has been a relatively short time since NAHASDA hit the ground. I heard one HUD official tell a national audience that before NAHASDA, 6,000 units were produced nationwide for Indians, and three short years later, nearly 20,000 units were produced. I think that is an indication of early success, but I think it is just the tip of the iceberg of the kind of success that we can all expect with reauthorization.

The CHAIRMAN. You have been averaging about 50 homes per year.

Mr. GAUTHIER. That is correct, sir.

The CHAIRMAN. Of that number, just a few come from NAHASDA funds.

Mr. GAUTHIER. That is correct.

The CHAIRMAN. What percentage of that 50?

Mr. GAUTHIER. Ten percent. We built five with NAHASDA funds.

Senator INOUYE. So 45 out of the 50 are from other funds?

Mr. GAUTHIER. That is correct, sir.

The CHAIRMAN. And generally what sort of funds are we speaking of?

Mr. GAUTHIER. Well, we have done four tax credit projects we have done one each year since NAHASDA was implemented. We have done a title 6 loan, which in essence is a NAHASDA project, but it didn't use any direct NAHASDA funds because it is set up in such a way that it is self-servicing. We have done an awful lot of individual mortgages, using non-restricted funds that the Housing Authority received from proceeds of sale of Mutual Help units for down payment assistance for our tribal families. We are doing about 20 of those a year.

The CHAIRMAN. I brought up the matter of predatory practices in lending in Navajo Land. Have you experienced that in Pablo?

Mr. GAUTHIER. Well, I will tell you, they always make a joke that the fastest growing business on the Flathead Reservation are pawn shops. I think Indian people by and large don't have access to the credit other communities have, and they are perfect candidates. When you need money, you've got to pay what the market demands. And there are not very many options for a lot of tribes. And we experience, even though we are a fairly prosperous tribe with

one of the lower rates of unemployment, particularly in the Plains area, but a lot of our members have suffered through really horrible lending practices. We try to educate them, but it is a slow process.

The CHAIRMAN. You have indicated that section 601(b) of the act, which requires a tribe to certify that it was unable to secure timely financing, could have unintended consequences in having to pay above-market rates. Do you have any suggestions how this unintended consequence can be avoided?

Mr. GAUTHIER. Well, I would suggest that that requirement be removed, because if you can get credit at three or four points higher than what you would get with a guaranteed loan, it will a lot of times make the project not financially feasible. NAHASDA does not have any subsidies. So if we are building low rent units, we have to have the lowest price possible, because unless you commit part of the money received in a block grant to subsidize those low rent units for very poor families, you are going to be out of money. If you continue to build low rent units without figuring out a way to support them with the block grant, you are not going to be able to build any more new units.

Under the 1937 act, we had the PFS factor which assured subsidy to meet the low rent shortages. We don't anymore.

The CHAIRMAN. You are suggesting that we should consider repealing 601(b)?

Mr. GAUTHIER. I think it could be reworded, Mr. Chairman, slightly to accommodate that issue.

The CHAIRMAN. May I ask you to work with my staff here?

Mr. GAUTHIER. I would be honored, sir.

The CHAIRMAN. Thank you.

Mr. Vice Chairman.

Senator CAMPBELL. Thank you, Mr. Chairman.

I have a couple of questions for you, just in passing. You mentioned pawn shops, Mr. Gauthier. You know, that ought to be something we deal with sometime in this committee—the history of it and how Indian people use it.

But I know that there are some good stories about them and bad stories about them, but I have some Navajo friends who, as an example, who live way out with no burglar alarms and not good security in their houses that actually use the pawn shops like a bank. It is where they redeem their jewelry when they want to use it again, but they find it safer leaving it there than it is leaving it at home. So there is probably an up-side and a down-side. But there were so many down-sides some years ago, as you probably know, the law was changed and now they are federally licensed and regulated, or supposed to be if they are working on reservations with Indian people.

Let me also commend you at the terrific model that your tribe has done. The 50 houses, and you indicated only five are done with NAHASDA money and the other 45 done with other funds—I think that is wonderful. There is a story in there that we ought to be able to use or do something with through changes in NAHASDA through legislation or in other Federal laws, or at least by using that as a model that other tribes could copy. If you have any suggestions, if there is something we ought to do legislatively, I cer-

tainly would appreciate some advice so that we can improve this bill.

The CDFI recently published its Native American Lending Study, as you know, outlining the steps that need to be taken to improve the access to credit in Indian communities. What steps do you believe the Federal Government and the tribes can do to improve that situation?

Mr. GAUTHIER. My answer might surprise you, Mr. Vice Chairman, but we have had a tremendous response from the Federal agencies, particularly rural development. They have lending programs that are perfectly suited for Native people. They have the 502 Program that most of us were not aware of that will give a one percent loan for 37 years. They have a 515-Program that will be a 50-year 1 percent loan with subsidy. It is not used in Indian country. We are starting to use them.

But the problem that we are having is while the local rural development personnel are well educated as to our issues, when we send something to their internal attorneys, things go to hell—excuse my language. We cannot seem to get—it bogs down when it gets beyond the local level. We have lease approved locally. It dies, it disappears, it doesn't get out of there. Right now, we are waiting on 10 self-help units in Elmo. It is a remote community on a reservation. The Housing Authority has been helping with the bridge financing, and we are waiting for Rural Development to take those loans out and we are guaranteeing them. But they have a problem with the very same lease process, where the Housing Authority takes the lease from the tribe then subleases it to the participants, that we used with HUD to build over 1,000 units at Flathead. But for some reason, their attorneys want to totally reinvent the wheel.

So while the families—and let me tell you, out of the 10 families, 8 of them are single-mother heads of household and are building their own homes. And they are working like crazy in the dead of winter in Montana to have these homes ready for their families, and yet we are having that sort of problem.

If there was some way that we could have those people who make decisions on Indians share, you know, tie into a common educational process, I think it would expedite the availability of mortgage money on reservations.

Senator CAMPBELL. Well, you brought up two problems we face all the time. We put things in place, and number one, it often gets tangled up in bureaucratic red tape; or number two, the information does not filter out to the tribes so they know what they can avail themselves to, and the training to be able to avail themselves to it, too. I know it is not an easy thing to do.

You seem to have a wonderful relationship with your banks. How did you do that? Did Doug Allard have a connection with all those banks up there in Flathead, or what?

Mr. GAUTHIER. I think he's got most of the money in them. [Laughter.]

Senator CAMPBELL. I think so, too.

Mr. GAUTHIER. I will share the inquiry with him.

Senator CAMPBELL. Good.

Mr. GAUTHIER. You know, we have a very unique reservation and tribe. Our tribe is blessed with some outstanding leaders. I know

the chairman and our late chairman, Mickey Pablo, were great friends. And our tribal leadership had the vision to set up a revolving loan program more than 40 years ago that now has $40 million in trust land loans—mortgages. So the people on our reservation that need mortgage loans, they don't come to the Housing Authority. My job is much easier because I only have to deal with the families that are income-eligible, that qualify for the programs, and not all the programs that have the ability to pay a mortgage. So our bank is more familiar with lending. We have on our reservation six separate institutions, which is very unusual. And due to some of the work we did early, and the work of the Commission, I was invited to serve on the Federal Home Loan Bank of Seattle's board as a community interest director.

Senator CAMPBELL. Your own personal banking experience probably has helped them, because I know banks. Man, you must have a very fine repayment rate because if they don't get repaid for a while, they are tougher to get money out of.

Thank you, Mr. Chairman, I appreciate the opportunity.

The CHAIRMAN. Thank you.

I just have one more question. You have indicated that section 184, the Loan Guarantee Program, is somehow not being received too well by tribes. Can you tell us why?

Mr. GAUTHIER. Well, I would like to go back again to the good work of Congressman Doug Bereuter back in the early 1990's, again during the time of the Commission, and one of his staff members, Joe Pigg, who said we could help by giving you a product that would give a lot of confidence to lenders that wanted to loan money on Trust land. And the concept of section 184 was to have a high tolerance for default, because at that time every house we built in Indian country was just built. There was no leverage. If Congress appropriated enough money for 100 units, we built 100 units.

So we figured if we could leverage that even one time to 200 units and one-half the loans failed—50 percent failed—we still were breaking even. That was the idea behind section 184, is to try to have a high tolerance, give a guarantee that was very easy to use for lenders, but eventually it founds its way basically to—I mean, it's got some great components. But the underwriting very much resembles other FHA loans. And it is very cumbersome.

For example, I know there is at least one person from Rocky Boy here. They had a lady that returned to their reservation who taught school in California. She and her husband were interested in building a house and inquired about a mortgage. The bank said no, but there is a 184 Program. So the applied for it, and it took 1½ years and a three-ring binder that thick—now, this was a couple of years ago, and they have made some improvements, but at that time, it took 1½ years and a binder that thick to finally get that loan approved.

They had to do their own environmental certifications, for example. I mean, it could be much simpler if we had a little—I mean, as far as I know, the default rate in 184 is similar to downtown Scottsdale. There is not much tolerance for people to learn to make mistakes. I think there are some ways we could loosen it up and get more mortgages made, in my opinion.

The CHAIRMAN. Would this take an amendment to the law?

Mr. GAUTHIER. Well, there were some specific recommendations on credit that I had in my testimony that I think could be done by HUD if they chose to, without any statutory change, Mr. Chairman.

The CHAIRMAN. Once again, I join my vice chairman in thanking you, Mr. Gauthier.

And now may I call upon the president of the National American Indian Housing Council, Chester Carl, and the first vice president of the National Congress of American Indians of San Juan Pueblo, Joe Garcia.

Mr. Carl and Mr. Garcia, welcome, sir.

Mr. CARL. Thank you very much.

The CHAIRMAN. Please proceed sir.

STATEMENT OF CHESTER CARL, PRESIDENT, NATIONAL AMERICAN INDIAN HOUSING COUNCIL

Mr. CARL. Mr. Chairman and Mr. Vice Chairman and honorable committee, on behalf of the Coalition for Indian Housing Development and its sister organization, the National American Indian Housing Council, I would like to again express my appreciation, Chairman Inouye and also Vice Chairman Campbell and other members of this committee, for holding this hearing.

In listening to the questions, I feel like you are more educated than me providing this testimony. However, I would also, again like to take this opportunity to also thank you on behalf of the entire organization, the people that are behind me here in the audience, for having this Committee put a lot of effort into Indian housing issues.

The Native American Housing Assistance Self-Determination Act of 1996 is still a young program. But we have already, according to the testimony, seen a lot of its potential. Beyond my capacity as chairman of the Coalition and also National American Indian Housing Council, I am also a housing administrator. It has been unquestionable that NAHASDA-funded programs have been successful in providing better housing. It is a program that has tripled production in its first year, and increases number every year.

This is the result of a major effort and parallel efforts to implement private financing and also efforts to address economic development. I have seen the same success that I have seen on my reservation also in other reservations.

NAHASDA addresses the specific needs of tribes and has gone far in defining the government-to-government relationship between Indian tribes and the United States Government. Based on this unique relationship, NAHASDA outlines ambitious goals to provide tribes the tools to be more creative, while also encouraging flexibility for providing housing services to tribal members.

Today, I speak to you as chairman of the Coalition for Indian Housing and Development, a new voice for Indian housing, but also a voice for community development, and that also includes economic development. The few examples of some of the flexibility I am sure this Committee has heard about is the Apache Dawn Project at Whiteriver, White Mountain, AZ. This tribe is using bond issuance to leverage with NAHASDA to finance their community. But more importantly, they also are using the lumber from

the local sawmill to build the community, and that is the way it should be.

Tribes across the country are using NAHASDA funds to leverage with mortgage programs. The Chickasaw Nation, I believe the committee has mentioned, includes other nations such as the Oneidas, the Red Lake in Minnesota, and the very small Pueblo in New Mexico, Santo Domingo. You could not be more proud of them. They were part of the umbrella housing authority organization and have been able to break away through self-determination; been able to use tax credits to develop housing projects to serve their community.

The act requires tribes to accomplish clearly stated goals to reduce housing needs. It further encourages the involvement of private entities, rather than simply spending Federal funding. Unfortunately, as the years passed since enactment, these lofty goals appear to have been limited by the continued burdensome oversight of HUD. The creation of HUD impediments are not authorized by NAHASDA, and sometimes other agencies refusing to accept the goals of NAHASDA, discourages a lot of this development.

The Coalition for Indian Housing Development respectfully requests Congress to reaffirm its commitment to NAHASDA, and tribal sovereignty through reauthorization.

My constituents, the membership that I represent, requests Congress to make the following changes in the act. One, earlier discussed, the negotiated rulemaking—we hope this committee takes the lead role to clarify the statute to remove any ambiguity or discretion on the part of HUD to engage in serious, meaningful negotiated rulemaking with tribal organizations on all rules and regulations promulgated pursuant to NAHASDA. We have heard some promises by the Secretary.

I think HUD is afraid the tribes will engage in long, meaningless negotiations, but that is not so. The initial negotiation that took place to develop the rules for NAHASDA, it took us 90 days to develop a draft. With nothing in front of us, it took us 90 days. It took a year and a half for HUD to clear the rules. I think that is important to remember.

Many of us do not want to spend time away from our families, spend long hours sitting day after day with HUD to negotiate. That is not the intent. I think our intent is not to run HUD, but assist HUD in developing regulations that will allow us to develop a better governing document.

The TDHE members that the assistant secretary spoke to was a decision that was made by HUD. One of the problems that he speaks to is many tribes not responding. But he didn't tell you the criteria the tribal leaders had to meet was to define themselves as representing small to medium to large tribes. Where did that definition come from? We don't know. The other criteria, Mr. Chairman, if you were to ask to serve on this committee, you have to have served a minimum of 2 years as a board commissioner of an Indian Housing Authority. Any tribal leader that is out there fighting on behalf of its housing issues or other issues don't meet that criteria. This is foolish, and that is the reason that the Secretary is not able to meet the needs of the negotiated rulemaking requirements, and to further revisit the formula for NAHASDA funding.

The other issue that I would like to also bring to the committee's attention is the issue that also requires technical amendment. That has to do with program income. We urge the enactment of a technical amendment to NAHASDA that would allow more flexibility in determining program income. Currently, HUD views any income or revenues, no matter how remotely related to the expenditure of Federal funds, as program income. The tribes are required to track program income and financially account for these funds without any sunset, meaning it has to be tracked until eternity.

This not part of an accounting function anywhere we find. This also causes a severe disincentive for Indian Housing Authorities and TDHE tribal governments from exploring creative and imaginative housing and finance initiatives. They have also imposed a requirement to have tribes use all its reserve funds before they can draw down on any funds from NAHASDA. This hinders any private financing opportunities. In order for the tribes to duplicate what Mr. Gauthier explained in able to paint a very good balance sheet to allow private financing to come onto your reservation, it will not be done if these type of restrictions remain with HUD.

Some of the other issues that I believe that the secretary spoke to is very, very important—the training that he spoke to, Mr. Chairman. We find that the tribes do not have an opportunity to consult on the appropriation. As a result, in the past 5 years, set-asides have been taken from NAHASDA for special projects, without any consultation. Often, these set-asides are not successfully implemented. For example, HUD has been able to receive over $5 million each year for set-asides for TA and training. Yet, we still see the lack of technical assistance that is received on the reservation.

It is also very disheartening to see millions spent on HUD conferences where many tribes cannot even afford to go. It is true that our organization is also receiving this money to provide training for technical assistance, but much of this training is provided free of cost. In the case of technical assistance, we go directly to the tribes.

We urge this committee again also to review the funding of these NAHASDA set-asides to ensure that we are providing the best product out there.

I also would ask this committee to look at those programs in these set-asides that are no being implemented. For example, the 184 program—we believe there are some answers there; the title 6 program. We would like to see perhaps the committee explore the option to bring those moneys directly into the block grant formula, rather than having those moneys be captured by HUD or by Congress further on down the road.

In conclusion, I appreciate the committee's attention in addressing important issues that hinder not only economic development, but also housing development opportunities on Indian reservations. We are confident that together our efforts will result in direct benefits to American Indians and Alaska Natives.

Indian housing is at a critical stage, with many of the housing problems that have long plagued Indian communities still unresolved, including the press conference that we had yesterday on overcrowding. The passage of NAHASDA has given tribes incredible opportunities, and with adequate funding and proper imple-

mentation, NAHASDA can be the most important tool in building sustainable and healthy communities in Indian country.

Thank you very much.

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

The CHAIRMAN. I thank you very much, Mr. Carl.

Vice President Garcia.

STATEMENT OF JOE GARCIA, FIRST VICE PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. GARCIA. With all due respect, sir, I request to speak before you this afternoon. The request is granted? Thank you.

Good afternoon. On behalf of the executive committee and members of the National Congress of American Indians, I would like to thank you, Chairman Inouye, Vice Chairman Campbell and other distinguished members of the committee for this opportunity to speak today on the subject of housing, especially now at a time when so much attention has been paid to the trust reform and the BIA. It is good that you take the time to listen to us.

My name is Mark of the Misty Lake, better known as Joe Garcia. I come from San Juan Pueblo, a little Pueblo in northern New Mexico. With NAHASDA, we have been able to do a lot more than we have ever been able to do in just the recent years. And so that is testimony enough for me to understand the importance of NAHASDA and its impact in Indian country.

I will speak today a little bit about some of the issues. Some are old issues, some are continuous issues, and some issues you have iterated and reiterated today numerous times. But nonetheless, hopefully this testimonial is just reinforcement to the fact that they do exist, the problems do exist, issues do exist.

The future of Indian housing dramatically changed on October 26, 1996 when Congress enacted Public Law 104–330, entitled the Native American Housing Assistance and Self-Determination Act of 1996. Some of those most important changes for Indian housing, as opposed to the 1937 Housing Act, included establishing the trust responsibility with Native Americans, to include affordable and healthy homes; separating Indian housing from public housing within the Department of Housing and Urban Development; replacing several individual housing grant programs with one block grant to tribes or their tribally designated housing entities; allocating appropriated funds based on a single formula, eliminating the competition among housing authorities for scarce housing resources; providing much greater flexibility for development of affordable housing activities at the community level; requiring enabling regulations to be promulgated through a negotiated rulemaking process with the tribes. Those two latter ones are ones that we really need to build on, and I will touch upon those in a few seconds.

In 1998, technical amendments provided some clarification of the act, as well as amendments passed late in 2000. These later provisions included a Davis-Bacon wage rate preemption for tribes, an environmental waiver, local cooperation agreement improvements, along with other important provisions.

Tribal authority and responsibility—perhaps the most fundamental change to Native American and Alaska Native housing following the advent of NAHASDA is HUD's relationship with tribes. As

beneficiary of the Federal Housing Program, federally recognized tribes exercise their authority throughout the NAHASDA process, seeking true self-determination that the act emphasizes from the title, all the way through the statute.

Illustrating the self-determination aspect of NAHASDA, each NAHASDA recipient is responsible for the following—three basic ones. Tribes possess the power to decide who the recipient of the NAHASDA program will be, either themselves or their tribally designated housing authority. Each recipient must then submit an Indian housing plan that certifies approval of each involved, in the case of more than one tribe being served by the recipient. Those plans are so important. That is what delineates part of the continuance and the consistency for how successful the housing programs can be.

The essential part of the housing program was to provide affordable housing activities that can be drawn from a list of eligible activities, including development, modernization, management, crime prevention, planning and leveraging. Tribes can draw from these activities to formulate a housing program tailored to their specific needs. Therein lies one of the major points of NAHASDA and how much more successful it can be, is to allow for these kinds of flexibilities within the program. You have heard some testimony today on some of those successes. There are numerous others in the country, including my little Pueblo. This is what allows us to move forward.

On the government-to-government relationship, in so many ways NAHASDA set the stage for increased freedom for tribes and created an atmosphere where self-determination and tribal sovereignty could flourish. Unfortunately, these good intentions of Congress still have not made their way into HUD's day-to-day administration of the program. For too many years, HUD was the puppeteer for tribes in their housing programs, so it is understandable that there continues through this period of transition adjustments that must be made as far as self-determination is concerned. And so we have to do away with that mentality to allow for NAHASDA to be an even further success.

NAHASDA has allowed for this negotiated rulemaking procedure to be put in place. I am proud to say that I was one of the committee members. I served as Governor of San Juan Pueblo in 1997, and I said to the delegation this morning that those individuals, including the resource people, that served to make the negotiated rulemaking a success, and to make NAHASDA a partial success, should be given a medal of honor for what they endured, the pain, the sacrifices they made to make it work. That is testimony in itself that the negotiated rulemaking ought to continue and that it needs to be mandated of HUD. Because if we don't do that, it is one entity calling the shots, and I think that is detrimental to Indian country. It is important that that be mandated, and that HUD be required to adhere to it.

Only then can we see success, because this is a solution not for us here. It is good that we are here, but I think what is most important is the people back home. For those of you who have visited Indian country, you cannot really appreciate what we speak of here unless you have made some visits. And Senator Inouye and Chair-

man Campbell, I know you have been out there. And so I know that you can appreciate what we speak of.

So there are numerous other issues that we need to speak of, but all have been mentioned. I will touch lightly only on the position that has been open and the downgrading, as I see it, of that one specific position. I think that position would not carry political weight to address all of the numerous high level issues that is required of such a position. So I would suggest and recommend that HUD reconsider—not only reconsider, but to maybe be mandated that that position of high level be restored.

With all of that, I have my written testimony submitted. If there are any questions, I will be glad to answer them if I can, and I again thank you for the opportunity. I do represent NCAI, and the myriad of Indian Tribes and Nations throughout the country, especially those people in need back home.

Thank you for the time.

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

The CHAIRMAN. I thank you very much, sir. The full text of your testimony will be made part of the record.

Mr. Carl, in your testimony, you have touched upon multiple environmental reviews that Housing Authorities must complete, often having to address differing requirements. On an average, how many environmental reviews are associated with the construction of one unit?

Mr. CARL. Presiding chair, in my testimony you will find that our concern is the multiple requirement from different agencies. If the environmental review is done by BIA, if it is done quite some time ago, rather than moving forward and approving that environmental review, HUD will require a total new environmental review. On any activity that involves, whether it be renovation, even just replacing the roofing of a house if it leaks, it requires not only the State, asbestos abatement also, but environmental review reports. Further, HUD has to approve the environmental review.

The CHAIRMAN. What kind of costs are we talking about—money and time?

Mr. CARL. On each environmental review that we conduct, each cost, each house, each unit averages anywhere between $450–$500 to conduct environmental review studies.

The CHAIRMAN. $500 for one unit?

Mr. CARL. For one unit. Mr. Chairman, you also have to understand that many of Indian country does not have mapping for flood plains. There is really no information to substantiate the requirements of environmental review. So there are a lot of research that has to take place into specific areas where environmental review has to be conducted.

The CHAIRMAN. Have you discussed this matter with HUD or EPA, on your suggestion that one environmental review should suffice?

Mr. CARL. Mr. Chairman, I believe in an attempt to consult with HUD, an attempt to prioritize issues that are important to the tribe, often the issues that are not important becomes priority for HUD to consult with the tribes. So that is the very reason why I believe the tribes are very adamant about mandating a negotiated rulemaking provision in the statute that mandates HUD to sit at

the table with the tribal input to determine what should be prioritized, not only for negotiated rulemaking, but also for consultation.

The CHAIRMAN. Mr. Garcia, you spoke of the position being downgraded. The position of NCAI is against that?

Mr. GARCIA. Yes, sir; I believe we would be. It is important, as you ask the pressing question yourself this afternoon, that in Indian country, that is what it would resemble. But not only that, in terms of function, when you look at the levels of authority and levels of responsibility of those particular positions, the authority would not be there, the responsibility would not be there, and certainly the political clout that is required to address and work with the other number of agencies that is required would not be there. So in a sense, it is not only a downgrade, I think it is undermining the entire position and where Indian housing is.

The CHAIRMAN. I can assure you we will do our best to see that your position is upheld.

Small tribes have advised the committee, as you have, that they have problems because they receive smaller block grants, insufficient funds to hire or administer housing problems. Do you have any suggested amendments to NAHASDA or to regulations that would address the problems of small tribes?

Mr. GARCIA. Mr. Chairman, I think that is a long-term solution, but part of the solution when we were fighting the formula, and I worked on the sub-group, I was cochair on the subgroup for the formula, and one of the issues that faced us is the formula, the way it was written, that in the onset we simply used a simplified formula. Thereby, if you look at the smaller tribes, they were just by default in their status in the numbers of land-base and number of units and number of tribal members, they fell at the lower end. I think that that needs to be readdressed.

For negotiated rulemaking, that would be one particular area that is a critical area that needs to be addressed. I believe that we can come to some creative solutions, unique solutions on how we can address that. But not having a mechanism, a conduit in place, a system in place to address that, we can't begin to fix it.

And so, that is only one area—the formula is one area. There are a myriad of other areas within the NAHASDA that need correction, but it is like the example that I gave, Mr. Chairman, this morning about this little fruit tree.

The CHAIRMAN. Will you get together with the staff to work out recommendations?

Mr. GARCIA. Yes, sir.

The CHAIRMAN. Because on the reauthorization, if we need to make changes, this is the opportunity we have.

Mr. GARCIA. Okay. Thank you, sir.

The CHAIRMAN. Now, speaking of negotiated rulemaking, both of you concur that it should apply to amendments and not just the original rule. Is that correct?

Mr. CARL. Presiding chair, we believe that HUD misinterpreted the intent of the law. As I recall the writing of NAHASDA, Senator John McCain very strongly insisted on having a negotiated rulemaking provision. We believe that any rules that are going to be

developed, whether it be amendment of the rule, it should be done through negotiated rulemaking.

The CHAIRMAN. Is that the official position of NCAI?

Mr. GARCIA. I agree, Your Honor.

The CHAIRMAN. Do you have a resolution to that effect?

Mr. GARCIA. I believe we do, although I don't remember the resolution number. There is one in place.

The CHAIRMAN. Can you send us a copy so we can use that in our discussions here?

Mr. GARCIA. Yes, sir; we will.

The CHAIRMAN. Also, I presume you have a resolution on the assistant secretary's position?

Mr. GARCIA. I believe there is too, on that one, and there is also a letter addressing that.

The CHAIRMAN. We would appreciate that.

We have been advised that over 200 tribal leaders walked out of HUD's Homeownership Summit in St. Paul last July to protest HUD's implementation of its tribal consultation policy. That group prepared a position paper explaining the reasons for the protest. Were you involved in that? Do you know anything about this protest?

Mr. GARCIA. I was not involved in it, no, sir. I am not aware.

The CHAIRMAN. Mr. Carl are you aware of this protest?

Mr. CARL. Yes; I am. In fact, I was also asked by HUD to cochair the meeting that took place. The tribal consultation negotiated rulemaking has a very long history. Secretary Cuomo in his position as secretary gave a commitment to the tribes, and his commitment was this: If you can develop a policy on consultation and negotiated rulemaking, HUD will support it. The secretary, I am sure, was not advised very well, because tribes—he was probably advised tribes tend to fight among themselves and never agree on anything.

The tribes took this as a challenge, and met in Las Vegas, over 150 tribal representatives. We developed a draft. It was presented to HUD. In February 2000, the tribe presented this policy. That policy had 48 tribal members as part of the negotiated rulemaking team. And the tribe made a determination who would represent them on this negotiated rulemaking team.

And it also provided how different consultation would be done. For example, the formula negotiated rulemaking could be done in a smaller group, but it would be represented back to the 48 members. So when the 48 member was presented to Secretary Cuomo, HUD informed the tribes that they could not accept that proposal.

So the tribes felt like their only avenue to get back to the table to discuss a lot of these implementation issues was to the consultation policy. The consultation policy that was presented to HUD basically said, HUD, we determine what will be discussed and presented. Tribes, you may have some input, but in the long run, HUD determines which is to do. And the tribe had major problems with that. So for that reason, the tribes felt like it was not productive to continue dialogues, but rather make a very respectful protest of that presentation of that policy.

The CHAIRMAN. Do you believe that the attitude has changed since then?

Mr. CARL. We had strong hopes for this Republican administration. We understand that Assistant Secretary Liu has just been in office a couple of months. We are somewhat hopeful at some of his responses, but I think it will take the work of this committee to get to where we can actually sit down with HUD.

The CHAIRMAN. We have been led to understand that ONAP does not have uniform policies dealing with all tribes in all regions. They seem to have policies that differ from region to region. Is that correct?

Mr. GARCIA. I missed the last part, sir.

The CHAIRMAN. We have been led to understand that the Office of Native American Programs does not have uniform policies for dealing with all tribes in all regions. In other words, they have different policies in different regions. Is that correct?

Mr. GARCIA. Sir, I think the policies—there may be some policies in place. It may be the interpretation. While we stress at some level that the decisions should be able to be made over at the regional levels, that should be done. However, there should be some consistency in how those decisions are made and what policies are being looked at. So that is an issue.

Mr. CARL. Mr. Chairman, if I may just add on to the Vice President's comment, when we sat down to negotiate with HUD, pre–NAHASDA HUD approved everything, even your operating budget, even how much your staff salaries would be. It went as far as HUD approving your contractors, your housing design, and how much the house would cost, so from that mentality to an abrupt change with negotiated rulemaking where we had to discuss these very same issues with HUD staff that are present. A lot of the field staff were not present at that negotiated rulemaking. The rationale, the pretext on why the tribes were wanting things done in a certain way was not provided to the HUD staff.

So there is a lot of misinterpretation. There is a lack of guidance, uniform guidance to be provided to staff. So you get a lot of the old mentality of "mother may I" type attitude from certain staff of HUD. As a result, HUD imposes restrictions that are not even part of the regulatory requirement. For some of us tribes, we are outspoken. We know the rationale behind some of those regulations, but there are many tribes that are afraid to break ties with the relationship we have with HUD staff. So for that reason, a lot of time tribes tend to try to comply.

The CHAIRMAN. If I may, I will submit to both of you questions of some technical nature that may require some research. May I do that?

Mr. CARL. You certainly can. We will be more than honored to address a lot of those issues you may submit to us.

The CHAIRMAN. In working on the reauthorization bill, there are times when amendments are not necessary, but it is always important that we put the right matters in the committee report, because the committee report oftentimes is often looked to, to determine legislative intent. And so there are some changes that you have recommended which may not require an amendment to the law, but may require some urging on the part of the committee on the policies that are enunciated by the agency. So if you have any suggestions you let us know.

So with that, may I thank both of you and thank all the other witnesses for sharing your wisdom with us. We will take them seriously as we proceed in the matter of the reauthorization of NAHASDA.

Mr. GARCIA. Thank you.

Mr. CARL. Thank you very much.

The CHAIRMAN. With your help, I think we can do it. Thank you very much.

[Whereupon, at 4:05 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Mr. Chairman, thank you for the opportunity to meet today to discuss the Native American Housing Assistance and Self-Determination Act.

Congress passed the Native American Housing Assistance and Self-Determination Act (NAHASDA) in 1996 in order to strengthen Federal housing assistance for tribal communities. Unfortunately, tribal communities suffer disproportionately from substandard housing conditions, such as overcrowding, lack of plumbing and electricity, or lack of any housing at all. Indeed, the success of NAHASDA is critical to many low-income Native Americans. As we reauthorize this legislation for another 5-year period, it is important that we assess the implementation of NAHASDA to identify what has worked well for tribes and what aspects need to be improved upon.

HUD's Office of the Inspector General has examined the first 3 years of the implementation of NAHASDA and reported its findings in August 2001. This study found that, overall, tribes have successfully implemented NAHASDA. However, the report also identified several concerns about the workings of NAHASDA on both the Federal and tribal levels.

I am also aware that many tribes have expressed serious concern that HUD has not adequately consulted tribes when making regulatory changes to NAHASDA. While tribes believe that a negotiated rulemaking process should be used anytime changes are made to NAHASDA regulations, it is my understanding that HUD has taken the position that the requirements of NAHASDA were met when HUD included tribes in the original adoption of regulations.

NAHASDA was designed to help tribes with their housing needs while also promoting tribal self-determination. Indian Housing Block Grants are awarded directly to tribes to allow tribes to maintain authority over both the design and implementation of housing programs for members of their communities in need of housing assistance. I believe that it is important to address how we can promote negotiation between HUD and tribes in order to respect the government-to-government relationship between tribes and the United States.

Mr. Chairman, 29 tribes in Washington State rely on Indian Housing Block Grants through NAHASDA to provide for low-income tribal members. I am eager to participate in a forum where we can discuss both the strengths and weaknesses of the implementation of NAHASDA to help tribes effectively meet the housing needs of their communities while respecting tribal self-governance.

PREPARED STATEMENT OF KENT CONRAD, U.S. SENATOR FROM NORTH DAKOTA

Mr. Chairman, thank you for holding this oversight hearing to discuss the implementation of the Native American Housing Assistance and Self-Determination Act, commonly known as NAHASDA.

Native Americans face some of the worst housing conditions in the United States, and overcrowding is common. In North Dakota, where winter daytime temperatures

generally do not rise above freezing—and in fact are often sub-zero—a person who lacks solid, well-insulated housing is at risk of serious injury and possibly even death. Yet we are asking many Indian people in North Dakota and throughout the United States to make due with substandard housing.

I am pleased that in 1996, Congress passed NAHASDA, which allows tribal housing authorities greater autonomy to design housing plans that suit their needs. NAHASDA block grants are a more efficient way of providing funding for housing in Indian country. As the title of the 1996 act indicates, self-determination is a core principle of the law. NAHASDA points to local control and local solutions to address the housing crisis facing so many in Indian country.

As this committee works on the reauthorization of NAHASDA, one area that should be examined is whether an emergency reserve fund should be created. This past year it was discovered that over 200 homes on the Turtle Mountain Reservation in my State of North Dakota were infested with black mold, caused by the extraordinarily wet conditions in that part of the State.

Black mold can be life-threatening, especially to the very young and the very old with respiratory problems. It has caused very serious health problems to those occupying these houses on the reservation. In fact, two children have already died in these homes. Many of the homes are simply uninhabitable due to the extreme mold infestation in the basements, walls, ceilings, and insulation. Other tribes in North Dakota, including the Spirit Lake Nation and the Three Affiliated Tribes at Fort Berthold, are also battling mold-infested homes.

As we worked to find a way to replace the homes impacted at Turtle Mountain, we discovered that there is no emergency fund for Native American housing, as there is for public housing. As a result, we had to secure funding to address this emergency through other means.

It is my hope that we can address some of the issues, like the lack of an emergency fund, that have become apparent as NAHASDA has been implemented and make this good law even better. I look forward to the testimony of today's witnesses, and thank them for being here.

PREPARED STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Chairman Inouye, Vice-Chairman Campbell, members of the committee, and witnesses. I am pleased to be here today to receive the testimony on the Reauthorization of the Indian Housing Block Grant.

For over 5 years, tribes and Alaska Native Villages have been living through the experimentation of using Block Grants to provide housing assistance to Native Americans. The Native American Housing Assistance and Self-Determination Act has proven to be a vast improvement over the prior way that housing assistance was provided to Tribes in some respects, and a complete failure on others. We are here today to further review this program so that the proper improvements may be made.

It remains clear that Congress needs to further clarify the consultation process that is pivotal to the government-to-government relationship that exists between tribes, villages, rancherias, and the Federal Government. Tribes should be afforded a thorough and meaningful consultation process when the Federal Government attempts to change the regulations governing Native specific programs. Only once has this been seen by the tribes throughout the past 5 years on housing issues. There remains much discussion between the Department of Housing and Urban Development and Native peoples of this great Nation on what was the actual intention. I will tell you now that the Administration must consult with tribes as part of its Federal obligation to them.

Throughout my 16 years of service in Congress, I have been dismayed by the living conditions of our First Americans. On numerous occasions, it has been documented that Native Americans have the worst housing conditions in the United States. There is rampant overcrowding, homelessness, and crumbling housing stock. In South Dakota we see some of the worst conditions overall. There is anywhere between 50–80 percent unemployment on many of South Dakotas nine Indian Reservations. According to the Housing Assistance Council, South Dakota contains 10 counties that are inhabited by 30–65 percent of persons below poverty. Nine of these counties are fully contained or directly adjacent to reservations.

The Federal Government has the treaty obligation to provide basic services to tribes. This has been far from the case in most instances—including Housing. I appreciate the opportunity to continue to shape the face of Indian housing, and further improve access to safe, and decent housing for our Native people. The Federal Gov-

ernment must end the practice of treating our First Americans as Third Class Citizens.

Mr. Chairman I thank you for holding this important hearing, I look forward to receiving the testimony of our witnesses today. I ask unanimous consent that my statement be included in the record, and I will submit questions in writing.

PREPARED STATEMENT OF PHIL BUSH, NEVADA/CALIFORNIA INDIAN HOUSING ASSOCIATION AND THE SOUTHWEST INDIAN HOUSING ASSOCIATION

Thank you Chairman Inouye, Vice Chairman Campbell, and other distinguished members of the committee for the opportunity to submit this written testimony as part of the record for the February 13, 2002, hearing on the Native American Housing Assistance and Self-Determination Act.

As President of the Southwest Indian Housing Association (SWIHA) and as Chairman of the Nevada-California Indian Housing Association (Nevada Cal), I want to provide the committee with a perspective on the implementation of NAHASDA which you did not hear from the witnesses who testified before you on February 13. Nevada Cal, as its name implies, represents tribes in California and Nevada who are committed to providing adequate housing for their memberships. SWIHA represents tribes in California, Nevada, Arizona, New Mexico, and West Texas.

Most of the federally recognized Indian tribes who belong to Nevada Cal and many of the tribes who belong to SWIHA are smaller tribes who receive less than $350,000 per year under the needs component of the NAHASDA funding formula. As you know, the regulations adopted to implement the statutory allocation formula in NAHASDA established two components: One component to provide for the maintenance of the existing housing constructed with Federal funding under the National Housing Act; the other component to meet the continuing unmet need for housing in Indian country.

You have heard from the other witnesses that NAHASDA established a new era in Indian housing which respects the role of tribal governments and has allowed tribes more flexibility to provide housing to low income Indian families. We at Nevada Cal and SWIHA agree that NAHASDA is a vast improvement over the previous Indian housing program and we strongly support its reauthorization.

When the needs component of the funding formula emerged from the negotiated rulemaking used to establish NAHASDA's implementing regulations, it included a floor or minimum level of funding. Under those regulations, no tribe would receive less than $50,000 in the first year and no less than $25,000 for the next 4 years. That minimum funding level ends in fiscal year 2002. The smaller tribes unsuccessfully advocated for a larger minimum grant during negotiated rulemaking. The last 4 years have convinced them that an adequate minimum level of funding is essential to make the promise of NAHASDA available to all tribes and has taught them that $25,000 is not adequate.

For fiscal year 2002, 172 of the 583 federally recognized tribes in the United States will receive approximately $307 million or over 86 percent of the slightly more than $356 million available for allocation under the needs component of the NAHASDA funding formula. That leaves $49 million or less than 14 percent for the remaining 410 potentially eligible tribes. Of those, over 100 will receive less than $50,000 under the needs component of the formula.

Unless a realistic minimum level of funding is established for block grants under NAHASDA, grants to smaller tribes will produce no tangible improvement in the abysmal housing conditions in which their members currently live.

The cost to develop housing in Indian country is expensive, because those costs include the extensive infrastructure development that is frequently necessary to provide water, sanitation facilities, road access and electricity to the newly constructed houses and, of course, because Federal law requires the payment of prevailing wages to all workers involved in the construction of those houses. In California, for example, HUD has established the allowable "total development cost" or "TDC" for one home at more than $190,000.

In addition, NAHASDA requires tribes to comply with extensive regulatory requirements in the administration of block grant funds. They must submit annual Indian Housing Plans, performance reports, and independent audits. They must comply with the National Environmental Policy Act before they can draw down and use block grant funds and they must adopt accounting and procurement systems that meet Federal standards. NAHASDA currently limits these administrative expenses to 20 percent of the annual block grant.

For a tribe which receives the minimum grant of $25,000 this year, it cannot spend more than $5,000 to comply with all of these regulatory requirements but will

have only $20,000 to provide housing benefits to its low income tribal members. Even if that tribe were to take advantage of the federally guaranteed loan opportunities afforded by title VI of NAHASDA, it could borrow no more than $125,000, less than the cost of one house.

No other strategies we are aware of can mitigate an inadequate minimum grant level. If, for example, tribes were to join together into multi-tribal housing organizations, they might achieve some economies of scale that may reduce the percentage of their grants spent on administration. However, no economies of scale can make a $25,000- or even a $50,000-grant adequate to provide meaningful housing benefits to tribal members.

Based on our experience during the first 5 years of NAHASDA, Nevada Cal and SWIHA recommend that the Committee introduce as part of its reauthorization an amendment to NAHASDA that mandates an adequate minimum for block grants under the act. We are prepared to work with committee members on the development of that amendment and its passage.

PREPARED STATEMENT CHADWICK SMITH, PRINCIPAL CHIEF, CHEROKEE NATION

Chairman Inouye, Vice Chairman Campbell and other members of the committee:

Please accept the gratitude of the citizens of the Cherokee Nation in your continuing support for Indian housing programs. The Native American Housing Assistance and Self-Determination of 1996 (NAHASDA) has allowed our Nation to create its own programs designed by and for our citizens. It has allowed us to develop programs involving self-help, the development of the private housing market, and opportunities to leverage other funds in order to multiply the resources available to our citizens. Our ability under NAHASDA to control additional assets has also allowed us to monitor, develop, and implement efforts to improve self sufficiency, provide housing counseling, and to protect our citizens against practices such as predatory lending. We have been able to access private bank financing, the Low Income Housing Tax Credit process, the Federal Home Loan Bank's Affordable Housing Programs, USDA programs, and other sources of financing to house our citizens.

We greatly appreciate your support of the reauthorization and continued funding of NAHASDA.

The Cherokee Nation wishes to express its continuing concern over the issue of negotiated rulemaking. We realize our view may be contrary to most of what the committee has been hearing. We have been involved from the beginning of the attempt to formulate a new consultation policy with the Department of Housing and Urban Development. We are concerned that subjecting all changes to NAHASDA regulations to the negotiated rulemaking process creates an inefficient, potentially bureaucratic, process to routine, noncontroversial issues. There are numerous technical changes that could and in our opinion should have been made to NAHASDA as long as 2 years ago which have been held up because of the continued insistence that everything needs to go through negotiated rulemaking. Although we fiercely protect our sovereignty when necessary, we also take a practical view of properly serving our citizens in the most efficient manner possible. We believe that the Department of HUD has been extremely cooperative in attempting to promote a balance between consultation in the form of negotiated rulemaking on controversial issues, such as formula allocation, and other less formal means of consultation on the more numerous "routine" issues. We urge you to review the November 28, 2001 "Tribal Consultation Document: Implementation of Statutory Changes to NAHASDA" produced by the Department of HUD that, in our opinion, is such a balanced document that we didn't even feel the necessity of responding to it. At this point in time, we urge the Committee to allow Secretary Martinez, Assistant Secretary Liu, and the Office of Native American Programs to implement a consultation policy for all of HUD's Indian programs, not just NAHASDA, that promotes a balanced, effective, respectful, and timely process that helps us to reach our main goal with the housing funds: Creating housing opportunities for our needy citizens. In short, there is no legislative change necessary regarding consultation, negotiated rulemaking, etc. at this time.

On another matter, we would like for you to review the process by which the Indian Housing Drug Elimination Program was discontinued. As you know, Indian tribes had a $12 million set-aside out of the Public Housing Drug Elimination Program (PHDEP). When the PHDEP was eliminated, public housing's Capital Fund was increased to include drug elimination activities. Nothing got increased for Indian housing. Please review the possibility of increasing NAHASDA/Indian Housing Block Grant or even the Indian Community Development Grant program by the $12 million set-aside in the same manner that public housing was treated. The Cherokee

Nation utilized DEP funding for resident empowerment and law enforcement activities. Now we have to expend approximately $700,000 a year out of NAHASDA/IHBG funds in order not to lay off personnel and continue our drug elimination programs.

Thank you again for advocating for Indian Country. The Cherokee Nation would be privileged to testify in any hearings on NAHASDA issues in the future.

PREPARED STATEMENT OF KELSEY A. BEGAYE, PRESIDENT, NAVAJO NATION

Thank you Chairman Inouye, Vice Chairman Campbell, and other distinguished members of the committee for the opportunity to speak to you today about Indian housing. As President of the Navajo Nation, I present to you the Navajo Nation's recommendations regarding the reauthorization of NAHASDA and housing issues facing the Navajo Nation. The Navajo Nation values the work Congress has done to address Indian housing needs with the passage of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), and its reauthorization will reaffirm the government's commitment to address and increase Indian homeownership.

As you are aware from many hearings covering Indian housing issues, tribes and Congress have had little success on curing the housing problems in Indian Country, despite the work done by both. In fact, the Navajo Nation discussed this issue in our Legislative Priorities for the 107th Congress written testimony. This testimony addressed many overall issues including, "Promoting Homeownership in Indian Country." The Navajo Nation especially appreciates the work of the Senate Committee on Indian Affairs (SCIA) and we look forward to working with you on the reauthorization and finding viable solutions to overcome housing barriers.

Last summer, SCIA Minority Staff Director, Paul Moorehead traveled to the western part of the Navajo Nation. He saw for himself that the Navajo Nation is mostly rural and lacks basic infrastructure in many parts. Added to the rural conditions, in the Navajo and Hopi region, are the restrictions that the Bennett Freeze imposes upon building new homes or to make improvements to existing improvements. Mr. Moorehead may himself be able to tell you about the great need and desire that the Navajo people have in trying to obtain the American dream of homeownership. I would like to thank Mr. Moorehead for his visit and I would also like to invite members of this committee and its staff to also visit the Navajo Nation.

The National American Indian Housing Council (NAIHC) estimates that 40 percent of Native Americans live in overcrowded or physically inadequate housing conditions, as compared to 6 percent of the general population, and 33 percent of Native American households are considered very-low income, compared to 24 percent nationally. Fifty-six percent (56 percent) of our approximate 250,000 Navajo members live below the poverty level. We estimate that 20,000 to 30,000 new housing units are needed immediately on the Navajo Nation. Nationwide, NAIHC estimates that 200,000 new housing units are needed. These are waiting list numbers and do not take into account actual need, which would include those tribal members and families continually moving back to reservations as a result of economic hardship or other needs.

As conveyed in the Navajo Nation written testimony on Legislative Priorities for the 107th Congress, we support the development of a comprehensive Federal Indian funding policy that examines the amount of available funds for programs and services for which Indian Nations are eligible, the mechanisms for distribution and the funding management requirements. Formal consultation with tribal governments in the analysis development is also essential, provided that consultation is well defined to ensure success in the development of a comprehensive and meaningful Indian funding policy that supports tribal self-government and self-determination while fulfilling the obligations the United States has undertaken to Indian people.

We believe that by involving the Navajo Nation and other Indian Nations in the formulation of annual Federal budget proposals, true government-to-government consultation is achieved. Tribal involvement in the budget process creates better dialog between Federal agents and tribal representatives, resulting in a better understanding by Federal agencies of the unique budgetary needs of tribal governments. Consultation allows tribal governments to participate in important decisionmaking activities that directly impact their own communities. And, direct input from tribal governments promotes and respects Indian self-determination.

The NAHASDA legislation obligates HUD to follow a Federal statutory negotiated rulemaking process when developing regulations to implement NAHASDA. HUD has taken a position that this is only a one-time process to be used for the establishment of implementing regulations. The Navajo Nation opposes HUD's position because it is not in accordance with the statutory provision and the congressional find-

ings of NAHASDA, that this is an on-going requirement that HUD must follow on all new regulations. The Navajo Nation requests your support to strengthen the government-to-government relationship with HUD and to encourage them to follow this policy.

To implement the original intent of Congress for the HUD Negotiated Rulemaking process, HUD must consult with all federally recognized tribes, including the make up of the representatives to the Negotiated Rulemaking Committee. Upon the selection of the Negotiated Rulemaking Committee, the Navajo Nation requests that Congress provide HUD the appropriate funding in order to achieve the objectives of NAHASDA and the tribal consultation policy.

As you are very aware, in President Bush's fiscal year 2003 budget request, there is major focus on Homeland Security and the war against terrorism. The Navajo Nation understands that this is not the Senate Appropriation's Committee, but would like to bring to your attention the great need to support domestic security within the United States, which must include the indigenous homelands of Indian Country. The President is asking for billions of dollars to secure and rebuild Afghanistan, which is a noble cause, but as reported in the 2000 U.S. Department of Energy study, 37 percent of Navajo homes lack electricity. In addition, 77 percent of Navajo homes lack plumbing, 76 percent lack telephone service, and 72 percent lack kitchen facilities. The lack of basic utility infrastructure is common across Indian Country. In your work, please keep in mind that tribal communities are in need and should also be considered.

The Navajo Nation is concerned about the current environmental review process. This process requires tribes to utilize a large amount of NAHASDA funding to conduct environmental review for minor housing renovation. While environmental review is important and necessary, this requirement makes it difficult for tribes to further stretch an already inadequate amount of NAHASDA funding. The Navajo Nation knows that further coordination of the Environmental Protection Agency, HUD, and other Federal agencies could alleviate these problems.

The National Environmental Protection Act requires that a lead agency be designated when there are multiple funding agencies. This allows for only one environmental review process to occur. Agencies requiring multiple independent environmental assessments will only hinder construction progress. This NEPA process not only makes sense, but also saves time and money and therefore should be supported.

The Navajo Nation is concerned about the current vacancy of the head of HUD's Native American Program as well as the downgrading of the position from SES designation to a GS–15 position. This position also has the additional responsibility of not only overseeing the Native American Program, but also the new Native Hawaiian Homeland program.

The Navajo Nation recommends that this position should be raised to an Assistant Secretary for Indian Affairs at HUD. This elevation is warranted because of the government-to-government relationship and the importance of providing adequate and safe housing for Indian Country. The principles of tribal sovereignty and the government-to-government relationship between tribes and the Federal Government place Indian housing in its own category, needing its own authority and direct contact with the Secretary.

The Navajo Nation continues to experience considerable delays in obtaining approval by the Bureau of Indian Affairs (BIA) on title conveyances. The Navajo Nation and BIA have attempted to implement a process that would facilitate a prompt review and approval of title conveyances. There are several hundred title conveyances, however, pending within the BIA Navajo Regional Office.

One current example creating unnecessary delays is that once the parties agreed on the appropriate conveyance form, the BIA refused to approve conveyances because the conveyance document was printed in maroon ink. The document printed with this color ink readily identifies it as an original document. The BIA objects because the maroon ink makes it more difficult to transfer it to microfiche records. This bureaucracy does not ease the difficulty of securing approval of title conveyances. Certainly, there is a simple solution to this problem. The Navajo Nation requests the Committee's support in obtaining the cooperation of the BIA to promptly approve title conveyances.

One way to achieve sustainability without Federal subsidy is to stimulate investment in tribal communities. Unfortunately, barriers exist which deter private investors. Although non-tribal investors can help to revitalize these communities, tribes would like most to create incentives for tribal investors to help their communities from the inside.

For example, implementing substantial tax incentives, such as a capital gains tax exemption, would encourage tribal members to invest in managed rental properties

on reservations. Given the right environment, inside investment will significantly support self-sustainability on Indian reservations.

Along these lines of stimulating private growth in communities is halting predatory lending practices. Although a problem in most all low-income communities, Native American communities suffer acutely from exploitation by lenders because there is an almost complete absence of other options, even for people who can afford competitive loans. An extensive outreach by HUD and Veterans Housing would help eliminate Indian Country's reliance on unscrupulous lenders.

Another recommendation is to revisit the Community Reinvestment Act (CRA) and how it is applied in Indian Country. Currently, banks are able to meet their CRA requirements without actually going into rural America. Perhaps there is some way to make Indian Country a component of the CRA, which would require greater scrutiny by lenders. Regulators should act to hold lenders accountable for more rural areas.

With respect to the Navajo Nation, I have actively supported NHA's efforts to create a private housing market within the Navajo Nation. NHA has implemented procedures that will aid in the prompt recordation of titles and acquisition of land for housing development. They have negotiated new master leases with the BIA that will encourage private financing of Navajo homes. They completed an appraisal of every NHA housing unit to provide financial institutions with sufficient information to approve mortgages. And, NHA also established a mortgage guarantee program.

In addition, I have directed the consolidation of the Navajo Nation's housing programs to facilitate the prompt development of housing and streamlining the delivery of housing services and reduce housing program costs. I believe this demonstrates that the Navajo Nation is being proactive in addressing our desperate housing need and aggressively pursuing non-governmental private financing to supplement Federal funding.

In closing, I would like to reiterate the importance of consulting with tribes on how to implement NAHASDA, as well as allowing us the freedom to work with the program without excessive oversight and restriction. The dilemma we face is the lack of support at the agency level for tribal sovereignty. The lack of consultation significantly hinders Indian housing development opportunities. Without at least, an open door policy to communicate, the Indian housing tragedy will continue despite laws passed by this and future Congresses. Thank you for your attention and I welcome any questions you may have.

[Resolutions follow:]

IGRAU–234–01
Resolution of the Intergovernmental Relations Committee of the Navajo Nation Council
Approving the Navajo Nation's Written Testimony to the Senate Committee on Indian Affairs on the Goals and Priorities of the Navajo Nation for the 107th Congress

NHA–3354–2002
Resolution of the Navajo Housing Authority
Recommending to Congress the Adoption of Certain Legislative Initiatives and Appropriations of Adequate Funds for Indian Housing Programs

IGRN–246–99
Resolution of the Intergovernmental Relations Committee of the Navajo Nation Council
Approving the Navajo Nation's Written Position on Establishing a Tribal Consultation Policy With the U.S. Department of Housing and Urban Development (HUD) to Serve the Purpose of a Direct Partnership on Housing Issues and Related Matters

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PREPARED STATEMENT OF MICHAEL LIU, ASSISTANT SECRETARY, OFFICE OF PUBLIC AND INDIAN HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. Chairman, Mr. Vice Chairman, and members of the committee, thank you for inviting me to provide comments on the implementation of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

My name is Michael Liu, and I am HUD's Assistant Secretary for Public and Indian Housing. I am responsible for the management, operation and oversight of HUD's Native American programs. These programs are available to over 550 federally recognized, and a limited number of State-recognized Indian tribes. We serve these tribes directly, or through their tribally designated housing entities (TDHE), by providing grants and loan guarantees designed to support affordable housing ac-

tivities and viable community and economic development. Our clientele is diverse; they are located on Indian reservations, in Alaska Native Villages, and in other traditional Indian areas.

In addition to those duties, my jurisdiction encompasses the public housing program, which aids the nation's 3,000-plus public housing agencies in providing 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 and Alaska Native peoples. Although progress is being made to improve the housing conditions of Native American families residing on Indian reservations, on trust or restricted Indian lands and in Alaska Native Villages, much more needs to be done.

At the outset, let me reaffirm the Department of Housing and Urban Development's support for the principle of government-to-government relations with Indian tribes. Section 2, "Fundamental Principles," of Executive Order No. 13175, "Consultation and Coordination with Indian Tribal Governments," states:

> The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.
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> Our Nation, under the law of the United States, in accordance with treaties, statutes, executive orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.

HUD is committed to honoring these fundamental precepts in our work with American Indians and Alaska Natives.

NAHASDA has been successful in changing the way Indian tribes conduct their housing business. Tribes and their tribally designated housing entities (TDHE) are no longer mired in a regulatory morass, complying with multiple, competitive, categorical programs, many with redundant requirements.

Today, tribes or their TDHEs submit an annual Indian Housing Plan (IHP). Once it is reviewed for compliance with the appropriate requirements, recipients can draw on their funds to engage in the eligible affordable housing activities they have outlined in their IHP. If they choose, they can use the Title VI Tribal Housing Activities Loan Guarantee Program to supplement their Indian Housing Block Grant (IHBG) funds.

At the end of a grant year, results are reported in the Annual Performance Report. We conduct monitoring and oversight remotely, with periodic onsite visits. Training and technical assistance is available both from HUD and our partners through a variety of media.

You will hear testimony that improvements need to be made, both to the program and to our management of it. We will work with our clients, and we are listening to their suggestions on how to improve the program. As an example, we met last July in Saint Paul, Minnesota for several days of tribal consultation. Some tribal leaders expressed their dissatisfaction with how we wished to implement certain aspects of the most recent NAHASDA amendments. We listened, and affirmed that many of those amendments could be implemented, after consultation, by administrative means through a Public and Indian Housing Notice, rather than by other, more time-consuming methods. In other instances, such as revision of the IHBG allocation formula, we determined that it was necessary to establish a negotiated rulemaking committee for that specific purpose.

I believe that although we may disagree on certain procedural matters, we do not disagree that this program provides unprecedented, fundamental improvements in how tribes and TDHEs plan and execute their housing programs and projects. The results of those improvements are more homes for low-income Native American families.

The Department has had a Tribal Consultation Policy since June 26, 1994. The Policy was put in place in response to an April 29, 1994 Presidential Memorandum to Heads of Federal Agencies on "Government to Government Relations with Native American Tribal Governments." HUD has honored the spirit and the intent of that policy.

On May 14, 1998, Executive Order (EO) No. 13084 was issued on the same subject. To ensure compliance with that EO, the Department developed revised draft

consultation policies. We first engaged in consultation with tribes on a draft of our proposed policy in March, 1999. At the request of tribes, we subsequently rescinded the draft policy, revised it again, and reissued it in July 1999. From September 1999 to February 2000, we sponsored eight regional consultation sessions and a final national consultation session in Washington, DC on the policy. We continued to discuss it with tribal leaders into the Fall of 2000, when another, similar EO, No. 13175 (November 6, 2000) was issued. Meetings were held among all Federal agencies and White House staff to set direction and ensure consistency for the Federal-tribal consultation policies. Further discussions were held with tribal leaders and within the Department, culminating in the issuance of the Department's revised Tribal Government-to-Government Consultation Policy, which was signed by Secretary Martinez on June 28, 2001.

The Secretary's revised policy contains a new and important provision, the authority to create an advisory committee made up of tribal leaders to provide advice on how to proceed with tribal consultation matters. Discussions are underway on establishment of that advisory committee, and I will be making some announcements regarding the committee in the near future.

On December 27, 2000, amendments to NAHASDA were signed into law. Early in calendar year 2001, HUD again held a series of eight regional consultation sessions for the express purpose of hearing tribal priorities and proposed solutions to issues surrounding the implementation of NAHASDA, including how to proceed with implementing the amendments. All written and oral comments received from all sessions were then collated and distributed to every tribe and TDHE in the country. We asked tribes to comment on those sessions and on the written materials, and we asked our clients to establish 10 priority national issues for discussion at a subsequent national tribal consultation session, which was held in July 2001 in St. Paul, Minnesota.

Indian housing leaders are aware that our tribal consultation policy provides for the use of a broad array of mechanisms, from tribal, regional and national forums to notice-and-comment rulemaking to negotiated rulemaking, depending on the nature of the issue to be discussed, the need for rapid response, and other factors.

Many tribal leaders participated in discussions on how to implement both the amendments and the 10 national priority issues. A number of attendees were opposed to any implementation of any regulatory change without negotiated rulemaking. Others offered suggestions across the entire range of consultation possibilities that are available under the policy.

In response to the comments we received in St. Paul, the Office of Native American Programs constructed a consultation document with suggested methodologies to implement all the NAHASDA amendments. We mailed the document to all tribal and Indian housing leaders on November 28, 2001, asking for their comments by the end of December. At the request of the National American Indian Housing Council and others, we subsequently extended the deadline for comments to February 11, 2002. Our next steps include reviewing those comments and providing feedback on how we will proceed.

A good example is the NAHASDA amendment concerning the establishment of tribally determined wage rates in lieu of Davis-Bacon wage rates. Consensus was reached at the St. Paul consultation session on this subject. Participants agreed that it should be implemented as quickly as possible. The November 28, 2001 Tribal Consultation Document states that a regulatory change is required, and that the Department will engage in tribal consultation on that regulation. The Office of Native American Programs has been working with HUD's Office of General Counsel and the Office of Labor Relations to develop a draft regulation. All written and oral comments received at the regional and national consultation sessions were considered when drafting the proposed regulation. The draft will be released soon, asking for tribal feedback.

Should the committee so desire, we will keep you informed of our progress on this and all other tribal consultation matters.

NAHASDA's Indian Housing Block Grant Program regulations provide, in 24 CFR 1000.306, that the IHBG allocation formula shall be reviewed within 5 years after issuance, which would be in March 2003. Recent statutory amendments to NAHASDA make several changes to the formula. HUD believes that this is an appropriate time to begin review of the formula, both to implement the statutory changes and to hear from our clients about whether they believe other revisions should be made. We also believe that, pursuant to HUD's Tribal Consultation Policy, the formula allocation issue is of sufficient magnitude to require negotiated rulemaking.

In July 2001, we published a Federal Register Notice requesting nominations and establishing the minimum qualification criteria for membership on that committee.

We received 44 nominations. Approximately one-half of the nominees were missing one or more pieces of required information. To give nominees every opportunity to comply, in November 2001, we wrote to all nominees, informing those that had provided all the necessary information that they would be considered, and notifying others that they were missing one or more of the items required. To date, we have received replies from approximately one-third of those with deficient applications.

There may be good reason for this. As the committee is all too aware, after September 11, our mail service has experienced significant delays. For example, one nominee mailed his reply to us on December 12. We received it on January 23. As a result, we are being extremely flexible on accepting information. We are also preparing for publication a follow-up Federal Register Notice, announcing the names of the successful nominees. It is important to note that they remain nominees; no committee members have been selected yet. We did not receive, in our estimation, a broad enough geographic distribution of nominees. Therefore, this notice will give tribes another opportunity to add to the list of potential participants. If a nominee is not listed in the next notice, it means that they either did not reply to the request for additional information, or the information they provided was insufficient. They may also reapply under that notice. Once the second round of nominees has been submitted, the Department will again review each nominee's information to ensure it is complete, notify those with deficient applications as well as those with complete applications, and then make final decisions. We will solicit the assistance of our partners in the selection process.

The Office of Native American Programs (ONAP) has developed an internal review process that ensures that the Indian Housing Plans (IHP) submitted by recipients for the Indian Housing Block Grant (IHBG) Program are reviewed in accordance with section 103 of NAHASDA. In the 4 years since the award of the first grant under this innovative program, HUD has successfully managed this new block grant by funding 368 recipients representing 552 tribes in Fiscal Year (FY) 1998; 356 recipients representing 527 tribes in fiscal year 1999; 364 recipients servicing 528 tribes in fiscal year 2000; and 307 recipients serving 531 Indian tribes in fiscal year 2001. In fiscal year 2002, there are a total of 583 potential tribal grantees eligible for a total of $641,122,812. This represents a substantial increase in the number of clients that ONAP has assisted since the transition from the programs administered under the United States Housing Act of 1937. Under the 1937 Housing Act, ONAP provided assistance to only approximately 200 Indian Housing Authorities.

NAHASDA encourages tribes to develop and operate affordable and innovative housing programs based on local needs. Housing needs most often addressed in the IHPs are new housing construction, rehabilitation and modernization of existing housing stock, infrastructure to support affordable housing, crime prevention, elderly homes, congregate housing and housing counseling. NAHASDA has also provided tribes with the ability to develop new affordable housing efforts that were not eligible under the 1937 act, including down-payment and other mortgage assistance programs, transitional housing, spousal abuse shelters and revolving loan funds. The result has been an increase in housing opportunities for many eligible tribal families throughout the country. NAHASDA is also being used in many cases to leverage funds for affordable housing.

In addition to the review of plans, ONAP administers the IHBG formula developed by the Negotiated Rulemaking Committee to allocate NAHASDA funds. Each year, ONAP reviews over 120 challenges and corrections to the NAHASDA funding formula. Since FY1999, ONAP has worked diligently to address formula challenges and corrections for the purpose of correcting the data used in developing the formula allocation for each tribe.

ONAP has established a toll-free hotline so that tribes and TDHEs can receive immediate assistance with formula allocation questions and problems.

As mentioned earlier, ONAP will be convening a negotiated rulemaking committee this year to re-examine the formula, pursuant to the requirements contained in 24 CFR 1000.306. This regulation states that the IHBG formula can be modified by developing a set of measurable and verifiable data directly related to Indian and Alaska Native housing needs; determining if NAHASDA units should be included under Formula Current Assisted Stock (FCAS) or other changes that may be needed with respect to funding under the FCAS component of the formula; and/or, reducing the Section 8 units by the same percentage that the current assisted rental stock has diminished since September 30, 1999. The goal of the committee will be to determine if the formula should be modified, and if so, how.

The NAHASDA regulations authorize a recipient to invest grant amounts in securities and other obligations of the United States for the purposes of carrying out affordable housing activities. This provision was negotiated with tribes during the rulemaking process and can be an important component of a tribe's IHBG Program.

However, we have found that many recipients have not taken advantage of this flexible regulatory provision.

In fiscal year 1998, the first year of the program, a recipient could invest up to 50 percent of its IHBG annual grant formula amount (minus the operating subsidy element of the FCAS component of the formula). In fiscal year 2001, a recipient could invest 100 percent of this amount.

In order to invest, recipients only need to demonstrate that there are no unresolved significant and material audit findings or exceptions in the most recent audit and that it is either a self-governance tribe or it has the administrative capacity and controls to manage the investment.

From fiscal year 1998 through fiscal year 2001, $1.48 billion was available for investment. To date, 42 recipients have been approved for investments with a total request of $272.3 million, or 18 percent of the amount eligible for investment. There were 10 disapprovals for various reasons.

We continue to encourage recipients to take advantage of this opportunity to invest funds in order to provide affordable housing to their members.

The Department views the responsibility for program oversight as critical to the success of NAHASDA. The responsibility is not the Department's alone but is shared with all tribal governments. The Act and the program regulations require tribes to periodically review their programs for compliance with the requirements of the Act and to report to its constituents and HUD on their performance. HUD has developed a self-monitoring guidebook and is providing training programs to assist tribes in addressing this responsibility. HUD reviews of a tribe's performance are targeted toward the design and implementation of the tribe's self-monitoring program. Where a quality self-monitoring program is in place, we are assured that a tribe is complying with the requirements of the Act.

The Department has spent a good deal of time and energy developing a monitoring process that both meets the oversight responsibilities of the Federal Government and is sensitive to our special relationship with tribal governments. Using Annual Performance Report information provided by grant recipients, audit reports, and internal reports on the expenditure of grant funds, an Overall Assessment Report is prepared for each participating tribe. This Report is provided to the tribal leadership and summarizes the strengths and weaknesses of the tribe's housing program implementation. This is primarily a feedback tool that provides information to tribal decisionmakers on what is working and what improvements are needed in their housing delivery system.

To identify tribal housing programs for onsite monitoring by HUD staff, a risk-based approach has been developed. Using the information gathered through the Overall Assessment process, the Department identifies those grant recipients who pose the highest risk of loss of grant funds or failure to meet the requirements of the Act. Upon completion of onsite monitoring, a report is issued to the tribal government, which provides recommendations for addressing statutory or regulatory violations. Where appropriate, HUD provides technical assistance to the tribe to correct identified deficiencies. Since the beginning of calendar year 2000, 167 review reports have been issued covering approximately 45 percent of IHBG recipients.

On-site monitoring results indicate that, for the most part, tribes are establishing housing programs that meet the needs of their tribal members and that are complying with program requirements. Because NAHASDA changed the responsible entity for housing grants to the tribal government, and with the expansion of grant recipients to include many tribes who had not previously received HUD assistance, performance issues occur at a higher incidence than may exist as the program matures.

In analyzing the findings contained in monitoring review reports, by far the most prevalent issue is the establishment of financial systems, fiscal management, and internal controls. The second and third most frequent performance deficiencies are in the areas of procurement/contract administration and the adoption and implementation of required admissions, occupancy, and management policies. Tribes are addressing these issues with HUD assistance or through third-party contractors. Since the inception of NAHASDA, HUD has found it necessary to initiate the sanctions process for nine grant recipients, and has imposed sanctions for three tribes.

A pressing concern for the Department is the high number of tribes that have chosen not to complete and submit to their tribal members and HUD an Annual Performance Report as required by the Act. Currently, there are 108 grant recipients or approximately 29 percent of all participants who are 60 days or more past the end of their reporting period who have not submitted a complete and accurate APR. A number of grant recipients have not prepared an APR for several years. The impact of this failure to provide required reports is a lack of information to evaluate program performance for these grant recipients and, for the program as a whole, an inability to develop complete, meaningful accomplishment data for Congress or

the Department. The Department has stopped funding to five tribes and is processing sanctions for a number of additional tribes. HUD continues to look for solutions, but it is unlikely that this performance issue will be resolved without a higher level of compliance by tribal governments.

In August, 2001, the HUD Inspector General for Audit (IG) issued a report on the implementation of NAHASDA. The report supported a number of the performance issues identified in our monitoring of recipient performance and provided reasonable recommendations for addressing the identified problems. Findings of the report included over-reporting by tribes of existing housing stock resulting in excessive funding formula amounts; a lack of understanding by recipients of program requirements; failure to adopt and implement required policies; inadequate financial management practices, and failure to obtain financial audits. HUD and the IG have agreed upon actions to be taken to resolve these issues and expect to complete the actions within calendar year 2002.

The passage of NAHASDA and its implementation through the program regulations developed by the Negotiated Rulemaking Committee challenged tribes and ONAP staff to create a new atmosphere of consultation and coordination. Asking tribes to adopt procedures to become the direct housing provider was vastly different from their prior role as an indirect oversight entity. More intensive, hands-on training was needed for ONAP staff, tribes and their housing entities to meet those challenges. ONAP is in the final stages of accomplishing these objectives and is preparing to move into the second stage of its training and technical assistance plan. On-site technical assistance will be provided on a larger scale to assist those grantees that are experiencing problems in one or more facets of the implementation of NAHASDA and/or other grant programs.

In the past year, the following training sessions have been held for grantees, ONAP staff, and other interested parties:

NAHASDA Essentials (a basic course on the Indian Housing Block Grant program)

Indian Housing Plan Preparation and Submission
Annual Performance Report Preparation and Submission
Board and Tribal Roles and Responsibilities
Mold Prevention
Environmental Review Requirements
Construction Contract Management
Financial Management
Basic Financing and Leveraging
Advanced Financing and Leveraging
Procurement
Grants Monitoring Business Processes
Indian Community Development Block Grant
Homeownership Summit Seminars

In fiscal years 2000 and 2001, ONAP continued to work on improving the IHP review requirements and opening further channels of communication between our staff and our grant recipients. Additional staff training is scheduled for April 2002. We continually work with staff to ensure that the 60-day statutory deadline for IHP review is met.

There was continued outreach and training to increase homeownership opportunities in Indian Country, including the issuance of the final report of the One-Stop Mortgage Center Initiative in Indian Country in October 2000, which represents the recommendations of the task force partners. ONAP staff also continue to participate in conferences around the country to promote the Section 184 Loan Guarantee Program.

Under the title VI program, the contractor completed their activities to provide direct technical assistance and capacity building to NAHASDA grantees. As a result of this outreach, six title VI projects have been approved through October 2001. ONAP will provide training sessions on this program during fiscal year 2002.

Staff training opportunities were expanded significantly, utilizing some innovative training vehicles. By accessing training through the Internet and video and audio libraries, individual development at all grade and skill levels has been made available to ONAP staff.

A Tribal Technical Assistance and Training (TTAT) Center has been established on the Internet to provide a central location for tribes and TDHEs to request technical assistance in program planning, development, and management. The TTAT Center maintains a training calendar and provides training and technical assistance products. We also have an information clearinghouse to disseminate crime prevention and public safety materials.

ONAP has also developed many technical assistance products that have been made available to grant recipients on the Internet or through distribution of CD-ROMs. Some of the latest products include:

Mold Prevention and Detection: A Guide for Housing Authorities in Indian Country: A resource guide with the procedures for addressing mold and moisture problems in the home, with survey information gathered from tribal housing entities and occupants. The guide offers advice on addressing mold conditions and identifying partners to help resolve this problem.

Self-Monitoring Assessment Guidebook: A guidebook providing IHBG recipients with guidance on conducting self-monitoring compliance assessments as required under NAHASDA. In addition, the material goes beyond providing guidance on complying with the requirements, it includes suggestions and recommended management practices to make the grantee's IHBG activities successful and sustainable.

ONAP Online Training Modules: A web-based training tool that allows users to learn whenever they want, at their own pace. The online training currently includes basic level modules on housing finance, procurement, homeownership, financial management, construction management, and property management. Three additional topics and an upgraded system should be released this spring.

The Guide to Creating a Nonprofit Homeownership Entity: A resource guide for launching a nonprofit with the mission of promoting homeownership opportunities. The guide leads the user through the planning stages, the legal creation of an entity, the application process for Internal Revenue Service 501(c)(3) status, the development of the organization, and program operations.

Based on a survey of technical assistance needs identified by ONAP's Area Offices, ONAP has begun providing intensive onsite technical assistance to tribes and TDHEs. The focus of the technical assistance is concentrated in the following major areas:

Mold and Moisture Prevention
Internal Controls
Housing Management
Financial Management
Occupancy
Procurement and Contracting
Environmental Reviews
Public Safety
Grant and Program Administration

In addition, ONAP will continue to develop and provide training sessions to improve grantee performance and understanding:

Self-Monitoring
Conversion to GAAP Accounting
Homeownership (Section 184) in Indian Country
Economic Development in Indian Country
Mold and Moisture Prevention and Remediation
NAHASDA Essentials
Indian Housing Plan Preparation and Submission
Annual Performance Report Preparation and Submission
Environmental Review Requirements

ONAP continues to hold an annual Homeownership Summit, publish quarterly issues of ONAP's newsletter *Dream Catcher,* and add to and improve our Internet presence with the website *Codetalk.*

The last 18 months have seen the first loans guaranteed under the title VI program. This initiative allows better tribal access to capital markets to provide infrastructure and affordable housing. Over $14 million in guarantees have been provided by banking partners to Native American communities.

These loans have provided much-needed rental housing to remote Alaska Native Villages and funded an ambitious master-planned community for the Catawba Indian Nation of South Carolina. The Salish & Kootenai Tribe of Montana purchased an existing mobile home park and completed upgrades to its water and sewage system. The Native American-owned Chippewa Valley Bank assisted the Lac Courte Oreilles Band with a 40-unit project that combined HUD's title VI guarantee with grants from the Federal Home Loan Bank of Chicago.

The Federal Home Loan Bank (FHLB) of Seattle committed in September 2001 to purchase HUD-guaranteed title VI loans from its member banks. Partnering with the ONAP Office of Loan Guarantee, FHLB staff produced letters and information packets for their member banks and held meetings, in conjunction with ONAP, in Wyoming and Alaska. The Seattle Bank's region is home to half of the tribes in the United States and their strong statement of support will continue to assist HUD's

effort to provide financing to tribes and tribal organizations under the title VI Program.

These innovative strategies can be replicated by lending and tribal partners to further improve the housing conditions for American Indian and Alaska Native peoples.

I am very excited about the recent passage of legislation creating a new title VIII under NAHASDA. We may now serve those Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands with two new programs: The Native Hawaiian Housing Block Grant Program and the Native Hawaiian Housing Loan Guarantee (Section 184A) Program. In President Bush's fiscal year 2003 Budget, we have requested funding of $10 million and $1 million respectively, under accounts completely separate from NAHASDA's Indian Housing Block Grant and the Section 184 Indian Housing Loan Guarantee Fund. I am pleased to inform you that the Department will soon publish an interim rule for public comment. Current-year grants can be released for use following the submission of the appropriate Housing Plan.

Finally, let me state for the record that this Department supports the passage of S. 1210 and H.R. 1873, bills which would reauthorize NAHASDA.

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

[Questions with responses follow:]

Supplemental Questions for Michael Liu
Assistant Secretary
Office of Public and Indian Housing
U.S. Department of Housing and Urban Development

Tribal Consultation

"During the Department's Homeownership Summit in St. Paul last July, over 200 tribal leaders walked out of the meeting to protest the Department's approach to implementing its tribal consultation policy. This group prepared a position paper explaining the reasons for the protest and submitted it to the Department."

QUESTION 1: Would you please provide the Committee with a written copy of the Department's response to this protest paper?

ANSWER 1: Let me clarify for the record, the Department's perception of what occurred in St. Paul. During the consultation workgroup sessions at the 8th Annual Native American Homeownership Summit, some participants left the sessions to attend tribal caucus meetings. Although many individuals left sessions, most returned to these sessions and contributed their opinions and suggestions before they were adjourned. Many participants made statements in both the breakout and plenary sessions that they disagreed with the Department's position that negotiated rulemaking was one method, but not the only method, by which to implement regulatory changes to the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

On November 1, 2001, Acting Deputy Assistant Secretary for Native American Programs Ted Key sent a letter to all tribal and Indian housing leaders outlining what occurred in St. Paul, and what the next steps would be. Among the topics covered in the letter was how the Department intended to proceed with implementing the Government-to-Government Tribal Consultation Policy, its effect on the NAHASDA amendments, how the negotiated rulemaking process would be used, and how it would affect the development of policies and regulations subsequently issued. A chart was attached to the letter listing all statutory amendments discussed in the Summit workgroups, along with an explanation of the action we anticipated taking to implement each amendment.

This letter was supplemented with a more formal "Tribal Consultation Document," which was mailed to the same individuals on November 28, 2001. That document discussed in more detail each amendment, outlined how we would implement every provision and asked for tribal comments on our suggestions of how we should proceed. The National American Indian Housing Council asked for and was granted an extension of time, from December 28, 2001 to February 11, 2002, to submit comments on the consultation document. Taken together, these mailings answered all questions raised by tribal participants in the protest paper. Copies of both documents are enclosed.

Assistant Secretary for Native American Programs

"The Committee was advised that you addressed the members of the Native American Indian Housing Council and the Coalition for Indian Housing and Development on February 12, 2002 and that you expressed frustration at being responsible for two areas with huge unmet needs – public housing and Native American housing."

QUESTION 2: Given the demands of both of these areas, would the Department support the establishment of an Assistant Secretary for Native American Programs?

ANSWER 2: On February 12, 2002, I expressed concern over the need to address questions of detail that should be handled by field or program offices. Any alleged lack of responsiveness would be looked into. I did not express frustration at being responsible for public and Indian housing. Indeed, I welcome the challenge. My comments centered on the need to find ways to eliminate bureaucracy within the Department, to include in PIH and ONAP, which is a personal priority and an aim of this Administration.

Training and Technical Assistance

"Both the Office of Native American Programs (ONAP) and the Native American Indian Housing Council provide NAHASDA training and technical assistance to tribes. Some tribes have suggested that ONAP cease providing training and technical assistance and instead allocate training and technical assistance funds to existing programs that the Housing Council provides."

QUESTION 3: Has the Department ever considered contracting all training and technical assistance responsibilities to the Housing Council?

ANSWER 3: The Department takes seriously its responsibilities with regard to the oversight, management and expenditure of the Federal funds appropriated to it. HUD will consider entering into contractual agreements with others to provide certain training and technical assistance services when such services benefit grantees and such actions are in the best interests of the Federal Government. The Department is in the best position to evaluate how its training and technical assistance dollars should be spent, and we have determined that those funds should remain under HUD's control.

NAIHC, as well as other technical assistance providers, can supplement HUD's technical assistance activities through competitive contracts with HUD. Through the competitive process, contractors must demonstrate the required knowledge and experience. Providing funding to NAIHC on a non-competitive basis eliminates the requirement to prove their capacity to provide technical assistance.

As required in the fiscal year 2000 appropriation, HUD executed a contract for $2 million with NAIHC to provide training and technical assistance. During the fifteen-month period of performance, NAIHC expended approximately one quarter of the contract amount. HUD recently extended the contract at NAIHC's request so that they could complete the work that was to be supposed to be finished by December 31, 2001.

In a letter from NAIHC's Acting Executive Director, Luke Toyebo, dated December 14, 2001, HUD was notified that "full-time ongoing TA will not be pursued under this contract" even though the sole purpose of the contract with HUD is "providing technical assistance and capacity building to tribes and tribally designated housing entities ..."

Inspector General's Report

"The Committee was advised that the Department will be addressing the recommendations found in the Inspector General's 2001 report on NAHASDA's implementation and that changes would be complete by the end of 2002."

QUESTION 4: What types of changes will the Department undertake?

ANSWER 4: The following table provides a summary of the Inspector General's recommendations and the actions either taken or promised by the Department to address the issues identified in the 2001 report on NAHASDA's implementation.

#	Recommendation	Action Taken
1A	Audit the Formula Current Assisted Stock (FCAS) for all Housing Entities (HE) and remove ineligible units from HUD's FCAS component.	The Department had initiated actions related to this recommendation prior to the OIG identifying it as an issue. These actions include (1) review homeownership units that should have been conveyed and removed from FCAS; (2) compare FCAS with Indian Housing Plan data to identify discrepancies; (3) revise the reporting form to more clearly indicate to recipients their responsibility in reporting; and (4) raise the issue with the Formula Rulemaking Committee.
1B	Recover over funding from HEs that had inflated FCAS and reallocate the recovery to recipients that were under funded for current and prior NAHASDA funding years.	Prior to identification of the problem by the OIG, the Department had implemented procedures for recapturing over funded HEs and reallocating these funds through the formula. This action will be ongoing while current assisted stock remains a portion of the formula.
1C	Implement control procedures to ensure FCAS accuracy for future years.	Control procedures were in place before the issue was identified by the OIG. The Department will continue to inform tribes of their responsibility to report changes in their FCAS.
2A	If appropriate, based on the OGC opinion and clarification, we recommend you identify all NAHASDA assistance combined with other federal housing assistance and take action to resolve incompatible admission requirements through withdrawal of NAHASDA assistance or the elimination of other federal assistance and its Fair Housing Act requirements.	The Department is developing program guidance to tribes advising them of conflicting requirements between various funding sources. The OIG has closed this recommendation.
3A	Obtain an opinion from the OGC as to whether umbrella HEs are required to ensure that benefits provided are commensurate with the member tribe's	The Office of General Counsel (OGC) satisfied the OIG's concern; umbrella HEs are not required to provide benefits commensurate with the member tribe's formula share. The OIG has

#	Recommendation	Action Taken
	IHBG. If appropriate, based on OGC's opinion issue appropriate guidance to Hes.	closed this recommendation.
3B	Advise member tribes of umbrella HEs to monitor tribal affiliation of new program participants to ensure appropriate distribution of benefits.	Based on the opinion provided by the OGC for the above recommendation, this recommendation was also closed by the OIG.
4A	Identify and advise HEs of changes in requirements between the 1937 Act and NAHASDA.	The Department provided significant training and guidance regarding implementation of NAHASDA prior to the issuance of the OIG report. Additional program guidance will be issued related to this concern.
4B	Advise the HEs to adopt the necessary policies, systems, and control procedures to comply with all NAHASDA requirements, particularly those changed by NAHASDA.	In addition to the previous training and guidance provided, the Department is developing program guidance regarding the requirement to adopt and implement necessary policies, systems and control procedures.
4C	Verify HE compliance with changes in requirements between the 1937 Act and NAHASDA during all on-site monitoring visits and impose remedies, as appropriate, for consistent noncompliance.	The Department has developed review guidance for its staff to assure the concern is addressed during on-site monitoring. The OIG has closed this recommendation.
5A	Conduct a review of the risk associated with program charges under negotiated indirect rate agreements and provide for appropriate coverage during on-site monitoring reviews.	The Department is evaluating charges by recipients and is developing program guidance regarding use of indirect rate agreements and advice to staff on conducting reviews.
5B	Seek regulatory change to better define "administration and planning" expense and the proper charging practice.	In conjunction with the indirect rate review included in the previous recommendation, the Department is conducting an evaluation of administration and planning charges by recipients. A program guidance will be developed for recipients.
5C	Conduct a review of the risk associated with program charges for administrative and planning expense and provide for appropriate coverage during on-site monitoring and reviews.	As part of the actions the Department is initiating in response to recommendation 5B, program guidance to ONAP staff on the review of administration and planning expenses charged by recipients is being developed.
6A	We recommend you request HEs to identify any conflict of interest for participants previously admitted under NAHASDA and ONAP take appropriate enforcement action against HEs for ineligible participants.	The Department is developing program guidance which will include a discussion of the requirement and a request for notification from recipients for past conflicts. Additionally, the Department verified that its on-site monitoring procedures included adequate procedures for verifying compliance during on-site monitoring.
7A	We recommend that you take appropriate action to ensure the two troubled HEs attain administrative capacity to carry out NAHASDA activities, including following up on our audit memorandums sent to Area ONAP offices detailing our concerns regarding these HEs.	In one instance, the Department had initiated actions to impose appropriate remedies authorized by NAHASDA. In the other instance, the Department verified that the recipient had addressed the issues identified by the OIG. The OIG has closed this recommendation.

#	Recommendation	Action Taken
8A	Advise all HEs that in the absence of a system to allocate income between 1937 Act and NAHASDA programs, all program income from units receiving funding from both programs must be used for NAHASDA-eligible affordable housing purposes.	The Department is developing additional program guidance as recommended by the OIG.
8B	Remind all HEs that program income must be used before requesting additional IHBG funds.	In conjunction with the action being taken for recommendation 8A, the Department will include guidance to recipients on using program income before drawing funds from the Treasury.
8C	Ensure compliance with tribal policies on collections during all on-site monitoring visits and implement appropriate enforcement actions for noncompliance.	The Department has agreed to review and advise recipients, where appropriate, on the value of collecting payments imposed by tribal policy. The OIG has closed this recommendation.
9A	Determine if the lack of an audit represents substantial noncompliance under NAHASDA regulations (24 CFR 1000.534) and take appropriate actions specified for such instance for all HEs that have outstanding audits.	The Department has agreed that failure to obtain an audit of financial systems is a critical factor in the evaluation of recipient risk. Additionally, the Department is reviewing its systems for identifying overdue audits and actions to be taken to assure recipient compliance.
9B	Take action to revise NAHASDA regulations to require HEs that submit Single Audit Act reports to comply with generally accepted accounting principles (GAAP).	The Department has agreed to evaluate whether GAAP is required for tribal and TDHE audits and to take the appropriate action, if any.

National Environmental Policy Act Requirements

"The National Environmental Policy Act (NEPA) authorizes Federal agencies to coordinate the environmental review process so that only one agency's environmental requirements need to be met. The Coalition on Indian Housing and Development and the National American Indian Housing Council believe that this NEPA provision applies to NAHASDA."

QUESTION 5: Has the Department assessed whether NEPA's coordinated environmental reviews apply to NAHASDA? If not, why not?

ANSWER 5: Yes, the Department has and they do apply. NEPA regulations (specifically 40 CFR 1501) attempt to promote efficiency and avoid duplication by allowing the participants of a project that has more than one Federal funding source to choose one Federal agency that will act as the lead agency and prepare the NEPA review. The other agencies may act as cooperating agencies and assist in preparation of the environmental assessment (EA), or may merely accept the product as the means to fulfill their NEPA responsibility.

HUD implementing regulations (24 CFR Part 58) allow the tribe to assume the role of the entity responsible for NEPA compliance and thus to stand in the shoes of a Federal agency.

Although the formats and procedures for environmental assessments used or required by most Federal agencies are similar in that they all stem from NEPA and its implementing regulations (40 CFR Part 1500), there are differences that have developed over time as each agency worked more or less independently to meet it responsibilities. These differences can complicate and frustrate attempts by a tribe (or anyone else) to undertake a coordinated, consolidated assessment. To remedy this situation, the HUD Midwest Environmental Officer, in conjunction with staff of the HUD Office of Native American Programs (ONAP), has taken the initiative to support and facilitate coordinated, consolidated assessments. They are working with representatives of other agencies, most notably the Bureau of Indian Affairs, to develop a consolidated format and procedures that may be used by tribes for multi-agency-funded affordable housing activities.

Financial Accounting

"The Department has taken the position that income derived from the investment of NAHASDA funds retain their character as Federal program funds that are subject to restrictions and accounting requirements. Tribes have advised the Committee that these accounting requirements are burdensome and serve as disincentives to create housing and financing initiatives."

QUESTION 6: Is the Department willing to revisit its position on how long NAHASDA-generated funds are treated as Federal program funds that need to be accounted for?

ANSWER 6: A statutory amendment would be required to alter how revenues generated from Indian Housing Block Grant (IHBG) funds are used and accounted for. Section 104 of NAHASDA, "Treatment of Program Income and Labor Standards," provides in subsection (a)(1) that a recipient may retain any program income that is realized from any grant amounts under this Act if such income was realized after the initial disbursement of the grant amounts received by the recipient; and the recipient has agreed that it will utilize the program income for affordable housing activities in accordance with the provisions of NAHASDA.

Requiring no tracking of revenues generated from grant amounts would make the accounting process easier. However, tracking does not necessarily impose overly burdensome requirements on recipients. HOME and CDBG Entitlement Program recipients must track program income. This provision expresses the intent of Congress to use funds generated by Federal grants to provide affordable housing to low-income Native American families. If the funds were unrestricted, there would be no corresponding requirement to use these funds in this manner.

Finally, the current regulations governing program income permit significant generation of unrestricted grant funds, particularly for those tribes with 1937 Act housing stock. For example, revenues under 46% of the average level of expenses needed to maintain a

project can be retained by the tribe as unrestricted funds. Since most tribes do not collect this level of rent, most of the funds generated from 1937 Act housing stock are unrestricted. This can be very significant, especially for larger tribes.

Environmental Reviews

"As explained during the hearing, tribes informed the Committee that the Department waives technical errors when it conducts the environmental review for a tribe, but that the same technical errors will not be waived when the tribe conducts its own environmental review. During your testimony before the Committee, you explained that this was no longer the Department's practice."

QUESTION 7: How often will the Department conduct the environmental review for a tribe or a tribally designated housing entity?

ANSWER 7: For the Indian Housing Block Grant (IHBG) Program, 24 CFR 1000.20 clearly states that an Indian tribe is not required to assume environmental review responsibilities for assisted activities; it is an option a tribe may chose. If a tribe declines to assume these responsibilities, HUD will perform the environmental review. There is no statutory, regulatory or other limit that has been placed on the number of times HUD will conduct such reviews for any single tribe.

QUESTION 8: How long does it take for the Department to complete an environmental review (please include the time from the tribe's request until when the review is completed)?

ANSWER 8: For a simple project where the tribe provides all the required information, the average time for completion would be 20 to 30 days after receipt of the information from the tribe. For a moderately complex project where HUD does not receive the requested information in a timely manner, approximately 60 to 120 days from the date the tribe requests HUD to perform the environmental review. For a complex project where HUD must provide intensive technical assistance to the tribe to aid it in completing its responsibilities, it may take as long as one to two years from the date the tribe requests HUD to perform the environmental review.

The time needed to complete a review is affected by a number of variables including, but not limited to:

- The complexity of the proposed project. Completing an environmental review for a project such as single–family housing rehabilitation, which is categorically excluded from the applicability of National Environmental Policy Act, is much less involved (fewer review steps required) and therefore less time-consuming than for a multi-unit housing subdivision, which may include land acquisition and infrastructure construction as well as new housing construction.

- The support provided by the recipient tribe or TDHE. HUD Notice PIH 2000-37 (issued earlier as Notice PIH 99-37 and extended by Notice PIH 2001-31)

provides a complete and specific description of the information, which varies by project or activity type, that the recipient must provide to HUD to meet its responsibility under 24 CFR 50.3(h). Some recipients have been very timely; others have been slower or may initially provide incomplete information.

- Availability of HUD resources. As stated in the preamble to the proposed rule implementing NAHASDA, as well as in the rule itself (24 CFR 1000.20 (a)), the timing of HUD undertaking the environmental review will be subject to the availability of resources.

QUESTION 9: Please explain what the Department's current policies and practices are for:

(A) Conducting environmental reviews;
(B) Evaluating tribal environmental reviews;
(C) Waiving technical errors from its own reports and tribes' reports.

ANSWER 9:

(A) If a tribe does not choose to assume responsibilities for environmental review and decision-making for IHBG-assisted activities, HUD will complete the review under the provisions of 24 CFR Part 50. Under theses circumstances, to meet its responsibilities under 24 CFR 50.3(h), an IHBG recipient will: supply to HUD all available, relevant information necessary for HUD to complete the review; carry out any mitigating measures required by HUD (or select an alternative property); and, not acquire, rehabilitate, convert, lease, repair or construct property, nor commit or expend HUD or local funds for these program activities until HUD approval of the property is received. HUD Notice PIH 2000-37 (extended by Notice PIH 2001-31) provides guidance and procedures to be followed if tribes do not assume environmental review responsibilities. HUD will attempt to complete the review as expeditiously as possible, subject to the availability of resources for this activity.

(B) When a tribe assumes responsibilities for environmental review and decision-making, it will follow the procedures and requirements set forth in 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities." Under these procedures HUD does not evaluate the environmental review done by the tribe at the time of its completion; the tribe is the Responsible Entity and as such assumes all environmental review and decision-making responsibilities that would otherwise apply to HUD under NEPA and related laws and authorities. After it completes its review, the tribe submits to HUD a Form HUD 7015.15, "Request for Release of Funds and Certification." It certifies that it has fully carried out its responsibilities for environmental review, decision-making and action for the project or activity. The permissible bases for objecting to HUD's release of funds are set forth in 24 CFR 58.75. If no permitted objections are received (or if received, not sustained), HUD will release funds.

Please note that as part of its overall comprehensive program monitoring under the provisions of section 405 of NAHASDA, HUD may have occasion and opportunity to review a tribe's Environmental Review Record to evaluate if it met its certified responsibilities.

(C) The statutory provision that allows tribes to assume the Secretary's environmental review and decision-making responsibilities (NAHASDA, sec. 105) includes specific technical procedural requirements which must be met (section 105(c)). One of these requirements provides that the Secretary may not release funds for an assisted activity unless a request for release of funds and certification is submitted by the tribe to HUD after it has completed its environmental review. There are no corresponding statutory technical procedural requirements for the Department when it retains environmental review and decision-making responsibilities.

Prior to the enactment of the most recent NAHASDA amendments (Pub.L. 106-568, approved December 27, 2000), the Department was not authorized to waive the requirement for environmental reviews if technical procedural errors were made by tribes in conducting their reviews. The amended environmental review waiver provisions (the new section 105(d) of NAHASDA) have already been implemented by the Department for tribal recipients; a waiver of environmental review requirements was approved for the Nome Eskimo Community on February 4, 2002.

Prior to amendment of section 105(d), for the benefit of tribes that made unintentional or inadvertent mistakes, the Department developed and implemented procedures for HUD to assume environmental responsibility when a tribe made technical procedural errors in the environmental review process. A proviso in such an assumption (as it is in any waiver under section 105(d)) is that the error did not cause any adverse effects on the environment.

While the process for converting responsibility from a tribe to the Department was time consuming, eleven conversions were made to avoid mandated statutory sanctions or remedies for purely technical procedural errors. Tribes who benefited from these waivers are:

- Absentee Shawnee Tribe of Oklahoma
- Menominee Indian Tribe of Wisconsin
- Upper Sioux Tribe
- San Juan Pueblo
- Flandreau Santee Sioux Tribe
- Jamestown S'Klallam Tribe
- Sac and Fox Tribe of Oklahoma
- Quileute Tribe
- Coeur d'Alene Tribe
- Lummi Tribe
- Lower Elwha Tribe

Budget

"Secretary Martinez has stated that the Department's lead-based paint program funds would also be available to remediate toxic mold problems in low-income housing."

QUESTION 10: You testified that you believed that tribes would be eligible to apply for these funds, but that you would verify this. What is the Department's position?

ANSWER 10: Healthy Homes Program funds, which are available from the Office of Healthy Homes and Lead Hazard Control, could be used for this purpose, but lead hazard control grants could not. Federally-recognized Indian tribes are eligible to apply to fund technical studies to improve methods for detecting and controlling residential lead-based paint and other health and safety hazards; to assist in undertaking comprehensive programs to identify and control lead-based paint hazards in privately-owned housing; and to develop, demonstrate and promote cost-effective, preventive measures to correct multiple safety and health hazards in the home environment which produce serious diseases and injuries in children.

NAHASDA grant recipients may also include mold detection and remediation activities as eligible affordable housing activities in their Indian Housing Plans.

QUESTIONS OF SENATOR TIM JOHNSON

QUESTION 11: The position of Deputy Assistant Secretary for the Office of Native American Programs was vacated in June of 2001. When should Congress and the tribes expect to see a person permanently fill this important position, or at least nominated by the Administration?

ANSWER 11: The revised vacancy announcement, reflecting an elevation of the position to the Senior Executive Service (SES) level, was published on March 14, 2002.

QUESTION 12: Given the government-to-government relationship that exists between tribes and the federal government, shouldn't this position be higher than a civil service GS-15 position? And, would the Department support Congressional efforts to elevate this important position?

ANSWER 12: In response to comments I received from the Native American community and this Committee, and in the spirit of cooperation, Secretary Martinez has authorized that the position be re-advertised at the SES level. The revised vacancy announcement reflecting this decision was published on March 14, 2002.

QUESTION 13: It is my understanding that only 18 tribal representatives will be selected for tribal consultation on regulations affecting how tribes provide housing services to their low-income members. Is it the Department's plan to negotiate and consult with tribes in a more meaningful manner?

ANSWER 13: The Department has determined that a negotiated rulemaking committee comprised of 18 tribal representatives and one Federal representative would give fair and meaningful representation to the varied interests of our clients. Selections would be based on tribal size and geographic location. I am willing to listen to the concerns of tribes on this matter, and it is possible that adjustments to the size of the committee could occur.

NEW MEXICO INDIAN HOUSING ENTITIES POSITION PAPER

Mescalero Apache Housing Authority, Zuni Pueblo Housing Authority, Jicarilla Apache Housing Authority, Northern Pueblos Housing Authority [Picuris, Tesuque, San Ildefonso], Rio Grande Pueblos Housing Authority [Sandia, Santa Ana], San Felipe Pueblo Housing Authority, and Isleta Housing Authority.

The above housing entities, representing 10 of New Mexico's 22 tribes, offer this Position Paper to describe their primary housing concerns, in order of priority.

1. Appropriations 2003. Appropriations must be adequate to effectively address housing needs in Indian country. We support an appropriation of $1.1 billion in the Federal Fiscal Year (FFY) 2003 budget. Data generated by National American Indian Housing Council supports that this is the minimum amount necessary to begin to address Indian housing needs.

2. Tribal Consultation. Executive Order 13175 requires all Federal agencies to "establish regular and meaningful consultation and collaboration" with tribes. HUD's own Tribal Government to Government Consultation Policy requires HUD to identify and seek tribal input and to consider such input a necessary and integral part of HUD's decisionmaking. This has not occurred in the past and is not currently happening. Collaboration requires mutual not unilateral decisionmaking, and consultation is not just a technicality for HUD to endure. It is a federally mandated requirement for HUD to treat tribal input respectfully, to learn from the tribal input, and to adjust its procedures, attitude, and guidances accordingly.

3. Fair Treatment For Small Tribes. *A Baseline Funding;* 24 CFR Part 1000, Implementation of the Native American Housing Assistance and Self Determination Act of 1996; Final Rule allows for funding for the tribes in 1997 at $50,000.00 and $25,000 for the next 4 years. This funding level is severely inadequate to allow a tribe to meet the reporting requirements of NAHASDA, much less to acquire land and develop decent safe and sanitary homes for tribal members. NAHASDA should be modified to allow for not less than $350,000 annual base funding under the need component of the formula for each federally recognized tribe. This will allow tribes to begin meeting their housing needs. Any increase in appropriations from the current level should be used to fund increases for small and minimally funded tribes to achieve base line funding.

B. Small Tribe Definition. The small tribe definition was removed from NAHASDA without consultation with or notice to the tribes, and should be restored. As a result, small tribes must comply with the same reporting requirements as larger tribes, despite limited funds. 24 CFR Part 1000 caps the administration costs at 20 percent, which does not allow minimally funded tribes adequate funds for staffing and operating an office, let alone complying with the various additional NAHASDA Requirements. Unless and until the small tribe definition is restored, HUD should approve the requests for adjustment of the administrative cap.

4. Negotiated Rulemaking. NAHASDA mandates that HUD follow a Federal statutory negotiated rulemaking process in developing the regulations that implement NAHASDA. HUD has taken the position that this is a one time only mandate, while tribes and TDHE's believe it to be an on-going mandate. The above New Mexico tribes support legislation clarifying the on-going nature of the mandate. In addition, the above tribes are predominately "small tribe" that typically do not have the financial resources to travel to negotiated rulemaking and tribal consultation sessions that are scheduled in locations that are convenient to HUD, rather than convenient to us in New Mexico. We need additional funds to provide a special subsidy to travel to tribal consultation and rulemaking meetings.

PREPARED STATEMENT OF PAUMA-YUIMA BAND OF MISSION INDIANS

Thank you Chairman Inouye, Vice Chairman Campbell, and the Senate Committee on Indian Affairs for the opportunity to submit testimony regarding the implementation of the Native American Housing Assistance and Self-Determination Act (NAHASDA).

California Indian Legal Services,[1] on behalf of our client, the Pauma-Yuima Band of Mission Indians, submits the following testimony to the Senate Committee on Indian Affairs concerning necessary improvements to the implementation of the Na-

[1] CILS is the oldest and largest tribally controlled law firm in the United States. Founded by California Indian leaders in 1967, CILS maintains 6 offices in California and Washington, DC, and represents, at any given point in time, 60 California tribes. Over the years, CILS has also represented many intertribal housing authorities as well as single tribe housing authorities. CILS attorneys have worked closely with the Indian housing community for many years and has unparalleled experience working with small tribes in California.

tive American Housing Assistance and Self-Determination Act and in support of its reauthorization.

The Pauma-Yuima Band is located in northern San Diego County and has approximately 200 members. The Pauma and Yuima Indian Reservations are not large, covering less than 5,500 acres As such, Pauma is representative of many of the tribes found in California and throughout the Nation in that it does not have either a large landbase or a large population. However, because of decades of underfunding, in comparison to other regions, livable housing on the Pauma and Yuima Reservations was in critically short supply when NAHASDA was enacted.[2] Although NAHASDA has improved the Federal Government's role in helping the Pauma-Yuima Band provide decent housing for its members, the lack of base level funding for all tribes has made this goal, the primary purpose of NAHASDA, elusive. Because of the size of the reservation and the number of members, the Tribe does not receive sufficient funds to construct anywhere near the number of units needed to ensure adequate housing for the reservation community.

Beyond ameliorating decades of underfunding, Pauma's struggle to address its housing problems are exacerbated by the very high cost of housing found in the surrounding communities and the relatively high cost of grant administration for small tribes. Funding under current NAHASDA formulas is not likely to ever allow Pauma to construct new housing at a rate approaching the growth of its population, let alone meet its current shortages caused by decades of underfunding. We strongly believe that for NAHASDA to have meaning to improve the lives of Pauma's members and their families, and importantly, to hold out some hope to those that have spent years on tribal housing waiting lists that they will eventually have a decent place to live, Congress should establish or require base level funding for all tribes with housing shortages. At a minimum, all such tribes, including the Pauma-Yuima Band, should receive funding that would allow the construction of at least two new homes each year. Even that modest rate of construction will certainly not meet the housing needs of most small tribes, but will be a dramatic advance over the current situation, and a signal to those living in structures that most Americans could not conceive of, that there is hope.

Moreover, by providing base level funding, not only will there be meaningful progress toward meeting the housing needs of small tribes and furthering the goals of NAHASDA, but base level funding will improve the efficiency and efficacy of Federal housing dollars. As the Committee is well aware, there is and should be a certain level of professionalism and accountability in all tribal housing programs. This mandates a certain level of expenditure for administrative and other costs. When small tribes receive very little money for the construction or rehabilitation of housing, those administrative costs can become disproportionately large relative to the amount of Federal funds available for construction. The establishment of reasonable base funding will ensure a better balance of use of Federal funding.

Last, the Pauma-Yuima Band supports the reauthorization of the NAHASDA and asks that the Committee and Congress reaffirm the Federal Government's trust relationship with all of Indian Country. In reauthorizing the NAHASDA, Congress should also clarify to the Department of Housing and Urban Development that the government-to-government relationship between and among our nations is fostered and strengthened through negotiated rulemaking and truly meaningful consultation as Chairman Inouye recognizes and often emphasizes that the best solutions for Indian Country are made in Indian Country by Indian people.

Thank you again for this opportunity to submit testimony to inform your decision and policymaking. Please do not hesitate to contact us with any questions or for further information and discussion.

PREPARED STATEMENT OF CHESTER CARL, CHAIRMAN, COALITION FOR INDIAN HOUSING AND DEVELOPMENT

On behalf of the Coalition for Indian Housing and Development, and its sister organization, the National American Indian Housing Council, I would like to thank Chairman Inouye, Vice Chairman Campbell, and other members of the committee

[2] In a series of reports commissioned by Congress resulting in publication in 1997, housing was identified as a critical need. These reports prepared by the Advisory Council on California Indian Policy found that for many years funding for Indian housing in California had been disproportionately less than the funding for Indian housing elsewhere, which makes for poor housing stock indeed. (ACCIP Reports, Community Services, table 7, page 33 et seq.) The congressionally commissioned reports detail the sordid history of this and many other inequities and do not need to be repeated here. However, this is an opportunity for Congress to undertake action that finally would repair some of the damage inflicted on the California Indian community.

for holding this hearing today. I would also like to take this opportunity to express my appreciation, and that of the entire organization, for the work this committee has put into supporting Indian housing issues.

The Native American Housing Assistance and Self-Determination Act is still a young program, but already we are seeing its potential. Beyond my capacity as Chairman of CIFID and NAIHC, I am also CEO of the Navajo Housing Authority. It is unquestionable that NAHASDA-funded programs on the Navajo reservation have been successful in providing better housing for Navajo families. It is a program that has tripled production in its first year with increasing numbers in each year of funding. This is the result of a major effort from the Navajo Nation in parallel efforts to implement private financing and economic development. I have seen the same in many other Indian communities across the country.

NAHASDA addresses the specific needs of tribes and has gone far in defining the government-to-government relationship between Indian tribes and the United States Government. Based on this unique relationship, NAHASDA outlines ambitious goals to provide tribes the tools to be more creative while also encouraging flexibility in providing housing services to tribal members. The act prompts tribes to accomplish clearly stated goals to reduce the housing need and to open the housing market to neglected people. It further encourages the involvement of private entities rather than simply spending Federal funding. Unfortunately, as the years have passed since enactment, these lofty goals appear to have been limited by the continuing burdensome oversight of HUD, the creation of HUD impediments not authorized by NAHASDA, and inadequate appropriations.

The Coalition for Indian Housing and Development respectfully requests Congress to reaffirm its commitment to NAHASDA and tribal sovereignty through reauthorization. It is vitally important, however, that Congress include in its reauthorization language clear guidance to HUD and Federal agencies that implementation of Indian housing programs be conducted in a manner that unequivocally supports tribal self-government.

In August 2001, the HUD Inspector General released its report on a nationwide audit of NAHASDA [2001–SE–107–0002]. The purpose of the audit, as stated, was "to determine if NAHASDA recipient performance is consistent with the Indian Housing Plan and if the Housing Entities efficiently, effectively, and economically provide affordable housing." The general outcome of the audit is that, "Overall, tribes have successfully implemented NAHASDA." The audit goes on, however, to say that the audit discovered "significant concerns that HUD needs to address." By and large, the rest of the audit discusses how poor management by HUD's Office of Native American Programs [ONAP] has resulted in problems in implementation. ONAP's response is that NAHASDA places accountability on the tribes, not on ONAP, and that ONAP's role is one of monitoring and dealing with noncompliance.

CIHD agrees that this is what ONAP's role should be, but we disagree that is what they are now doing. First of all, we would like to see HUD develop uniform policies and treatment for tribes of all regions. Second, we agree NAHASDA places accountability on the tribes and we willingly accept that burden, but despite its implication to the contrary, ONAP inefficiently over-regulates the program.

We support the findings of the OIG Report and will do our best to aid in making the necessary changes. We hope that the committee will take the report as a guide in working with HUD to more effectively implement NAHASDA.

There are several specific areas where we would like to make recommendations for statutory amendments to NAHASDA. The first is in dealing with program income.

CIHD urges the enactment of a technical amendment to NAHASDA that would allow more flexibility in defining program income. Currently, HUD views any income or revenues, no matter how remotely related to the expenditure of Federal funds, as program income. The tribes are required to track program income and financially account for these funds without any sunset and further there is not an accounting function that supports this requirement. This causes a severe disincentive for Indian Housing Authorities, TDHE's and tribal governments from exploring creative and imaginative housing and finance initiatives.

To illustrate, the Navajo Nation is implementing a mortgage concept program in the place of the traditional HUD Mutual Help homeowner program. Our aim is to use NAHASDA funds for a portion of construction financing and assist families in obtaining a conventional mortgage to repay construction costs including the NAHASDA portion. It is undisputed that Federal restrictions often cause lengthy delays in construction and increase construction costs. It should be our goal to ensure that the maximum amount of funding be defined as unrestricted which in turn will reduce the cost of housing. In other words, once NAHASDA funds have served their initial purpose, and an IHA, Indian nation or TDHE is able to generate reve-

nues or income in subsequent transactions, those funds should lose their Federal character and be unrestricted.

NAHASDA was intended to enable Indian tribes to administer housing programs consistent with self-determination and self-governance. Accordingly, NAHASDA funds should be considered seed money for tribal housing programs. Current HUD restrictions serve no other purpose than, to hinder future development.

NAHASDA legislation obligates HUD to follow a Federal statutory negotiated rulemaking process in developing regulations to implement NAHASDA. HUD has taken the position that this is only a one-time requirement to be used for the establishment of implementing regulations. CIHD believes that in accordance with the statutory provision and the Congressional findings of NAHASDA, this is an on-going requirement for all new regulations.

Consistent with tribal self-determination and self-governance, tribes proposed the use of the negotiated rulemaking process with the appointment of 48 tribal representatives, not 18 as in the HUD plan, for the purpose of reworking the NAHASDA distribution formula. The negotiated rulemaking process requires appointment of an adequate number of representatives that reflect a broad spectrum of Indian tribes. With over 550 federally recognized Indian tribes in the United States, 18 representatives picked by HUD is inadequate and is inconsistent with the government-to-government relationship.

Furthermore, HUD is appointing tribal representatives based on criteria that are not defined, such as the definition of a small tribe or the definition of a geographic area. The tribe's chosen selection process, using 48 tribal representatives should be used in any future negotiated rulemaking effort.

CIHD requests the inclusion of an amendment to NAHASDA that clearly states negotiated rulemaking be used for all new NAHASDA regulations. The negotiated rulemaking successfully worked with the development of new rules when a draft of NAHASDA regulations were produced in ninety (90) days, but it took HUD almost 1 year to clear the rules.

It is my understanding that today's focus is not so much whether to reauthorize NAHASDA, but to focus on how NAHASDA is being implemented and what improvements can be made. With that in mind, I submit the following concerns.

In July 2001, tribal representatives and HUD officials met in St. Paul, MN, for the purpose of consulting with HUD on issues related to NAHASDA. Although CIHD appreciates HUD's effort to develop a Consultation Policy, we find the policy does not support the intent of NAHASDA and marks a backward step in our efforts to address Indian housing needs. The HUD policy essentially says that HUD will decide what issues will be subject to consultation with tribes, and provides for what appears to be minimal input from tribes on the issues. HUD alone will consider proposed solutions and they will decide how to develop or implement new policy or regulations. This is directly contrary to the wishes of the tribes and significantly weakens the progress made by tribes in convincing the Administration to in fact strengthen the consultation process, as indicated in Executive Order 13084.

The intent of NAHASDA, as outlined in 25 U.S.C. 4101, requires that, "Federal assistance to meet these responsibilities should be provided in a manner that recognizes the right of Indian self-determination by making such assistance available directly to Indian tribes or Tribally Designated Entities under the authorities similar to those accorded Indian tribes in Public Law 93–638." HUD, in its internal decisionmaking and consultation approach, has not supported the above intent, but rather continues to micro-manage tribal housing programs.

The executive order dated November 6, 2000, requires all Federal agencies to "establish regular and meaningful consultation and collaboration" with tribes, and to "grant Indian tribal governments the maximum administrative discretion possible" with respect to Federal statutes and regulations administered by tribal governments. The order further encourages tribes to establish their own standards and policies to achieve program objectives, but most important to CIHD, the concept of negotiated rulemaking is encouraged. In contrast, HUD's use of consultation is contrary to these fundamental principles.

CIHD requests coordination of environmental review requirements among Federal agencies by establishing a lead agency. We submit that NEPA requires the Federal agencies to designate a lead agency when there are multiple funding agencies and that the other agencies are required to accept that agency's environmental review process. We feel this is an important issue because projects requiring multiple environmental assessments because of multiple funding sources hinder construction progress.

Another problem in this area is cost. HUD should receive additional funding to conduct environmental reviews within the HUD budget. Large amounts of

NAHASDA funding are being expended for this purpose, even for minor renovation to housing units. This unfunded mandate should be eliminated or properly funded.

When the HUD Office of Native American Programs was established with a Deputy Assistant Secretary responsible for all Indian housing programs at HUD, the former HUD Secretary found the position warranted a Senior Executive Service ranking, even though it was authorized as a GS–15 position. Recently this position was advertised as a GS–15 career position with requirement of only 1 year of experience. CIHD views this as a downgrade in the position, even though it was originally a GS–15. Meanwhile, this position has been given additional responsibility for conducting government-to-government relations as well as oversight of the new Native Hawaiian Housing Block Grant program.

CIHD believes the DAS position should be raised to an Assistant Secretary position. The unique nature of Indian housing as opposed to public housing, as well as the need to work with the principles of tribal sovereignty and the government-to-government relationship, place Indian housing in its own category needing the authority to have direct contact with the Secretary.

I would also like to address the issue of staffing in the regional HUD ONAP offices. Tribes receive little or no guidance and technical assistance from HUD field staff because they claim they are severely under-staffed. Although it has been a problem for some time and is no secret to anyone, HUD has made no effort to fully staff these offices with trained, competent employees.

For the past 5 years, set-asides have been taken from NAHASDA for special HUD programs without any consultation with tribes. Often the set-asides are not successfully implemented or the programs duplicate other existing programs. Such is the case for $5 million set aside each year for HUD to provide technical assistance and training for tribes. It is disheartening to see $5 million spent on HUD conferences many tribes cannot afford to attend when this money could have been spent providing shelter to an Indian family. We are simply not seeing enough training and technical assistance benefit to justify this cost. It is true that NAIHC also receives funding for training and technical assistance, but much of this is provided free of cost, and in the case of technical assistance we go to the tribe rather than having the tribe come to us.

CIHD urges Congress to review the funding of these NAHASDA set-asides to determine whether they are necessary and if the unused funds may be carried over to the current funding year for immediate use in affordable housing activities.

The Section 184 Loan Guarantee Program must be streamlined. Tribes have found the program too complex and families often experience delays in trying to comply with requirements such as the environmental reviews. We are now seeing cuts in the program, as with the President's fiscal year 2003 budget, because it is not being used. The solution is making the program more user-friendly.

Most Native Americans historically have not had access to credit, or at least to credit that is acceptable in practice off the reservation. Some of CIHD's recommendations are to accept down payment from any source, allow outstanding collections to be converted to a payment program, and include this in the debt ratio. Also, allow families to participate as long as judgments are paid and other derogatory issues are current in the last 6 months, and provide a lease-to-own option where twelve months of satisfactory payment may be converted to a mortgage. This option may also include participation of families who have a high debt ratio. For example, open Section 184 participation for families at 65 percent debt ration in a lease-to-own program and have families qualify for a mortgage at 48 percent debt ratio. The section 184 program may be further improved by allowing underwriting for multiple State jurisdictional areas rather than the restriction to one State.

HUD recently modified the Annual Performance Report [APR] format for NAHASDA. The report format, however, is still not consistent with the requirements of the Indian Housing Plan [IHP]. Further modification is required to have the APR report on the actual progress of the tribe's goals as set in the IHP. Furthermore, the report format should be in simple terms that can be understood by the public and the tribal leadership. The report in its current form is complex and can only be understood by people that work with the program every day.

In conclusion, we appreciate the committee's attention in addressing these important issues that hinder economic and housing development opportunities on Indian reservations. We are confident that together our efforts will result in direct benefits to the American Indian nations.

Indian housing is at a crucial stage, with many of the housing problems that have long plagued Indian communities still unresolved. The passage of NAHASDA has given tribes incredible opportunities, and with adequate funding and proper implementation, NAHASDA can be the most important tool in building sustainable, healthy communities in Indian country.

I am pleased to answer any questions you may have.

PREPARED STATEMENT OF GUS ADAMS, EXECUTIVE DIRECTOR, BARANOF ISLAND HOUSING AUTHORITY

The Baranof Island Housing Authority strongly endorses a statutory amendment to NAHASDA that would allow more flexibility in defining program income. We strongly support Chester Carl's testimony before the Senate Committee on Indian Affairs on February 13, 2002.

Mr. Carl is the Executive Director of the largest Indian Housing Authority in the country. BIHA is the smallest Housing Authority in Alaska and that our highest priority and major concern in the reauthorization of NAHASDA is to support a technical amendment to NAHASDA that would allow more flexibility in defining program income.

BIHA has demonstrated that we can build reserves while meeting the HUD guidelines to provide affordable housing, and that these reserves should be used, or better yet, leveraged to provide additional affordable housing.

Realistically it appears Congress will not be able to provide the necessary increases to meet the unmet housing needs in Indian Country. Consistent with self-determination and self governance, there should be no barriers in allowing Housing Authorities who use sound and efficient management practices to maximize the use of HUD funds to help meet these unmet housing needs.

The existing NAHASDA rules hinder BIHA in expanding our housing services.

If you feel I can be of any possible assistance during the mark-up of the bill, please feel free to contact me.

PREPARED STATEMENT OF ROBERT GAUTHIER, EXECUTIVE DIRECTOR, SALISH AND KOOTENAI HOUSING AUTHORITY

It is a pleasure to appear before you today to report on an exciting time in Indian country and to request your continued support of the present Federal approach to Indian Housing.

I would like to begin by thanking Chairman Inouye, Vice Chairman Campbell and the other members of the committee for inviting us here today, but also for your unwavering support of Indian housing. I would also like to acknowledge the staff of the committee both present and past. They really get things done. I have had the pleasure of getting to know some of them in their efforts to better understand Indian housing and I must say they inspire and encourage us in Indian country. We are grateful to them.

The Senate Indian Affairs Committee's vision, leadership and willingness to partner with us has allowed us to achieve many of the dreams we jointly shared just over 10 short years ago. When this Committee created THE NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKA NATIVE AND NATIVE HAWAIIAN HOUSING, the wheels of change were set into motion. Thirty-five specific recommendations plus various agency recommendations were made by this Commission. I am proud to appear here today and witness with you the progress in Indian housing that found its roots in those initiatives.

Congratulations, Senator Inouye, on your role in successfully developing and funding new housing opportunities through the Native Hawaiian Housing Block Grant based on NAHASDA. You have kept your word to us. Badly needed funding for underserved Hawaiians has not come at the expense of other Native housing programs. In fact, funding through HUD for NAHASDA has nearly met the Commission's 1992 recommendation of $690 Million per year. Funding for fiscal year 2002 was $648 million. If we could get the other Federal Government partners to meet their recommended funding levels, we could make even more progress. Bureau of Indian Affairs Housing Improvement funds have not increased, nor has Indian Health Service 121 funding. This is in spite of increased demand due to the success of NAHASDA

We are now finishing the 5th year of the NATIVE AMERICAN HOUSING AND SELF DETERMINATION ACT. I have witnessed more positive change in Indian housing over that time period than I would have imagined when the law was adopted. It is not only my opinion that NAHASDA is working. At a recent United Native

American Housing Association [UNAHA] meeting, 31 one members of the Great Plains tribes were surveyed as to their impression of NAHASDA and whether the act was meeting its intended purpose. While some of the tribes are still adjusting to the changes brought by the act, without exception every single member expressed their support for the new delivery system and voiced unanimous support for its reauthorization. Furthermore, NAHASDA is generating exactly the kind of interest from equity partners, banks and other Federal agencies that was intended.

For the first time ever, Indians are discussing financing options, tax credit pros and cons, qualifying for Rural Housing self-help funding and integrating infrastructure questions. At Salish & Kootenai, we have averaged fifty units a year of new construction with only a handful funded through the NAHASDA block grant. We actually see the light at the end of the tunnel because NAHASDA is meeting the intent of Congress in ways we only dreamed of. Giving tribes a little equity and a lot of autonomy will continue to pay huge dividends. We encourage you to reauthorize NAHASDA and consider a few minor changes to make the law work even better. With you permission I would offer the following suggestions.

There are a couple of key areas within NAHASDA under title VI and VII that could be amended to result in greater access to working capital, enhance self-determination and increase home ownership among Native Americans.

One important component of the home ownership equation is the availability of mortgage financing that promotes affordable housing. State and local government agencies utilize tax-exempt financing as a primary tool to fund housing in underserved markets. Indian country does not enjoy that same benefit because of provisions in section 7871 of the IRS Code. Senator John McCain's bill, S. 660, addresses several of the key issues that must be amended to facilitate broader application of tax-exempt financing. These proposed changes are consistent with existing provisions set forth under NAHASDA.

Another area that deserves attention is the HUD Section 184 Program. This program has tremendous potential; however it continues to receive a lukewarm reception. Unfortunately, because of low use, the President has chosen to cut both Section 184 and Title VI funding in his fiscal year 2003 budget. We would like to see these numbers return to previous funding levels, but first we must facilitate better access to the programs.

Proposed Amendments to Title VI of NAHASDA. Sec. 601. Authority Subparagraph (a) Authority—this provision defines the terms of the guarantee created under title VI. The intent of this program is to improve access to the capital markets for tribal communities. However, section 7871 of the IRS Code has a "Federal guarantee" prohibition that prevents tribes from accessing tax exempt financing using the title VI guarantee. This application of the Federal guarantee would reduce borrowing costs for tribes. In addition, the cost associated with this increased tax exempt bonding authorization would be limited and defined by the annual appropriation for title VI.

Sec. 601. Authority and Requirements Subparagraph (b) Lack of Financing Elsewhere—this provision states that a tribe must certify that a Federal guarantee is necessary to complete the transaction in a timely manner. This certification places an unnecessary burden on the tribes. This requirement could have the unintended consequence of a tribe making application with a lender to finance the proposed activity and receive an approval at an above market rate. Does the increased cost of funds constitute enough reason for the Title VI Guarantee to become applicable? The policy does not appear to be warranted.

Proposed Amendments to Title VII. Sec. 701. Loan Guarantee for Indian Housing Subparagraph (k) GNMA Authority—The GNMA provision creates the mechanism to issue housing bonds under this section of the code. The tribe is the applicant on the underlying mortgages and the occupants must rent/lease the units for 10 years from the issuance date before they can actually assume the existing mortgage or purchase the home from the tribe. If Section 7871 of the IRS Code were amended to allow tax exempt financing for "private activity bonds" using this provision of NAHASDA, individual families could obtain mortgage financing at a lower rate of interest using bond proceeds. The costs of this new authorization would be limited to the annual appropriation for HUD Section 184 Program. This proposed amendment provides a defined mechanism through which home ownership can be realized without placing undue financial burden on the Federal budget and would function outside state volume caps. A residual benefit associated with this amendment would mean new life for the HUD Section 184 Program.

Another characteristic of the HUD Section 184 that should be visited is the requirement for mortgage guarantee on individual loans. The 184 Program would benefit if it had the ability to underwrite and offer pool insurance for a number of mortgages from a common borrower that is, the tribe or TDHE. By underwriting the

credit risk of a pool and requiring a reserve account to offset losses beyond historic 184 experiences, ONAP could offer a viable program with broader appeal.

Another suggestion for improving the Section 184 program would require another approach to evaluation of the credit of applicants. We believe that Native Americans have historically not had access to credit and often the credit they have had access to is onerous if not illegal. Some 65 percent of the credit issued to Native Americans carry terms that would not be acceptable off the Reservation. Therefore, we suggest the following changes:

With down payment from any source of 10 percent or greater:

1. Collection-allowed if converted to payment program-in writing-payment to be included in ratios.
2. Judgments-must be paid.
3. Other derogatory credit must be current for the past 3 months.
4. Open credit must be included in ratios.

Applicants with down payments less than 10 percent should be allowed to make all past derogatory credit count as good as long as it is current for 3 months or more.

Bankruptcy is acceptable if discharged 12 months or longer.

Lease to own-12 months of on time home payments will qualify for acceptable credit. All open credit must be included in ratios.

We believe that 184 underwriting has moved closer and closer to FHA underwriting which was not the original intent of the program. (I was there) We need to loosen up and accept more realistic underwriting standards.

Sec. 202. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES. Currently reads: "Affordable housing activities under this title are activities, in accordance with the requirements of this title, to develop or to support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, through the following activities:"

This language has been interpreted by HUD to limit all NAHASDA resources to residents of affordable housing. They say that if a poverty level Indian child living in a tar-paper shack wants to play baseball on a Housing Authority sponsored team, he would have to be charged! If his mother wanted credit counseling to qualify for homeownership, and the counseling was paid for with NAHASDA funds, she must pay. If she lived in a HUD funded unit however, she would not be charged! I don't believe this was the intent of Congress and if we changed the wording of Sec. 202 to read as follows we could solve this problem:

Should read: "Affordable housing activities under this title are activities, in accordance with the requirements of this title, to develop or to support affordable housing for rental or homeownership, or to provide housing services for eligible families, living in affordable housing units or not, through the following activities:"

In closing, I think it is a testament to the progress of NAHASDA that we are able to elevate the Indian housing discussion to the level we are at today. As I indicated before, those of us who were here before NAHASDA understand the power of the tool we now have to work with. Our intent is to become ever less reliant on Federal funding for our housing programs, and I am sure that is what the Congress and Administration want as well. I believe that if we can move in the direction of alternate financing, utilizing section 184, title VI, tax exempt bonds, and other ways of leveraging NAHASDA, we will have come closer to hitting the mark this Committee set out to reach in 1990.

Thank you for your consideration of these suggestions and I welcome any questions you may have.

FOLLOW-UP QUESTIONS WITH RESPONSES

Amendments to Affordable Housing Activities. You suggested changing the wording of Section 202 to allow affordable housing activities to be provided to eligible low-income families regardless of whether they reside in NAHASDA-funded housing.

Question 1: Do you know whether the Department would support expanding the scope of NAHASDA-funded activities in the manner you propose?

Answer 1: HUD has indicated that they would very likely support such a change to allow housing services to eligible families who may not already live in NAHASDA-assisted homes.

Suggested amended language would read: "Affordable housing activities under this title are activities, in accordance with the requirements of this title, to develop or to support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing for eligible families, living in affordable housing units or not, through the following activities:" Amendments to Federal Guarantees for Financing Tribal Housing You support amending section 601(b) of

NAHASDA because it could have the unintended consequence of a tribe obtaining loan approval but only at an above-market rate, whereas if they could receive no financing, then they would qualify for the loan guarantee.

Question 2: Could you please provide us with suggestions of how this problem might be addressed?

Answer 2: The problem could be solved by simply removing the requirement under title VI that says you must be denied other financing before being able to take advantage of title VI funding.

The amendment would strike section 601 (b) of title VI and re-designate section 601 (c) as 601 (b). This amendment has been provided to the Indian Affairs Committee staff for review.

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

Mr. Chairman, Mr. Vice Chairman, members of the committee, tribal leaders and distinguished witnesses and guests. My name is Gregory E. Pyle, and I am chairman of the Choctaw Nation of Oklahoma. We are the third largest Indian tribe in the United States, and have run our own housing program since 1966, Our program encompasses in excess of 3,500 units, and serves over 5,000 tribal members annually. We operate at a level of more than $20 million per year. Today, we want to give you our recommendations for improving the Native American Housing Programs provided by the tribes.

We support the positions on reauthorization put forward by the Coalition for Indian Housing and Development. Specifically:

—through implementation of the Native American Housing Assistance and Self-Determination Act [NAHASDA], we have been able to provide more, desperately needed housing assistance for low-income Native Americans than at any other time in our history. However, there still remains an enormous need for housing assistance throughout Indian country. To continue to address this need, I strongly urge you to support the reauthorization of NAHASDA, currently before the committee as S. 1210, for an additional 5 years with amendments to refine and enhance the act.

As was noted above, there is much in the realm of Indian Housing yet to be done. I strongly urge you, in the reauthorization and in your work with your colleagues on the appropriations panels, to secure additional appropriations for NAHASDA. Studies conducted by national organizations identify the level of housing assistance needs throughout Indian country to exceed $1.1 billion annually. Therefore, we need an increase on the resources currently going to this program. I respectfully ask you to support an increase of $350 million to be targeted to this activity over the next 5 years.

I encourage you to amend section 106 of the NAHASDA to require that the Department of Housing and Urban Development use Negotiated Rulemaking when developing, modifying, and promulgating any regulations for NAHASDA. This is a practice now in general use with Education and other Self-Determination programs, and will allow tribes to exercise Self-Determination through true government-to-government relations. I believe this was, and is, Congress' true intent for this program.

For the Choctaw Tribe, I wish to submit several other ideas for your consideration. I believe that NAHASDA should be amended to designate maintenance of adequate operating reserve accounts as an eligible activity, and to state that program income shall be identified in, and expended according to, an individual tribe's Indian housing plan.

Also. section 4131(b)(4) allows tribes to establish tribal preference for services provided by a tribe. However, the funding for the tribal jurisdictions are based on the total number of Indian individuals who live within the jurisdiction. This creates, in some cases, a situation where an individual may attract funding for a tribal program, but, due to the tribal preference policy, may receive no services from that program. This may be in spite of the fact that their own tribe may be very close to their place of residence, and may be more that able to provide services to that individual. I believe that a tribe should be allowed to establish tribal preference for its members in setting up a program, but that if another tribe is willing to serve its own members residing within the other tribe's jurisdiction, that the act should provide a mechanism to allow such services. Indian people not served by the tribe within whose jurisdiction they reside should be counted toward the base for the tribe who will provide services. In other words, if such a tribe chooses not to provide equal services to all Indian people residing within its jurisdiction, then the excluded population should be allowed to be counted for funding by their own tribe in order for their own tribe to be able to provide access to needed services. We have devel-

oped language for this issue, and will share it with you during the next several weeks.

NAHASDA stresses not only Self-Determination but also Self-Sufficiency of tribes and individual tribal members through economic development. I believe that amendments to NAHASDA may be necessary to refine and amplify that intent in the act. Specifically in regard to model activities, the guidelines for approval should be given as much latitude and flexibility as possible to include job creation. In many of our economically depressed areas, the solution to affordable housing and Self-Sufficiency is adequate incomes through employment instead of public assistance. Some minor changes to the provision on model activities will allow greater lee-way to tribes in setting up such economic development programs, including programs which will lead to job creation in fields associated with housing. We are transmitting these amendments.

Additionally, I ask you to consider supporting through the Appropriations Committees and process the increase of Community Development Block Grant funding by $70 million over the next 5 years, reinstatement of the Drug Elimination funding, full funding for Rural Housing and Economic Development Programs, and an increase in the Indian Health Service appropriations—through the Interior Subcommittee of Appropriations—of $180 million per year for Sanitation Facilities Construction. I realize that these issues pertain to the funding and not authorization of the NAHASDA program, but I know how instrumental you have been in the past in securing funding for the programs you establish, and ask for your assistance for this year.

In closing, I would like to say that the passage of NAHASDA has allowed tribes enormous opportunities. With adequate funding, and your reauthorization of its programs, NAHASDA can be one of the most successful expressions of Self-Determination for tribes to address the housing needs of our low-oncome members.

Thank you for your consideration of these recommendations and your attention in addressing these concerns. If I can be of any further assistance or can answer any questions, please do not hesitate to contact me.

PREPARED STATEMENT OF PEARL CAPOEMAN-BALLER, PRESIDENT, QUINAULT INDIAN NATION

On behalf of the Quinault Indian Nation/Quinault Housing Authority, I would like to thank Chairman Inouye, Vice Chairman Campbell and other distinguished members of this committee for convening this oversight hearing on the Implementation of the Native American Housing Assistance and Self-Determination Act of 1996 [NAHASDA]. We join many tribes in supporting NAHASDA and want very much to see it continue. However, inasmuch as this legislation will be reauthorized this year, the Nation has prepared testimony of our views on its strengths and weaknesses during implementation at the tribal level.

The Quinault Indian Nation, an allotted reservation, is located on the northern coast of Washington State on the Olympic Peninsula. We are blessed to be surrounded by many natural resources, but providing some basic needs, such as housing, to our 2,400 enrolled members, continues to elude us. While we have built many homes for our people with the assistance of the Federal Government, we have never been able to meet the continuing increasing need,

Indian housing, as we once knew it, changed when Congress enacted Public Law 104–330, the Native American Housing and Self-Determination Act of 1996 [NAHASDA]. Compared to the 1937 Housing Act, these changes included:

Placing the trust and moral responsibility on Native Americans to get affordable housing services to the neediest of their Native Communities;

Separating Indian housing from Public housing within the U.S. Department of Housing and Urban Development, recognizing the unique differences of land,, tradition and culture;

Replacing several Indian housing grant programs with one block grant to tribes or their tribally designated housing entities [TDHES];

Allocating appropriated funds based on a single formula, eliminating the competition among tribes for scarce housing resources;

Providing greater flexibility for the development of "affordable housing activities" allowing for creative financing and leveraging of financing;

Requiring and enabling regulations to be promulgated through a negotiated rulemaking process on a government-to-government level; and,

Recognizing the need for economic growth on tribal lands.

With the enactment of NAHASDA, tribal designated housing entities were able to operate in a manner that better addressed the needs of the community. However,

during the negotiated rulemaking process, tribal representatives were unwavering in their efforts to try and provide Indian housing authorities with regulations that would enable them to operate with the flexibility and design of public housing authorities.

The intent of Congress was very clear in the NAHASDA legislation. It was intended to enable tribes to administer housing programs consistent with self-determination and self-governance. The separation from public housing was to foster the expansion and growth by allowing us to administer this program and in doing so to make it more effective and efficient. In doing so, we would be able to open doors to other ventures and partnerships with community development financial institutions [CDFIs] such as Fannie Mae and Freddie Mac, which would help to generate non-Federal dollars leading to greater investment capacity and minimize the paternal scrutiny of the Federal Government.

For tribes, the transition to NAHASDA has been tedious and burdensome because HUD has not been willing to accept or acknowledge the changes that came with the act. The legislation was passed in 1996 and went into effect in October 1997; the final regulations were published in March 1998 with amendments in late 2000. And, the statute mandates that all regulations required under NAHASDA be issued according to a negotiated rulemaking procedure. Yet, HUD still disputes this provision and argues that it was only applicable to the initial regulations and that the Department does not have to consult with tribes on future regulations.

It is obvious, that Congress needs to make sure that the reauthorization statute is written as "remedial" as allowable so that the Department will not be able to define terms as it sees fit to better serve its purposes. The lack of a government-to-government relationship, whether during consultation or basic overall respect, will continue to undermine the intent of Congress under NAHASDA.

The NAHASDA statute specifically requires the Department of Health and Human Services to utilize the negotiated rulemaking committee in the development of regulations. Tribal governments have been involved on other negotiated rulemaking committees such as TEA–21 and Self-Governance. However, this is the first time that a Department has imposed limitations on the involvement of tribes in this process. It is a mockery that HUD chooses to ignore the value of consulting with tribes when regulations are amended or when statutes expire and reauthorization is imminent.

Public Law 104–330 [NAHASDA] is evidence that Congress is convinced that tribes have the right to administer their own housing programs. However, burdensome paternalistic government Notices, Circulars and Policies continues to stymie the future of expanding the potential of Indian housing programs. NAHASDA allows for Economic Development, HUD does not, and threatens to hold up the tribes plan if included. An example: The need for a laundromat on the reservation. If 70 percent of an Indian village is 50 percent to 80 percent of median income, tribal members lack transportation to the nearest laundromat which is 50 miles away. HUD determines this activity to be Economic Development and requires that the tribe prepare an additional plan, which will then have to be reviewed by their Denver office. Why?

The negotiated rulemaking process is a Federal statutorily mandate process which has been used both in the development of regulations for TEA–21/Indian Reservation Roads [Department of Transportation and the Department of the Interior/Bureau of Indian Affairs] and Self-Governance—titles IV and V [Department of the Interior/Bureau of Indian Affairs and the Department of Health and Human Services/Indian Health Service]. Within both of these venues, there has been a common thread that has helped with government-to-government relations. Both agencies established an Advisory Committee to provide information and advice regarding a wide variety of issues that may or may not require resolution. Each of the Advisory Committees is provided support from a technical work group whenever situations warrant further research and review to carryout a policy issue for the Advisory Committee. The Advisory Committee and the technical workgroup, are comprised of both tribal and Federal representatives.

The Nation recommends that such an Advisory Committee be established within the Office of the Assistant Secretary for Public and Indian Housing [ASPIH]. The purpose will be to provide advice and assistance to the ASPIH on issues and concerns pertaining to NAHASDA, as well as other tribal programs as needed.

With just over 1 year remaining on the time allowed by the statute to conduct the negotiated rulemaking, HUD should consult with tribes and immediately proceed with establishing the negotiated rulemaking committee from the list of nominees submitted and begin a timely review of the Indian Housing Block Grant formula issues.

Drug Elimination Grant, The Quinault Indian Nation requests that funding for this program be added to the Indian Housing Block Grant, and that tribes develop an annual plan on how they intend to attack this plague. The Quinault Indian Nation, through the housing entity, included Crime Prevention and Intervention in their annual plan. The tribe's cultural approach to intervening with illegal activity is questioned by HUD every year. Youth activities may only benefit from Quinault Housing Authority residents. It is not cultural or tribal tradition to turn anyone away when they are in need of help, especially youth. Unlike urban public housing, in an inner city, Indian housing affects our entire villages. Therefore we are allowing any child, who so desires, to participate in housing authority sponsored events. But HUD says no.

Oversight and Monitoring. It is the Quinault Indian Nation's opinion that the existing 50-plus page monitoring review checklist, developed by the Northwest Office of Native American Programs, is a time consuming in depth investigative audit. The Northwest HUD Office in Seattle is impinging on tribal sovereignty and self-determination. The Quinault Housing Authority files a financial audit annually with HUD. A recommendation would be to develop language in the A–133 Audit requirement supplemental, that our Independent Financial Auditor would audit, review and report the specific information to HUD. Should we receive Findings or Material Weaknesses in our Independent Financial Audit report, this would then prompt a HUD on-site review and or audit.

NAHASDA Title VI & 184 Loan Guarantee. Tribes are finding that these programs are not tribal user-friendly. The 184 Loan Guarantee worked in 1994, but the Northwest Tribes developed interim lending guidelines for this program, with the assistance of lending institutions, the Bureau of Indian Affairs and HUD. The program worked for all who participated. One year later HUD changed the guidelines to conform to FHA lending guidelines and we have had only one approved loan guarantee since. We recommend that the original interim lending guidelines be revived. The 184 Loan Guarantee Program presently is not eligible for re-finance. Our people were unable to take advantage of the lower interest rates that the rest of the country enjoyed. The Quinault Indian Nation requested a waiver from the Secretary and was denied given the reason that this rule required negotiated rulemaking. In addition the lenders increased the interest percentage by almost three points for this program. The 184 Loan Guarantee Program has great potential but Indians are unable to achieve a mortgage on trust lands,. and it will take a while for Tribal members to understand the intricacies of how mortgages work.

Title VI. This program is an excellent idea. We recommend that tribes be able to use t1iis program for economic development, community facilities such as health clinics, hospitals, assisted living facilities, et cetera. A major issue of concern to the Nation is that NAHASDA was authorized for 5 years, and if NAHASDA is not reauthorized or funds appropriated, how would tribes repay the loan?

Income Targeting. The Quinault Indian Nation's moral obligations are to those most in need. However, to have a balanced society of people, we must build our villages and communities to address and accommodate all of the socio-economic factors. Tribes must be able to build healthy, balanced communities. Because Indians are unable to obtain mortgages on trust lands, tribal members lack the credit history to qualify for a standard mortgage. We must be able to find a way to assist our people in obtaining mortgages, without becoming illegal.

Tribes need to have access to funds for mortgage lending that relies on section 184 loan guarantees on Indian trust lands.

Again, on behalf of the Quinault Indian Nation/Quinault Housing Authority, thank you for holding this hearing.

TESTIMONY

Oversight Hearing before the Committee on Indian Affairs, United States Senate, on the Implementation of the Native American Housing Assistance and Self-Determination Act

Washington D.C
February 13, 2002

Submitted by the Pueblo of Acoma Housing Authority, New Mexico
P.O. Box 620, Acoma Pueblo, New Mexico 87034 – (505) 552-6118
Jason Johnson, Chairman, Board of Commission
Raymond J. Concho, Jr., Executive Director

INTRODUCTION

Located about 55 miles west of Albuquerque, New Mexico, the Pueblo of Acoma is 1 of 19 Indian Pueblos in New Mexico and is home to *"Sky City,"* considered the oldest, continuously inhabited village in North America. Unemployment continues at about 37%. Overcrowding is 1.65 people per room. Tribal lands are isolated where it is challenging to develop roads, water systems, wastewater systems, utilities and other infrastructure. Although the Pueblo is developing and managing tribal enterprises, the revenue generated is inadequate for housing and infrastructure. The tribal enrollment office reports there are 4,573 tribal members. The Bureau of Indian Affairs reports there are 6,344 people (1996 BIA Labor Force Report) with 40% under 16 years of age. The 1990 U.S. Census' severe undercount is 2,900 tribal members.

Since 1969, the Pueblo of Acoma was 1 of 10 Pueblos under the All Indian Pueblo Housing Authority (AIPHA). From 1968 to 1979, only 212 U.S. Department of Housing and Urban Development (HUD) funded housing units were constructed - this is 19 housing units per year for a growing rural population. *A significant neglect under AIPHA was there were no federal housing funds awarded to Acoma Pueblo for new housing development for a 14-year period from 1979 to 1993!* Some Indian tribes, in comparable size and need to the Pueblo of Acoma, are managing between 500 to 800 housing units. Because of this gross neglect, the Pueblo of Acoma separated from AIPHA and established the Pueblo of Acoma Housing Authority (PAHA) effective October 1, 1996. This separation was necessary because AIPHA and HUD did not address the housing needs at the Pueblo of Acoma.

Currently, the Pueblo of Acoma Housing Authority manages 145 Mutual Help housing units. There are no existing Low Rent housing units. Recently, funds were awarded for 62 additional housing units under the U.S. Housing Act of 1937 - PAHA, itself, was successful in acquiring HUD funding for 40 housing units in 1997. Under the Native American Housing Assistance and

Self-Determination Act of 1996 (NAHASDA), the Pueblo of Acoma Tribal Council designated the PAHA as the Tribal Designated Housing Entity (TDHE).

The Pueblo of Acoma has demonstrated that it can manage its own Indian Housing Authority. In 1998, 1999 and 2002, the Southwest Office of Native American Programs (SWONAP), HUD, validated this capacity by awarding certificates of outstanding performance. Recent significant activities include construction management of 63 housing units, assisted over 131 housing units, manage Bureau of Indian Affairs (BIA) Housing Improvement Program (HIP) funds, implement Tribal Council adopted mortgage laws, expand wastewater systems, initiate two housing construction training programs - all within a four year period.

ISSUES

1. ISSUES RELATING TO THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF DETERMINATION ACT OF 1996

In 1996, Congress passed the Native American Housing Assistance and Self-Determination Act (NAHASDA). NAHASDA allows funding for affordable housing activities like infrastructure, crime prevention, planning, pre-development and other non-housing construction activities. Indian tribes use NAHASDA funds for such purposes thereby placing new housing construction as a low priority because of inadequate funding. NAHASDA funding is clearly inadequate.

Under NAHASDA, the Pueblo of Acoma received Indian Housing Block Grant (IHBG) program funds in the amount of $1.1 million for FY 2000, FY 2001 and FY 2002. Smaller New Mexico Pueblo tribes, like the Pueblo of Picuris, received IHBG funding of $139,671 for FY 2002. This is inadequate for administration, planning, maintenance, modernization and construction.

For FY 2003, the Coalition for Indian Housing Development (CIHD) and National American Indian Housing Council (NAIHC) project funding for the IHBG program at $1.075 billion. This has been advocated for the past years. Because of military and homeland security priorities, Indian tribes, CIHD and NAIHC advocate for $700 million for the FY 2003 IHBG program.

The IHBG funding formula is not fair for small and medium size Indian tribes like the Pueblo of Acoma and other New Mexico Pueblo tribes. If IHBG funding levels are not significantly increased, the IHBG funding formula must be reevaluated and modified. Minimum and maximum funding levels should equally be considered.

RECOMMENDATIONS

- Congress must approve S. 1210 and H.R. 1873 to reauthorize NAHASDA.
- Congress must increase funding for the FY 2003 IHBG program to $700 million.
- Congress should reallocate funds to the IHBG program from the Drug Elimination Program (DEP) rather than not funding the HUD DEP program.

- Congress must request that HUD develop funding formula studies and begin negotiated rulemaking with Indian tribes to amend the IHBG funding formula.

2. MANDATE NEGOTIATED RULEMAKING UNDER NAHASDA

In 1999 and 2000, the All Indian Pueblo Council (AIPC), comprised of 19 Pueblo Indian tribes in New Mexico, approved Resolutions to reestablish the negotiated rulemaking process as mandated by the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA).

In 1997, negotiated rulemaking proved successful when Indian tribes met with the Department of Housing and Urban Development to develop federal regulations known as 24 CFR Part 1000. However, housing issues continue to surface where interpretation and administration of NAHASDA and 24 CFR Part 1000 is necessary. Also, Indian tribes are frustrated that it has taken several years for HUD to work with Indian tribes to formulate a "HUD/Tribal Consultation Policy." Further, it is disappointing that HUD decided to wait until President Clinton, in his final year as President, to issue Executive Order 13175 (November 6, 2000) on tribal consultation.

Simply stated, HUD needs to meet with Indian tribes, including soliciting input from Regional ONAP Offices, to discuss key issues as finalized in HUD's issued Notices. For example, recent issued HUD Notices include program income, conveying 1937 housing stock, etc.

The Pueblo of Acoma continues to be an active participant in consultations and looks forward in working with this Administration and Congress when addressing Indian housing issues.

RECOMMENDATIONS

- Congress must encourage President George W. Bush and HUD Secretary Mel Martinez to support and implement Executive Order 13175 on tribal consultation.

- Congress must mandate HUD to reestablish the 58-member (48 tribal representatives and 10 HUD representatives) Negotiated Rulemaking Committee to review and amend 24 CFR Part 1000 and other related regulations. When NAHASDA is reauthorized, amendments must mandate negotiated rulemaking.

3. FAIR AND EQUAL DISTRIBUTION OF U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT STAFF, UNDER THE OFFICE OF NATIVE AMERICAN PROGRAM, TO INDIAN TRIBES IN RESPECTIVE REGIONS

The Southwest Office of Native American Program (SWONAP), U.S. Department of Housing and Urban Development (HUD), serves 167 Indian tribes in New Mexico, Arizona, Nevada, California and west Texas. In comparison, the Bureau of Indian Affairs has 4 distinct Region Offices (i.e. Albuquerque, Phoenix, Sacramento and Navajo) serving the same Indian tribes. HUD SWONAP staffing levels are not comparable to other ONAP regional offices that serve a lower number of Indian tribes. For example, the following is a profile of Indian Housing Plans (IHP) for regional Indian tribes monitored by each HUD regional office:

	Number of HUD Staff	Number of Open IHPs for 1998, 1999 2000, 2001 & 2002	Weighed Factor: IHP Caseload Per ONAP Staff
Eastern Region	21	246	11.7
Southern Plains Region	21	190	9.0
Northern Plains Region	22	141	6.4
Northwest Region	15	169	11.3
Southwest Region	31	623	20.1
Alaska Region	19	351	18.5

The low weighed factors show there is more ONAP HUD staff to serve Indian tribes that have active IHPs. For example, the Northern Plains ONAP staff manages an average of 6.4 IHPs!

This continues to create delays in the Southwest region. Notably SWONAP was not available to conduct environmental reviews for the Pueblo of Acoma under 24 CFR Part 50. This forced the Pueblo to conduct environmental reviews under 24 CFR Part 58 to continue development and modernization projects. Delays are noted with Indian Community Development Block Grant (ICDBG) funding applications and Indian Housing Plan reviews. In some cases, SWONAP staff must distribute work to other regional ONAP offices not familiar with Pueblo Indian tribes.

RECOMMENDATIONS

- Congress must recommend to HUD Secretary Mel Martinez to take administrative action and assign more ONAP staff to the SWONAP Region.

- Congress must recommend to HUD Secretary Mel Martinez that New Mexico Indian tribes should not be transferred from HUD's Phoenix/Albuquerque SWONAP office to the Denver Northern Plains ONAP office administrative oversight. If individual New Mexico Indian tribes request transfers, this could be considered on a case-by-case basis.

4. INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT (ICDBG) PROGRAM FUNDS

Most New Mexico Pueblo Indian tribes do not receive Indian Community Development Block Grant (ICDBG) program funds from the Department of Housing and Urban Development. Only 9 of 19 New Mexico Pueblos applied for FY 2000 ICDBG funds. In FY 2001, only 1 of 19 New Mexico Pueblo Indian tribes received ICDBG program funds. This competitive, over-regulated and under-funded program provides funds for infrastructure, housing, public facilities, and community and economic development initiatives. ICDBG funds are inadequate which force Pueblo Indian tribes to apply for multiple funding sources to partially meet community needs. In the past 5 years, the Pueblo of Acoma applied for ICDBG funds and was only approved for one year; thereby forcing the tribe to reprogram Native American Housing Assistance and Self Determination Act (NAHASDA) funds to expand over-used existing wastewater systems.

Initially, the State of New Mexico prohibited access to state-administered CDBG funds because it believed that all New Mexico Indian tribes received ICDBG funds! The State now takes the position that state-administered CDBG funds may be accessed through and in competition with County governments.

The Coalition for Indian Housing Development (CIHD) and National American Indian Housing Council (NAIHC) project that $144 million is needed for the ICDBG program. Past funding was approved at $70 million for FY 2002, $71 million for FY 2001, and $67 million for FY 2000.

RECOMMENDATIONS

- Congress must increase the ICDBG budget to $144 million for FY 2003.
- Congress must mandate that HUD coordinate with other federal agencies (i.e. USDA, BIA, IHS, EDA, etc.) to streamline the funding process for infrastructure development on Indian lands.

5. *BUREAU OF INDIAN AFFAIRS' HOUSING IMPROVEMENT PROGRAM, AN OVER-REGULATED, UNDER-FUNDED PROGRAM*

Authorized by the Snyder Act (November 2, 1921), the Bureau of Indian Affairs (BIA) manages a Housing Improvement Program (HIP). Recent need and funding levels have been as follows:

Fiscal Year	BIA Nation-Wide Housing Need	Congressional Appropriation	BIA Southwest Region Funding	Funding to Acoma
2002	$362,517,431	$23,000,000	$1,146,123	$82,107
2001	$369,595,245	$22,000,000	$1,247,023	$ -0-
2000	$426,919,416	$18,000,000	$ 766,580	$98,818

The BIA Southwest Region Office serves 25 Indian tribes. In FY 2000, only 3 of 14 Indian tribes under the Southern Pueblos Agency received HIP funds. BIA's current funding methodology is based on an eligible-applicant, point-driven need and does not consider administrative costs, environmental reviews, demolition costs, etc. In 1999, the Pueblo of Acoma provided 3 complete individual housing applications and the BIA reported to Congress this as Acoma's housing need! This housing need analysis is inaccurate and underestimated! Further, the BIA Southwest Region requires all applicants to be complete. However, the BIA Alaska Region used incomplete applications to determine their need. This is unfair!

HIP regulations, 25 CFR Part 256, Subpart K–Housing, are contrary to Indian self-determination and tribal self-governance. The BIA made failed attempts to consult with Indian tribes and failed to incorporate tribal recommendations to amend regulations. The BIA made efforts to eliminate the HIP program because they believe it is HUD's responsibility to meet Indian Housing needs. Year-after-year, tribal leaders voice concerns to not eliminate the BIA HIP program.

There is a need to rehabilitate or replace existing traditional homes at the Pueblo of Acoma. These traditional homes are constructed with local materials (i.e. sandstone or adobes) using

local labor. Many homes are substandard (i.e. no foundations, no plumbing, outdated electrical wiring, etc.) and must be demolished. Currently, no HUD funds are used to meet this need.

RECOMMENDATIONS

- Congress must mandate the BIA to administer negotiated rulemaking with Indian tribes to amend 25 CFR Part 256, Subpart K, and develop a fair and equitable funding methodology.
- Congress must increase the FY 2003 HIP budget to $33 million. This is projected by the Coalition for Indian Housing Development and National American Indian Housing Council.
- Congress should reauthorize the HIP program, separate from the Snyder Act, to eliminate funding competition with other BIA programs like law enforcement, roads, tribal courts, etc.

THE NATIONAL CONGRESS OF AMERICAN INDIANS

Testimony of Joe Garcia, First Vice President

Senate Indian Affairs Committee Hearing
Oversight of Indian Housing Programs
February 13, 2002

Good afternoon. On behalf of the Executive Committee and members of the National Congress of American Indians, I would like to thank Chairman Inouye, Vice Chairman Campbell, and other distinguished members of the Subcommittee for the opportunity to speak to you today on a subject that, although vital for Native American communities, does not often receive the spotlight among Native American issues. Particularly now, when so much attention is focused on the Bureau of Indian Affairs and its trust management issues, it is good that the Committee is taking the time to address this important issue of housing and the future of our housing program, the Native American Housing Assistance and Self-Determination Act.

I am from the San Juan Pueblo in New Mexico, a small pueblo that has its share of difficulties, but with the help of NAHASDA we have built homes for many of our people. As a member of the Executive Committee of NCAI, I speak for tribes all across the nation who support NAHASDA and want very much to see it continue.

NAHASDA
The future of Indian housing dramatically changed on October 26, 1996 when Congress enacted Public Law 104-330 titled the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). Some of the most important changes for Indian housing, as opposed to under the 1937 Housing Act, included:

- Establishing the trust responsibility with Native Americans to include affordable and healthy homes.
- Separating Indian housing from public housing within the U.S. Department of Housing and Urban Development (HUD).
- Replacing several individual housing grant programs with one block grant to tribes or their tribally designated housing entities (TDHEs).
- Allocating appropriated funds based on a single formula, eliminating the competition among housing authorities for scarce housing resources.
- Providing much greater flexibility for development of "affordable housing activities" at the community level.
- Requiring enabling regulations to be promulgated through a negotiated rulemaking process with the tribes.

On October 1, 1997 the Act went into effect, with final regulations published in March of1998. Subsequent appropriations for FY1998 and beyond reflected a new attitude toward Native American housing with an initial block grant level of $480 million, or a nearly 35% increase over previous funding levels. The FY2001 budget increased funding by $30

million and was held steady at nearly $650 million for FY 2002. The President has now proposed a small cut of $2 million for the grant in FY 2003.

In 1998, technical amendments provided some clarification to the Act as well as amendments passed late in 2000. These later provisions included a Davis-Bacon wage rate preemption for tribes, an environmental waiver, and local cooperation agreement improvements, along with other important provisions.

Tribal Authority and Responsibility
Perhaps the most fundamental change to Native American and Alaska Native housing following the advent of NAHASDA is HUD's relationship with tribes. As "beneficiary" of this federal housing program, federally recognized tribes exercise their authority throughout the NAHASDA process, seeking true self-determination that the Act emphasizes from the title all the way through the statute.

Illustrating the self-determination aspect of NAHASDA, each NAHASDA recipient is responsible for the following:

- Tribes possess the power to decide who the "recipient" of the NAHASDA program will be: either themselves or their tribally-designated housing entity (TDHE).
- Each recipient must then submit an Indian housing plan that certifies approval of each tribe involved, in the case of more than one tribe being served by the recipient.
- The essential part of the housing program is to provide affordable housing activities that can be drawn from a list of eligible activities including development, modernization, management, crime prevention, planning, and leveraging. Tribes can draw from these activities to formulate a housing program tailored to their specific needs.

Government-to-Government
In so many ways NAHASDA set the stage for increased freedom for tribes and created an atmosphere where self-determination and tribal sovereignty could flourish. Unfortunately these good intentions of Congress still have not made their way into HUD's day-to-day administration of the program. For too many years HUD was the puppeteer for tribes in their housing programs, so it is understandable that there be a period of transition in adjusting to the self-determination precepts of NAHASDA. That day has come.

The best way for HUD to recognize NAHASDA and its capabilities is to implement true government-to-government consultation using negotiated rulemaking and allowing tribes the power to do with the program what it was made to do. I was part of the first negotiated rulemaking committee that produced regulations for NAHASDA. It was an arduous process, but a rewarding one. Many of us were frustrated and there was so much to learn, but we made it through. Now, the successes and challenges of NAHASDA are more important to us because we helped create it. We want the freedom to continue that process. We have a lot to offer the process because we are the ones out there building homes, seeing what works and what doesn't.

Although the NAHASDA statute clearly states that all regulations required under

NAHASDA be issued according to a negotiated rulemaking procedure, HUD has interpreted that to mean only the initial regulations. As with other laws, NAHASDA is not perfect and we did not create perfect regulations. They were good, but they need changes. I do not believe it was the intention of Congress to say that we had one chance and one chance only to affect the implementation of a law that is unprecedented in Indian housing.

I grant that HUD is currently seeking to form a Negotiated Rulemaking Committee to address issues with the NAHASDA formula. This I approve of, since the formula does need to be revisited, but why only the formula? Shouldn't other rulemaking also qualify for negotiated rulemaking? In the new HUD Consultation Policy set in place by Secretary Martinez last year, a provision was made to create a negotiated rulemaking advisory committee, made up of tribal members, to advise HUD on when negotiated rulemaking procedures ought to be used. This is certainly a step in the right direction, but it gives no guarantees since it is ultimately HUD's decision. This is not the policy we were looking for.

As many of you on the Committee surely know, this issue of consultation and negotiated rulemaking has required a lot of time and energy from both the Administration and the tribes. The reason I believe so many tribes will not give up on the issue is because we have not received the answer we need, which is that tribes will have a say in determining the course of their future and it will not be at the discretion of HUD.

One time, long ago, tribes gave up the power of self-determination to the United States government which brought us to where we are today. I make no judgement on that trust because that is not my purpose today, but the United States government has finally recognized the sovereign status of tribes and must demonstrate that it means self-determination when it says self-determination.

I know Secretary Martinez meant well when he signed that consultation policy last June, but I am sure he did it without full awareness of what his words meant to us. Many positive gestures were made in the policy that we can appreciate, but we had to reject it because it did not go far enough.

I request of this Committee today to support the tribes in insisting on true government-to-government consultation between the tribes and HUD. At the request of tribal leaders and representatives across the country I would like to suggest that the statutory language of NAHASDA be amended to spell out that negotiated rulemaking be used for all regulations and rulemaking made under NAHASDA.

Native American Status at HUD

The last important point I want to cover today also has to do with respecting the government-to-government relationship between the federal government and tribes. It has to do with HUD's lead administrator of Native American housing programs.

It has come to our attention that the position of Deputy Assistant Secretary (DAS) of Native American Programs is in danger of being downgraded from a Senior Executive Service position to that of a GS-15. We believe that the change in status of the DAS position will be detrimental to the goals of the Office of Native American Programs, as well as to the

housing needs of Native Americans and Alaska Natives, because the downgrade of the DAS position will take the issue of Indian housing out of the department-wide discussion.

NCAI President Tex Hall and the Chairman of the Coalition for Indian Housing and Development, Chester Carl, recently co-signed a letter to Secretary Martinez requesting him to reconsider the reduction of the DAS position from the SES level to a GS-15, and to explore the option of elevating the position to the Assistant Secretary level.

This Deputy Assistant Secretary has responsibility for all HUD Indian housing programs, including implementation of NAHASDA. In spite of the clear significance this position holds, HUD has allowed it to remain unfilled for nearly nine months. Even more frustrating, is the reduction to a GS-15 career position, with a requirement of only one year of experience. Rather than having the Deputy Assistant Secretary be a GS-15, we believe a position of this importance should be elevated to full Assistant Secretary status at the Senior Executive Service level.

Native American programs hold a unique position in our federal system. Whomever this Administration appoints to the Office of Native American Programs must have the knowledge and experience to handle the special government-to-government relationship between the federal government and the tribes. Furthermore, the person in this position not only takes responsibility for intradepartmental coordination amongst HUD's agencies, but he or she also takes responsibility for coordination of Indian programs with other Departments. The position must carry political weight, must be linked to the other HUD cylinders, and must have enough access to the Secretary to elevate the issue of Indian housing to a level commensurate with the need of the people it serves.

We are further concerned that the decision of the Administration to lower the position from an SES to a GS-15 may be partly responsible for the delay we have seen in filling the office. So long as the position is held to a GS-15, it will be difficult for HUD to find a truly qualified candidate that is willing to take the job. It is our hope that this Committee will put pressure on HUD, not only to maintain SES status for the DAS but to elevate it to the Assistant Secretary level within a year.

With an Assistant Secretary administering the program, NAHASDA will have an even better chance at achieving its full potential.

Again, I would like to thank the Committee for holding this hearing today. Perhaps Native Americans have the reputation for not agreeing, but we can all appreciate the value of self-determination and self-governance and we agree that NAHASDA has the potential to deliver these values if allowed.

Thank you.

NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE

PRESIDENT
Tex G. Hall
Mandan, Hidatsa, Arikara Nation

FIRST VICE-PRESIDENT
Joe A. Garcia
Ohkay Owingeh
(Pueblo of San Juan)

RECORDING SECRETARY
Colleen F. Cawston
Colville Confederated Tribes

TREASURER
Alma Ransom
St. Regis Mohawk Tribe

March 18, 2002

Senator Daniel Inouye
Chairman, Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20015

Chairman Inouye:

Thank you for your question and your concern for the housing issues in Indian Country. Also, thank you for your invitation to testify in front of your committee on the 13th of February. I will do my best to answer your question to the best of my knowledge in order to provide the committee with the most accurate information. I will address the questions you have sent me one by one.

Question 1a: Do you know what concerns these tribal leaders [at HUD's July consultation] expressed? If you have a copy of this protest paper, could you please provide the committee with a copy?

Question 1b: Has the National Congress of American Indians taken a position on this protest paper or the Department's implementation of the consultation policy? If so, please elaborate and provide the committee with any relevant documents.

When the tribal leaders walked out of HUD's July consultation in Minneapolis they were expressing their frustration that the final version of HUD's policy did not reflect the priorities that the leaders had expressed in previous pre-decision meetings. Tribal leaders were upset that consultation on a consultation policy had broken down, and they refused to accept the final version that HUD promulgated. NCAI's opinion is that HUD continue its consultations with tribes to improve the policy and to continue with the negotiated rulemaking procedures. While NCAI does not have an official position on the consultation policy itself, we do have resolutions (Resolutions #SPO-01-102 and #SPO-01-080) that deal directly with the negotiated rulemaking process in HUD's other operations. In short, these resolutions urge the department to establish tribally drive rulemaking committees.

As we both know, the issue of consultation is an important one throughout Indian Country, and the processes that will lead to an acceptable and successful policy to both the government and the tribes can be a very challenging process. We believe that the Department of Housing and Urban Development is committed to producing an exceptional policy, and ask that you urge officials at HUD to engage tribal leaders on how the process can be improved. We also ask that you urge the Bush Administration to re-affirm the government-to-government relationship between the federal government and the Indian tribes through an issuance of a comprehensive government-to-government consultation policy for this administration. There have been good examples within the current administration, particularly at the Department of Health and

EXECUTIVE DIRECTOR
Jacqueline L. Johnson
Tlingit

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Human Services and at the Department of Transportation; we think that these departments can serve as models for the other departments with less active consultation procedures, such as the State Department and the Department of Defense.

Please find attached our resolutions and a copy of the protest paper that tribal leaders produced at the Minneapolis meeting.

Question 2: Has the National Congress of American Indians explored possible amendments to NAHASDA or the regulations that would address some of the problems small tribes face? If so, please elaborate and provide the committee with any relevant documents.

NCAI is concerned with problems under the latest rendering of NAHASDA that affect all tribes. While NCAI has not finalized its position on NAHASDA amendments, we have received amendments discussed by tribal leaders at the recent meeting of the National American Indian Housing Council. We relay these to you as possible changes NCAI may endorse, but reserve our official position until our members finalize their priorities. Here is a summary of the amendments discussed at the NAIHC meeting:

Amendment to Section 106:	To establish a standing negotiated rulemaking committee and to require negotiated rulemaking on all rules, regulations, etc. that are legally binding on tribes.
Amendment to Section 104:	To eliminate the requirement to expend all program income before drawing down further IHBG funds.
Amendment to Section 203:	To change the recipient rent ceiling from 30 percent of adjusted income to Fair Market Rents according to each Indian area.
Amendment to Title II:	To allow tribes to establish operating reserve accounts.
Amendment to Title IV:	Eliminating the requirement of being declined for other forms of financing before qualifying for Title VI funds.
Amendment to Title II:	To redefine eligible activities under NAHASDA to include economic development activities.

These are the general amendments that certainly affect tribe large-, medium-, and small tribes alike. A more comprehensive look at these amendments is in the attached documents, and we welcome your questions about them.

We would now like to turn to your question to address the problems faced by small tribes specifically. The member tribes of NCAI realize that the Indian Housing Block Grant (IHBG) formula is problematic. We generally advocate for increasing funding for all tribes, especially to address the important areas of housing for tribal citizens. Officially, NCAI has a position, delineated in Resolution #STP-00-038, to advocate for a full process of negotiated rulemaking to address the reevaluation and modification of the IHBG funding formula with a broad cross-section of tribes around the nation to ensure the needs of the diverse tribes in the nation. We do not have a proposal to modify the IHBG formula, as we will leave that to a negotiated rulemaking committee, and can only advocate for the convocation of a committee as soon as possible.

Senator Johnson: What is the position of the National Congress of American Indians on Indian Housing Block Grant caps, and the situation facing smaller tribes who receive the minimum Block Grant?

Please refer to the previous paragraphs for an answer to these questions.

As you know, NCAI Executive Director Jacqueline Johnson has extensive knowledge of Indian Housing issues, and would be more than happy to help you with any specific questions that you may have. Please contact her directly at 202.466.7767 if you have any questions or other concerns. Thank you again.

Sincerely,

Joe Garcia
NCAI First Vice-President

03/26/2002 13:30 FAX 202 466 7797 NCAI WASH DC 005
MAR-20-2002 06:00P FROM:J.Myers 202-898-0227 TO:12024667797 P:2/12

TRIBAL CAUCUS RESOLUTION

WHEREAS, the below signed tribal representatives met with HUD officials on July 10th and 11th, 2001 in St. Paul, Minnesota for the purpose of consulting with HUD on issues related to Native American Housing Assistance and Self-Determination Act; and

WHEREAS, the below signed tribal representatives met in Tribal Caucus on three separate occasions and by consensus determined that the meetings with HUD did not represent "consultation" in a manner consistent with true government-to-government relations as mandated by Executive Order 13175; and

WHEREAS, the below signed tribal representatives also disagree with the position of HUD that the Working Group recommendations developed on July 10 and 11, 2001 represent a consensus view of the tribal governments on the solutions to the issues presented;

NOW, THEREFORE BE IT RESOLVED that the below signed tribal representatives unanimously direct the Department of Housing and Urban Development to develop all revisions to regulations and proposals for statutory changes that will result in regulatory changes to NAHASDA be developed through negotiated rulemaking pursuant to Section 106(b)(2)(A) of NAHASDA, which states, "Notwithstanding sections 563(a) and

565(a) of title 5, United States Code, all regulations required under this Act shall be issued according to a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5, United States Code," and if HUD declines to follow this procedure;

BE IT FURTHER RESOLVED that the below signed tribal representatives unanimously support an amendment to NAHASDA to direct HUD to convene a negotiated rulemaking committee pursuant to Section 106(b)(2)(A) of NAHASDA and any amendments to Department of Housing and Urban Development regulations required as a result thereof; and

BE IT FURTHER RESOLVED that the below signed tribal representatives submit to HUD the attached position paper that was presented and supported by unanimous consent at the Tribal Caucus held at 9:30 a.m. on July 11, 2001 and the Final Consultation Plenary Discussion on July 11, 2001 at 1:30 p.m..

03/26/2002 13:30 FAX 202 466 7797 NCAI WASH DC 007
MAR-20-2002 06:01P FROM:J.Myers 202-898-0027 TO:12024667797 P:4/12

CERTIFICATION

I hereby certify that the foregoing resolution was presented at the HUD 8th Native American Homeownership Summit meeting held in St. Paul, Minnesota on July 11, 2001.

Name	Tribe	Title
[illegible]	Mandan Hidatsa Arikara Nation	Chairman
A. Brian Wallace	Washoe Tribe of NV/CA	Chairman
Tammy J. Scott	Rosebud Sioux SWA BOC	Treasurer/UNAHA Secretary
David Baker	Mandan, Hidatsa, Arikara	President, UNAHA
[illegible]	[illegible]	[illegible]
Leo Gustafson	SICHA	[illegible]
Mary Lou Bottorff	Kenaitze/Salamatof	Kenai, AK 99611
Irene Augustusch	White Earth Reservation MN	Dist. Rep Council
Ken Castro	Torres Martinez Desert Cahuilla Indians	Grants Administrator
[illegible]	Rosebud Sioux Tribe	Sec A
Glenn W. Edwards	Absentee Shawnee Hous/Tribe	Executive Director
[illegible]	Rosebud	BOC
[illegible]	Little Priest	
[illegible]	multi-tribal housing programs	attorney
[illegible]	Sisseton-Wahpeton	BOC
Dean J. Bird Sr.	Cow Tribal Housing Authority	Executive Director
[illegible]	" "	Treasurer
[illegible]	Tri Indians AK	2nd VP
[illegible]	Lummi Nation	Staff Attorney
[illegible]	Lummi Nation	Mortgage Loan Spec.
[illegible]	AK	Tribal Rep
Elaine Sinyon	Cheesh-na Tribe AK	Tribal Administrator/Rep.
Norman Kallaghose	CIHA	H/A Staff
[illegible]	Forest Co Potawatomi	TH Director
Scott McCrea	Mesa Grande Band	Tribal Secretary-Administrator
[illegible]	CS+PT BOC	

03/26/2002 13:31 FAX 202 466 7797 NCAI WASH DC 008
MAR-28-2002 06:01P FROM:J.Myers 202-898-0027 TO:12024667797 P:5/12

CERTIFICATION

I hereby certify that the foregoing resolution was presented at the HUD 8th Native American Homeownership Summit meeting held in St. Paul, Minnesota on July 11, 2001.

Name	Tribe	Title
Bill Lyscak	United Community of the Arctic	Interim Exec. Director
Bud Wadda	Eastern Shoshone Tribe	Councilman
Richard Schroeder	Turtle Mountain	Housing Bus. Mang.
Jack Quinn	Warm Springs	Housing Commission Cr
Sam Lamoreaux	Yakama Nation HA	Ass. Executive Director
Rebecca Phelps	Turtle Mtn. Chippewa	TMHA Exec. Director
Veronica Nicholas	Native Village of Cantwell	President
Carl Pete	Native Village of Kluti-Kaah	President
Gloria Stickwan	Tazlina Village Council	President
Linda Tone	Native Village of Gakona	President
Eileen L. Ewan	Native Village of Gulkana	President
Teri Butler	Native Village of Gulkana	Tribal Member
Terrell Mutt	First Nations Housing Dept.	Attorney
Molly Shurandy	Koliah Island Housing Auth.	E.D.
[illegible]	TDHE/Tribal Attorney	
[illegible]	Tlingit & Haida H.A.	Asst. E.D.
Robert Dorathis	Salish & Kootenai	Executive Director
Richard Pumkop	Douglas Indian Assoc. Tlaku	Council
John P. Adkins	Sauk-Suiattle Indian Tribe	Executive Director
[illegible]	Pueblo of Laguna NM IHA	Exec. Dir.
Michael B. Sebring	Cook Inlet Housing Authority, TDHE of Cook Inlet Region Inc.	Chairman
Sharon Kook	Sac & Fox Nation HA-TDHE	Interim Ex. Dir.
Duke Angus	Oglala Sioux HA	Executive Director
Jim King	Samish Indian Nation	Councilman/Housing Chair
Ray Sampsel	Samish Indian National Council	Housing Vice Chair.

03/26/2002 13:32 FAX 202 466 7797 NCAI WASH DC 009
MAR-20-2002 06:01P FROM:J.Myers 202-898-0027 TO:12024667797 P:6/12

CERTIFICATION

I hereby certify that the foregoing resolution was presented at the HUD 8th Native American Homeownership Summit meeting held in St. Paul, Minnesota on July 11, 2001.

Name	Tribe	Title
BLAIR REELS SR	NARRAGANSETT	HOUSING
Joe Wilson	TMHA	EX. DIR
William Morgan	AVCP Housing	AHLEK AK
Dr. Rudy Fisher	Sand Tok	Chair of Housing
Virginia Fredricks	CRTA	Tribal Rep.
Candace Howard	Sac & Fox OK	BOC Chair
Karen Kinte	Interior Regional HA	General Counsel
Joel Alexander	BIHA Sitka, AK.	Ex. Dir.
[illegible]	SWIHA/NACAI IHA	Chairman
Hupe K Randy	Quechan Tribe	Grants Admin
Larry Cooper	Quechan Tribe	Executive Director
Cecilia Cook	St. Regis Mohawk	ED, Akwesasne Housing Authority
Dorothy Green	Douglas Indian Assoc	President Tribal Council
[illegible] Martin	Native Affiliated Tribes	Legislative Aide
[illegible]	Park Tribe OEC	
Carol Gore	T Cook Inlet Tribes	President/CEO CIHA
[illegible]	Athabascan	Chitina Alaska
[illegible]	Umatilla	Vice Pres
Bernie Lorman	CTB	Ex Hous. Director
Shirley M. Cain	White Earth	Tribal Attorney
Philip Attorn	Penobscot Nation	Housing Commissioner
Virginia Anderson	White Earth IHA	Executive Director
Annie Tyson	Haliwa Saponi	Housing Director
Jeanette Tessay	Aroostook Band of Micmacs	Housing Administrator
Glenn Stitz	Confederated of Siletz	Chairman

03/26/2002 13:33 FAX 202 466 7797 NCAI WASH DC 010
MAR-20-2002 05:02P FROM:J.Myers 202-898-0027 TO:12024667797 P:7/12

CERTIFICATION

I hereby certify that the foregoing resolution was presented at the HUD 8th Native American Homeownership Summit meeting held in St. Paul, Minnesota on July 11, 2001.

Name	Tribe	Title
Anton Lowry	Susanville Indian Rancheria	Tribal Council
Manuela Harris	Susanville Indian Rancheria	Housing Authority
Phyllis White Shield	Rosebud Sioux	SWA Board of Comm.
Tim Brill	Crow Tribe	Rep.
Lobel Weston	Secretary / Native Village of Mekoryuk	
Cate Stetson	City	SWIHA
Margaret LeKanof	Qawalangin-Unalaska, AK	Commissioner A.H.A
Judy RT Gobert	Blackfeet Nation	Housing DEP Director
David Zang	Squaxin Island Tribe	Director of Planning
Moses Parkan Sr	St Marys AK 99658	
Martha L. Youckton	Coeur d'Alene Tribe	Executive Director-Housing
Rita Lowe Samson	Housing Intake - Council	
Lorraine T. Cory	Sault Tribe	Housing Authority
Charlie Ingland	Pueblo of Jemez IHA	E.D.
Harry L. Jumpe	Pueblo of Jemez IHA	Lt. Gov
Gloria Fragua	Pueblo of Jemez IHA	Board Member
Carrie Tolsey	Hualapai	Peach Springs AZ 86434
D. Francis Geeker	Hualapai	Director, Peach Springs, AZ
Ronald Nayt	Native Village of St Michael	AK
[illegible]	Navajo Nation	RDC chair of Tribal Council
Jeffrey Edwards	Chippewa Cree Tribe	Executive Director Housing
[illegible]	Nez Perce Tribe	Nez Perce Village Council, President
Joyce Kosbor	Tribe Village of Perryville	President
John Christensen	Native Council of Port Heiden	President
Ralph Angapak Sr.	King Salmon Tribe	President
Merle Anthony Jr.	Neel Stroyahut Village	Council, Pres.
Clifford Makuta	Zuni Pueblo NM	Member

03/26/2002 13:34 FAX 202 466 7797 NCAI WASH DC 011
MAR-20-2002 06:02P FROM:J.Myers 202-898-0027 TO:12024667797 P:8/12

CERTIFICATION

I hereby certify that the foregoing resolution was presented at the HUD 8th Native American Homeownership Summit meeting held in St. Paul, Minnesota on July 11, 2001.

Name	Tribe	Title
Phillip Farrell Jr	Standing Rock	SRNA Board member
Diana Phair	Lummi Nation	Executive Director
ROBERT NICK	NUNAPITCHUK TRIBE	VICE-President
GLENN Frederick	Georgetown Tribe	President
Moses White	AVCP RHA	Board Chairman
Gary A Rennie	NUCORHA	Board S.
Joe Bonestin	AHA	CHAIRMAN
Jacques Smith	AHA/DNC-Cirquing	BOD / Tribal member
Bernard Kistler Guter	Upper Sioux Tribe	Housing Director
Martin Queen	Navajo Nation	NHA General Counsel
Terry A. Parmer	Cheyenne River	Dep. Director
Sharon Joseph	Cheyenne River Sioux	PDO Dept. Director
Peter R. Rider	Cheyenne River Sioux Tribe	Attorney/CONTRACT
Jesse Littleton	Keweenaw Bay I.C.	Tribal Planner
Carl Martin	Tonkawa of Okla	Ex Director
Tom Jones	EPDI	Section 8
Eleanor Tafoya	Jemez Pueblo	TM. BOC Sec/Treasurer
Sylvia Velarde	Hualapai Nation	Hualapai Tribal Vice Chairwoman Council
Linda Raymond	Hoh Hoh Rancheria/Hoh Indians	Vice Chairwoman/Treasurer
Joe Tso	Navajo Nation, WCP, AZ	NHA-BOC Treasurer
R.C. Wilson Sr.	Sac & Fox of OK	Committee member
Michael Jackson	Klamath Tribes	Tribal Council
Lewis Shirley	Laguna Pueblo	Tribal Council
Kimber Cook	Habama-Opassirle Tribal Town	Housing/Comm. Developer
Andrew C. Miller Sr.	Nome Eskimo Community	Tribal Council President

03/26/2002 13:34 FAX 202 466 7797 NCAI WASH DC 012
MAR-20-2002 06:02P FROM:J.Myers 202-898-0027 TO:12024667797 P:9/12

CERTIFICATION

I hereby certify that the foregoing resolution was presented at the HUD 8th Native American Homeownership Summit meeting held in St. Paul, Minnesota on July 11, 2001.

Name	Tribe	Title
Margaret Horn	Assiniboine Fort Belknap	Housing Occupancy Specialist
Annette Nesse	Jamestown S'Klallam	Dir. - Planning / Admin
[illegible]	Mandan, Hidatsa & Arikara Nation	Development Specialist
[illegible]	[illegible]	CEO
[illegible]	Sault Tribe Chippewa Indian	Housing Division Director
[illegible]	Oneida Nation	Carmen Moreen
[illegible]	Oneida Nation	Housing Director
[illegible]	Eastern Band of Cherokee	Housing Mgt Director
ELENA MITCHELL	Navajo	Housing Specialist
Margie Snyder	Waccamaw Siouan	Housing Director
Sabrina Jacobs	Waccamaw Siouan	Executive Director

03/26/2002 13:35 FAX 202 466 7797 NCAI WASH DC 014
MAR-20-2002 06:03P FROM:J.Myers 202-898-0027 TO:12024667797 P:11/12

HUD Consultation Tribal Caucus Issue Paper
Presented at the HUD 8th Native American Homeownership Summit
St. Paul, Minnesota
July 11, 2001

Note: On July 10, 2001 HUD held a "tribal" consultation meeting in which Tribal leaders were divided into 6 tracks of issues and given 20 minutes to outline all issues in that track that they wanted to discuss, and then spend no more than 1 hour per session proposing solutions and voting on those solutions. Tribal representatives met in Tribal Caucus on July 11, 2001 from 9:30 a.m. – 12:00 p.m. to discuss this process and associated issues and agreed by consensus to the following positions:

1. **The Tribes present at the Tribal Caucus do not endorse conclusions drawn by HUD as a result of this week's Summit. This meeting is not a government-to-government consultation.** Tribes were not permitted to assist in the development of the agenda or protocols used. Tribal leaders also were not informed of how the solutions developed in these limited work groups were going to be used by HUD – this question has been asked repeatedly with no answers. There has not been a serious effort to collaborate with tribal leaders and representatives – this is another HUD "listening" session where Tribes can say what they want, but HUD officials will decide alone what comments are valid and which comments are invalid. The attached statement read by a HUD official at the end of a "working group session" in which the "work group" decided that all regulatory and statutory changes needed to be submitted for Negotiated Rulemaking prior to implementing any such changes illustrates the continuing paternalistic role that HUD assumes with the Tribal governments in violation of Executive Order 13175 and the HUD Consultation Policy issued on June 28, 2001 by HUD Secretary Martinez.

2. The Tribes appreciate HUD's attempt to develop a consultation policy, but the Tribes find that the Consultation Policy as presented to be unacceptable and call for revision of the Policy through collaboration between Tribes and HUD.

3. HUD needs to explain the process they intend to follow after this meeting. NAHASDA requires all regulations to be promulgated through negotiated rulemaking and HUD needs to abide by the law. Any proposals that lead to a proposed regulatory solution need to go to rulemaking – that allows for consensus decisionmaking in a government-to-government forum.

4. Tribal leaders should pursue a legislative solution with their Congressional delegation - lobby for a statutory change that makes it even clearer that negotiated rulemaking is required.

5. Tribes may pursue legal action through the Court if HUD issues regulations without using negotiated rulemaking in order to enforce the law.

6. The original intent of NAHASDA in Section 2, 25 U.S.C. §4101, needs to be implemented by HUD in its internal decision-making and consultation approach, consistent with the requirement that, "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 Public Law 93-638." Micro-management of Tribal housing programs must come to an end.

Additional issues/questions that are very important:

a) The Tribes are greatly disappointed that Secretary Martinez did not attend in recognition of the government-to-government relationship that should exist between Indian nations and the federal government.
b) Appropriations – HUD needs to consult with Tribes prior to recommending anything about appropriations – they should not be recommending to cut Drug Elimination or no increase in IHBG funds without consulting with Tribes – appropriations need to be increased dramatically to solve many of the allocation of funds issues.
c) HUD needs to clarify how Tribes can change the consultation policy presented on 7/10/01. There is no answer on what Tribes need to do to comment on and request changes to the policy, even after there was a tribal proposal submitted in February 2000.
d) Are the tapes made of these discussions subject to the Freedom of Information Act? What is discussed here should not be a generally publicly available – this affects what tribal representatives can/will say.
e) Consultation policy language needs to be changed to recognize the sovereign status of Indian Nations – may/should need to be changed to directives – must/shall/required. Otherwise, there is no government-to-government obligation recognized in the policy.
f) In the issue paper and all communications, HUD needs to mark whether comments made are tribal comments and which are HUD comments.
g) The tribal proposal for negotiated rulemaking with 48 tribal representatives should be the one HUD follows – not 18 tribal representatives as is in the policy now. It is not appropriate for HUD to set unnecessary qualifications for membership on the committee and to unilaterally select members. The appropriate mechanism is set forth in the tribal proposal for negotiated rulemaking presented on February 22, 2000 to HUD.

- The consultation will conclude with this plenary. HUD will go home and write up all of the detailed notes from both the break-outs and the plenaries. These will be mailed to you and to all tribal leaders who could not attend this session.
- HUD will give all proposed solutions serious consideration. We will do our best to implement your solutions in the least burdensome way. This may be guidance or a notice. When regulatory changes are needed, we will publish the proposed regulation for public comment. When statutory changes are needed, we will proceed appropriately.
- It may not be possible to implement the solutions exactly as you recommend them. In some cases there may be fundamental disagreement between your solution and administration policy. There also may be statutory or other legal impediments. What we want to do is work through these issues together to our mutual satisfaction.

Ernestine Chavis Beaufort - Lumbee - admin. mgr.
William F. Moore - Lumbee - Construction Manager
Woodrow Dick - Lumbee - Board member
Edward L. Dillon - Lumbee - Rehab Manager
Jan Hardin Lumbee Housing Director
Marge B. Jacob Waccamaw Siouan Housing Director
Sabrina Jacob Waccamaw Siouan Executive Director

03/14/02

PROPOSAL FOR AMENDEMENTS TO THE NAHASDA STATUTE

LANGUAGE CLARIFYING THAT NEGOTIATED RULEMAKING WILL BE USED FOR ALL RULEMAKING UNDER NAHASDA

SEC. 4. DEFINITIONS.
(insert alphabetically) RULES- Rules shall mean all rules, regulations, guidances, interpretations, notices, and transition notices whenever they are of general applicability.

SEC. 106. ~~REGULATIONS~~ NEGOTIATED RULEMAKING PROCEDURE.—

~~(a) TRANSITION REQUIREMENTS-~~
~~(b) FINAL REGULATIONS-~~
(a) IN GENERAL—Notwithstanding sections 563(a) and 565(a) of title 5, United States Code, all ~~regulations~~ rules required under this Act, shall be issued according to a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5, United States Code.
(b) COMMITTEE-
(1) ESTABLISHMENT—The Secretary shall establish, under the principles of a government-to-government relationship, a standing committee to be known as the "Negotiated Rulemaking Committee." The committee shall be appointed by the Secretary and shall consist of five (5) representatives of the Secretary and twenty-nine (29) tribal representatives recommended to the Secretary pursuant to section 106 (b)(2) for all rulemaking under subsection (a). The committee shall be established and shall convene no later than 150 days after the effective date of these amendments.
(2) NOMINATIONS AND SELECTION OF TRIBAL COMMITTEE MEMBERS--The Secretary shall appoint the twenty-nine (29) tribal representatives to the committee from a pool of a maximum of fifty-eight (58) nominees, twenty-seven (27) nominated by tribes regionally organized into geographical groups and two (2) from national tribal associations. Members shall be appointed on the basis of geographic balance and diversity, with special consideration to relative size including small, medium and large tribes.
(3) TERMS—The tribal representatives shall serve on the committee at the discretion and pleasure of the nominating tribal organizations or tribes.
(4) ALTERNATE COMMITTEE MEMBERS—Tribal nominees not selected by the Secretary to sit on the committee will be appointed by the Secretary as alternates and will sit on the committee when the committee member from their respective association or geographic group cannot attend a meeting.
(c) PROCESS—
(1) IN GENERAL – For purposes of this Act, the definitions provided in section 562, with the exception of 562 (10), under subchapter III of chapter 5 of title 5, United States Code shall apply. Sections 566, 569, 570, and 570 (a) under subchapter III of chapter 5 of title 5, United States Code shall apply for purposes of governing conduct of the committee.
(2) GOVERNANCE—The negotiated rulemaking committee shall establish bylaws and procedures to govern its operations, which include, but are not limited to:

(A) selecting co-chairs, one who will represent the Secretary and one who will represent the tribes,
(B) setting meeting dates, formats and agendas,
(C) setting terms for members, and
(D) appointment of alternate members from the pool of nominees.

(3) AUTHORITY—The committee shall have the authority to initiate rulemaking procedures in the event that the Secretary, upon notice from the committee, declines to initiate rulemaking on a statutory subject matter.

(4) REPORTING REQUIREMENTS—The committee shall make its final recommendation to the Secretary on proposed rules within one year of the commencement of consideration of the issue by the committee. The Secretary shall at the end of each fiscal year report to the appropriate committees of Congress on the actions taken on all issues considered by the committee for that fiscal year.

(5) ADMINISTRATION—The Secretary shall provide for committee members', and alternate committee members when sitting in for committee members, reasonable travel and per diem expenses, reasonable administrative costs of participation, expenses to obtain technical assistance and other necessary expenses of the committee. NAHASDA funds shall not be used to provide for the operation of the committee. Funds for the operation of the committee shall be provided by the Secretary's administrative funds.

~~(c)~~(d) EFFECTIVE DATE- This section shall take effect on the date of the enactment of this Act.

03/14/02

EXPLANATION FOR
AMENDMENTS TO NAHASDA STATUTORY LANGUAGE
CLARIFYING THAT NEGOTIATED RULEMAKING WILL BE USED FOR ALL RULEMAKING UNDER NAHASDA

JUSTIFICATION FOR REMOVING "TRANSITION REQUIREMENTS":
The Secretary has had the opportunity to issue such transition rules as necessary to facilitate the transition from the 1937 Housing Act to NAHASDA. Comprehensive NAHASDA regulations, and some transition notices have now been promulgated, so such rules are not necessary for the reauthorization of this Act.

JUSTIFICATION FOR CHANGING "REGULATIONS" TO "RULES":
By reference to rules rather than regulations, as provided in the original NAHASDA, the intent is to provide for negotiated rulemaking on as wide a spectrum of issues as possible, without unduly interfering with the internal policies and organization of the Department.

ESTABLISHMENT
The amended act explicitly seeks to recognize tribal sovereignty and self-determination. The government-to-government language is an attempt to formally require the Secretary to act in such a manner consistent with this relationship.

The amended act anticipates that the Negotiated Rulemaking Committee will be a permanent entity, active as necessary to negotiate with the Secretary on issues within the subject matter of the act.

The statutory requirement that the committee shall convene within 150 days of the enactment of the amendment anticipates the following maximum timeframes:

30 days for publication of requests for nominations in the Federal Register,
60 days for the tribal organizations to submit nominations,
30 days for the Secretary to select the members of the committee from the nominees, and
30 days from selection by the Secretary to convene for purposes of organization.

NOMINATIONS AND SELECTION OF COMMITTEE MEMBERS
Although the Secretary will retain the ultimate authority to select the members of the Committee, he will be bound to the pool of nominees selected by tribes organized regionally (54) and national tribal associations (4). Half of the nominees will serve on the committee. The following criteria could and should be used:

(i) Twelve nominees, two from each Office of Native American Programs (ONAP) region,
(ii) Twenty-four nominees, two from each Bureau of Indian Affairs (BIA) region,
(iii) Eighteen nominees, two from each National American Indian Housing Council (NAIHC) region,
(iv) Two nominees selected by the National Congress of American Indians
(v) Two nominees selected by the National American Indian Housing Council

The purpose of the above is to ensure, to the extent possible, that the Committee reflect a diversity of membership encompassing small, medium and large tribes as well as tribes representing a geographic balance.

TERMS
In the interest of flexibility, the amendment leaves a considerable amount of power over its organization for the committee to determine. However, the amendment preserves the ability of the nominating tribal organizations, notwithstanding the terms set forth in the organizing document, to remove committee members at their discretion and re-nominate two new nominees for Secretary selection. The amendment contemplates that the committee members serve as representatives of their nominating tribal organizations, rather than as individuals.

03/14/02

ALTERNATE COMMITTEE MEMBERS
This provision anticipates that the Committee not be prevented or delayed in performing its duties by the absence of a single member.

PROCESS
The amendment establishes a process based on subchapter III of chapter 5 of title 5 of the US Code. However, certain provisions of that subchapter are not consistent with tribal sovereignty. The following sections, consistent with tribal sovereignty, are specifically included to provide for guidance on the negotiated rulemaking process.

The amendment adopts the definitions of section 562 with the exception of the section 562(10) – the definition of a "rule" - which is defined in the amendment itself.

Section 566 provides for the conduct of committee activity, including the use of a facilitator, and the requirements for reports and records of the committee.

Section 569 provides for the encouragement of negotiated rulemaking by facilitation by the Executive branch as well as allowing outside financial support of committee activity.

Section 570 provides that agency action relating to the establishment of a negotiated rulemaking committee not be subject to judicial review.

Section 570(a) authorizes such sums to be appropriated to carry out the purposes of the act. This is in addition to specific prohibitions on use of NAHASDA funds to carry out the operations of the negotiated rulemaking committee.

GOVERNANCE
The amendment anticipates that, in the interests of flexibility and recognizing the unique government to government relationship of the tribes and the federal government, the committee will maintain substantial authority to organize itself in what it determines to be an appropriate manner. However, specific organizational issues are anticipated by the amendment and are included in the statutory language. These include provisions on the selection of co-chairs, the requirements of meeting formats and agendas, the provision of terms for committee members, and the appointment of alternate members. These are illustrated due to the importance placed upon their implementation and are not intended to be exhaustive.

AUTHORITY
The amendment, in the spirit of the government to government relationship between the tribes and the federal government, provides that the committee representatives of the tribes have the authority to initiate rulemaking procedures in the event that the Secretary refuses to address an issue of importance to the tribal housing programs.

REPORTING REQUIREMENTS
This section would require the Secretary and the committee to act on proposed rules in a timely manner. The requirement of reporting to Congress by the Secretary is intended to provide the Congress with oversight of the good faith efforts of the Secretary and tribes to comply with the spirit of the negotiated rulemaking process.

ADMINISTRATION
The amendment provides that the reasonable costs of conducting the negotiated rulemaking committee be provided for in the administrative budget of the Secretary rather than through a reduction of NAHASDA funds. The amendment also provides that funds be made available to the committee members to allow for their meaningful participation in the negotiated rulemaking process.

03/14/02

PROPOSAL FOR AMENDMENT
TO NAHASDA STATUTORY LANGUAGE

TRIBES/TDHEs SHOULD BE PERMITTED USE
OF INCOME AND ELIMINATING THE REQUIREMENT FOR TRIBES/TDHEs TO
EXPEND PROGRAM INCOME BEFORE ACCESSING THE IHBG
25 U.S.C. § 4114

SEC. 104. TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS.

(a) PROGRAM INCOME-

(1) AUTHORITY TO RETAIN – Notwithstanding any other provision of this Act, a recipient may retain any program income that is realized from any amounts under this Act if--

(A) such income was realized after the initial disbursement of the grant amounts received by the recipient; and

(B)the recipient has agreed that it will utilize such ~~the program~~ income for ~~affordable~~ housing related activities as determined by the recipient in accordance with ~~the provisions~~ Section 2 of this Act.

(2) PROHIBITION OF RESTRICTED ACCESS OR REDUCTION OF GRANT- The Secretary may not restrict access to or reduce the grant amount for any Indian tribe solely on –

(A) whether the recipient for the tribe retains program income under paragraph (1);

(B) the amount of any such program income retained; ~~or~~

(C) whether the recipient retains reserve amounts described in section 210; or

(D) whether or not the recipient has expended retained program income.

(3) EXCLUSION OF AMOUNTS- The Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the requirements of this subsection would create an unreasonable administrative burden on the recipient.

03/14/02

EXPLANATION FOR TWO AMENDMENTS TO NAHASDA STATUTORY LANGUAGE CLARIFYING PERMITTED USE OF INCOME AND ELIMINATING THE REQUIREMENT FOR TRIBES/TDHEs TO EXPEND PROGRAM INCOME BEFORE ACCESSING THE IHBG

Current law, as interpreted by HUD, views any income or revenue, no matter how small or how remotely it relates to the expenditure of federal funds, as program income. HUD requires the tribe to financially track program income and financially account for these funds without any conclusion. The tribes have found that there is not an accounting system to support accounting and tracking for this requirement. Further, the infinite tracking of program income hinders closure of grants provided under the Indian housing plans. Specifically, the treatment of program income by HUD adds substantial administrative requirements and further unnecessary paperwork burdens.

Moreover, the current law and regulations are unduly restrictive and serve to limit tribes' and TDHEs' sources of income that can be reinvested in housing related programs that could benefit all residents. This causes a severe disincentive for the tribes and prevents exploring creative and imaginative housing and finance initiatives. Removing the restriction on program income will allow the tribes to respond to emergency repairs, build homes without burdensome federal regulatory compliance such as procurement, labor standards and environmental review requirements. Substantial changes in the law and regulations concerning program income will enhance the ability of tribes and TDHEs to provide critical housing related assistance to Native Americans.

The proposed amendment to Section 104(a) will treat all income generated after initial disbursements as unrestricted income. Such funds will be held by recipients and used in a manner that is consistent with the goal and objectives of NAHASDA as outlined in the Congressional Findings.

Further, the regulations promulgated for NAHASDA incorporates 24 C.F.R. Part 85.21 into its administrative requirements outlined in 25 C.F.R. § 1000.26, including the requirement that Tribes/TDHEs must expend program income before making further draw downs from the IHBG. The NAHASDA statute does not makes reference to this requirement. In fact, the tribes have argued that the intent of NAHASDA was to relieve Tribes/TDHEs from such restrictive regulations by creating NAHASDA as a block grant program instead of the traditional subsidy program. Further, the Congressional findings in NAHASDA (Section 2) make clear Congress' original intent that the assistance provided by NAHASDA would 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.)." 25 U.S.C. 4101(7). For HUD to unilaterally restrict Tribes/TDHEs access to the IHBG funds because of a dispute over whether or not program income has been expended, appears to be at variance with the intent of NAHASDA.

Therefore, a clarification is necessary to make clear that Tribes/TDHEs must not be required to expend program income before accessing the IHBG. Removing this restriction allows the recognition of tribal self-determination and self-governance promoted by NAHASDA and enables Tribes/TDHEs to function more efficiently in aiding families, addressing socioeconomic conditions, and establishing effective partnership with private market and lenders.

03/14/02

PROPOSAL FOR AMENDMENT
TO NAHASDA STATUTORY LANGUAGE

FAIR MARKET CEILINGS FOR RENTAL UNITS

SEC. 4. DEFINITIONS.
(insert alphabetically) FAIR MARKET RENTS- HUD fair market rents for Section 8 New Construction and Substantial Rehabilitation Program as established pursuant to 42 U.S.C. 1437f.

SEC. 203. PROGRAM REQUIREMENTS.

(a) RENTS –

(1) ESTABLISHMENT – Subject to paragraph (2), each recipient shall develop written policies governing rents and ~~homebuyer~~ lease-purchase payments charged for dwelling units assisted under this Act, including the methods by which such rents and ~~homebuyer~~ lease-purchase payments are determined.

(2) MAXIMUM RENT – In the case of any ~~low-income~~ family that is determined to be low income under this Act and is residing in a rental dwelling unit assisted with grant amounts under this Act, the monthly rent ~~or homebuyer payment (as applicable)~~ from the participant for such rental dwelling unit ~~may~~ shall not exceed ~~30 percent of the monthly adjusted income of such family~~ the applicable Fair Market Rents for the local Indian area.

03/14/02

EXPLANATION FOR
AMENDMENTS TO NAHASDA STATUTORY LANGUAGE
REPLACING 30% RENT CEILING REQUIREMENT

Congress should amend Section 203 (25 U.S.C. 4113) regarding the 30% rule by replacing it with a Fair Market Rents ceiling as a workable and simple method to insure that participants in a NAHASDA assisted program do not pay more for housing than fair market rates.

Though NAHASDA gives tribes the ability to use whatever method they want to determine rental and homebuyer payments, it continues a mandatory rental and payment ceiling of 30% of adjusted income for low-income participants. This has the effect of continuing the complex and unnecessary income disclosure, income verification and deduction calculation procedures. The requirement is costly, time consuming, grossly complex, often corrupting of staff and tenants, and most importantly, adverse to tribal self-determination.

The rule was originally imposed on the public and Indian housing program in the 1960s when the Brooke Amendment was made to the 1937 Housing Act. When Congress replaced the 1937 Act program in 1996 with the NAHASDA block grant program, HUD proposed that the 30% rule continue as a rent ceiling on all low-income families residing in dwelling units assisted under the Act. There was no particular support for this and some opposition by tribes and Congress. However, HUD at the time requested the ceiling probably because, 1) it was wedded to this rule in the past, 2) it was concerned that fully eliminating it might set a precedent for its public housing program, and 3) it feared some tribes might raise rents to unaffordable levels without a ceiling.

NAHASDA recognizes the importance and effectiveness of Indian self-determination and self-governance and the current requirement that imposes the 30% rule on what tribes can charge their own members for housing should be eliminated. Doing away with the 30% will also free up tens of millions of dollars of unnecessary administrative costs and these savings can then be used as additional money for addressing housing needs.

Placing a ceiling of the Fair Market Rent for the Indian area in which it is used will allow tribes proper authority to set reasonable rents while still preventing unreasonable overcharging of individual tribal members.

03/14/02

PROPOSAL FOR AMENDMENT
TO NAHASDA STATUTORY LANGUAGE

LANGUAGE CLARIFYING TRIBES/TDHEs' ABILITY
TO ESTABLISH RESERVES UNDER NAHASDA
25 U.S.C. § 4110

SEC. 210. CONTINUED USE OF AMOUNTS FOR AFFORDABLE HOUSING.

Any funds for programs for low-income housing under the United States Housing Act of 1937 that, on the date of the applicability of this Act to an Indian tribe, are owned by, or in the possession or under the control of, the Indian housing authority for the tribe, including all reserves not otherwise obligated, shall be considered assistance under this Act and subject to the provisions of this Act relating to use of such assistance.

SEC. 211. RESERVE ACCOUNTS.

A recipient shall be authorized to establish, manage and administer an operating reserve for its maintenance and efficient operation, and establish, manage and administer project reserves to achieve eligible housing activities and such placement of funds shall be deemed an eligible activitiy pursuant to Section 202.

03/14/02

EXPLANATION FOR AMENDMENT TO NAHASDA STATUTORY LANGUAGE ALLOWING RESERVES AS AN ELIGIBLE ACTIVITY

As currently administered by HUD, NAHASDA leaves very little opportunity for Tribes/TDHEs to establish a reasonable amount of reserves for housing programs or projects. HUD's reasoning is based on the requirements that any funds drawn down from the IHBG must be spent within three (3) days and program income must be expended before HUD will allow access to the IHBG. However, Section 203(b) provides that a recipient "shall, using amounts of any grant received under this Act, reserve and use for operating assistance under section 202(1) such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing." Clearly, the original intent of Congress was to require that the Tribes/TDHEs have sufficient reserve amounts for efficient operation, proper maintenance of its units and completion of its projects. It is unreasonable and an affront to Indian self-determination to have to rely on HUD to be the holder of the reserves. A reserve account is a prudent business practice and can be a necessity to continued operations in times of political pressures, prior to IHP approval and other times of emergency including when appropriated funds are not available. Therefore, in order to allow Tribes/TDHEs the opportunity to establish, manage and administer a reserve account, NAHASDA should be amended to allow the placement of funds in a reserve account.

It is equally important that the placement of those funds be deemed to be an eligible activity pursuant to Section 202. For small and medium tribes, it is critical that the placement of the funds be determined an eligible activity so that the funds can remain in the reserve account until such time as there are adequate funds to accomplish a housing project that one year's funding may not provide. For larger tribes, the ability to retain and manage the reserve account can be critical to the overall survival of the housing activities for the tribe during changing political winds, delays by HUD in approving the IHP, or other emergency situations. The suggested amendment would allow Tribes/TDHEs to operate in a professional and business-like manner and not jeopardize housing operations in times of emergency.

03/14/02

PROPOSAL FOR AMENDMENTS TO THE NAHASDA STATUTE

CLARIFYING ACTIVITIES ELIGIBLE UNDER NAHASDA

TITLE II – ~~AFFORDABLE HOUSING~~ ELIGIBLE ACTIVITIES

SEC. 101. NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES.

(a) PRIMARY OBJECTIVE – The national objectives of this Act are-

. . .

(5) to promote the development of private capital markets in Indian country and to allow such markets to operate and grow, thereby benefiting Indian Communities; and

(6) to strengthen Indian communities through investments in economic and community development programs and projects.

SEC. 202. ELIGIBLE AFFORDABLE HOUSING, ECONOMIC, AND COMMUNITY DEVELOPMENT ACTIVITIES.

Affordable housing, economic, and community development activities, in accordance with the requirements of this title, to develop or to support ~~affordable~~ low-income housing for rental or homeownership, or to provide housing services with respect to ~~affordable~~ low-income housing, or which facilitate economic and community development and self-sufficiency through the following activities:

(1) INDIAN HOUSING ASSISTANCE- The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority.

(2) DEVELOPMENT – The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of ~~affordable~~ low-income housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities.

(3) HOUSING SERVICES – The provision of housing-related services for affordable low-income housing, such as housing counseling in connection with rental or homeownership assistance, establishment and support of resident organizations and resident management corporations energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting low-income owners, tenants, ~~contractors, and other entities participating or seeking to participate in other housing activities assisted pursuant to this section~~ and homebuyers and other entities assisting such low-income families.

(4) HOUSING MANAGEMENT SERVICES – The provision of management services for ~~affordable~~ low-income housing, including preparation of work specifications, loan processing,

inspections, tenant selection, management of tenant-based rental assistance, and management of ~~affordable~~ low-income housing projects.

(5) CRIME PREVENTION AND SAFETY ACTIVITIES – The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of ~~affordable~~ low-income housing from crime.

(6) MODEL ACTIVITES – Housing, economic, and community development activities under model programs that are designed to carry out the purposes of this Act and are specifically approved by the Secretary as appropriate for such purpose.

EXPLANATION
FOR
AMENDMENT TO NAHASDA STATUTORY LANGUAGE
TITLE II SEC. 201 AND 202

According to Congressional findings, one of the original intents of this Act was to stimulate and encourage economic activities related to affordable housing. Since implementation of NAHASDA, HUD has interpreted this section to prohibit economic development. These changes intend to further define the inter-related effect of housing and community development with an economic benefit for low-income tribal members.

03/14/02

PROPOSAL FOR AMENDMENT
TO NAHASDA STATUTORY LANGUAGE

IMPROVEMENTS TO TITLE VI

TITLE VI—FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES

SEC. 601. AUTHORITY AND REQUIREMENTS.

(a) AUTHORITY – To such extent or in such amounts as provided in appropriations Acts, the Secretary may, subject to the limitations of this title (including limitations designed to protect and maintain the viability of rental housing units owned or operated by the recipient that were developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937), 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 affordable housing activities described in section 202.

~~(b) LACK OF FINANCING ELSEWHERE – A guarantee under this title may be used to assist an Indian tribe or housing entity in obtaining financing only if the Indian tribe or housing entity has made efforts to obtain such financing consistent with the timely execution of the program plans without such guarantee.~~

~~(c)~~ (b)TERMS OF LOANS - Notes or other obligations guaranteed pursuant to this title shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary. The Secretary may not deny a guarantee under this title on the basis of the proposed repayment period for the note or other obligation, unless the period is more than 20 years or the Secretary determines that the period causes the guarantee to constitute an unacceptable financial risk.

~~(d)~~ (c) LIMITATION ON OUTSTANDING GUARANTEES – No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the total outstanding notes or obligations of the issuer guaranteed under this title (excluding any amount defeased under the contract entered into under section 602(a)(1)) would thereby exceed an amount equal to 5 times the amount of the grant approval for the issuer pursuant to title III.

EXPLANATION FOR
AMENDMENT TO NAHASDA STATUTORY LANGUAGE FOR TITLE VI

Section 601 of Title VI states that a tribe must certify that a federal guarantee is necessary to complete the transaction in a timely manner. This certification places an unnecessary burden on the tribe. This requirement could have the unintended consequence of a tribe making application with a lender to finance the proposed activity and receive an approval at an above market rate. Does an increased cost of funds constitute enough reason for the Title VI Guarantee to become applicable? The policy does not appear to be warranted.

Lenders required to decline loans would have to reflect a negative activity on their Community Reinvestment Act report to regulators. Why would a lender support this program if it gives them a negative report?

Testimony of

Housing Authority of the Kiowa Tribe and Absentee-Shawnee Housing Authority

Before the Senate Committee on Indian Affairs
NAHASDA Oversight Hearing
February 13, 2002

The aforementioned tribally designated housing entities hereby submit their testimony to the Committee and express their appreciation to Chairman Inouye and Vice-Chairman Campbell for the opportunity to do so.

REAUTHORIZATION OF NAHASDA

Each of these TDHEs has successfully implemented and managed housing programs during the initial five years of NAHASDA authorization. The TDHEs are in full support of re-authorizing NAHASDA for an additional five years (through FY 2006). Reauthorization is critical to the success of each of the TDHEs.

NEGOTIATED RULEMAKING

The NAHASDA statute mandates that HUD follow a federal statutory negotiated rulemaking process whenever it develops or amends regulations for the implementation of NAHASDA. The statutory language and the Congressional findings contained in NAHASDA that this requirement recognizes the government-to-government relationship between tribes and HUD. However, HUD has taken the position that it was only required to conduct negotiated rulemaking for the initial NAHASDA regulations. HUD has already amended the initial regulations without conducting negotiated rulemaking and is currently in the process of drafting and implementing additional regulations without negotiated rulemaking.

The initial negotiated rulemaking process was immensely successful from a tribal perspective. The tribal participation in the initial rulemaking is directly responsible for the many successes the TDHEs and other tribes have experienced since the implementation of NAHASDA.

Tribes and TDHEs have attempted to work with HUD to construct a meaningful negotiated rulemaking process that meets both tribal and federal goals. HUD has consistently ignored these efforts. HUD's current proposal to use an 18 member negotiated rulemaking panel for formula issues only does not fairly represent all of the tribes nor does it address the issue of other types of regulations.

The TDHEs request the inclusion of an amendment to the statute that clarifies that negotiated rulemaking must be used by HUD whenever it develops new regulations or

amends existing regulations. The TDHEs have attached suggested language for such an amendment to this testimony.

INCREASED APPROPRIATIONS FOR NAHASDA

The TDHEs support increasing appropriations for NAHASDA to raise the total funding to at least one billion dollars over the course of the next five years. The TDHEs recognize the economics of such a request in times such as these. However, housing is a basic need that is severely lacking in these areas. With increased funding, adequate housing opportunities could be made available for more Indian families.

ASSISTANT SECRETARY FOR OFFICE OF NATIVE AMERICAN PROGRAMS

The TDHEs are very concerned that HUD has downgraded the top position in its Office of Native American Programs from its previous Senior Executive Service ranking to merely a GS-15 position. This downgrade severely decreases the effectiveness of ONAP when dealing with its counterpart agencies such as BIA and HIS, and has a detrimental effect on ONAP's prestige within HUD itself.

The TDHEs assert that the position should be raised to Assistant Secretary and retain its Senior Executive Service ranking. The unique government-to-government relationship, principles of self-determination, and sovereignty require that the top position in ONAP have direct access to the Secretary. In order to attract the most qualified person to fill this important Indian housing position, it must be raised to the level of Assistant Secretary.

The TDHEs appreciate this opportunity to address the Committee on these critical Indian housing issues.

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PROPOSAL FOR AMENDMENT TO NAHASDA STATUTE TO CLARIFY THAT NEGOTIATED RULE MAKING IS REQUIRED

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996

Public Law 104-330-October 26, 1996
(25 USC §§ 4101, et seq.)

SEC. 106. REGULATIONS.

(a) TRANSITION REQUIREMENTS.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall, by notice issued in the Federal Register, establish any requirements necessary to provide for the transition (upon the effectiveness of this Act and the amendments made by this Act) from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 and other related provisions of law to the provision of assistance in accordance with this Act and the amendments made by this Act.

(2) PUBLIC COMMENTS; GENERAL NOTICE OF PROPOSED RULEMAKING.— The notice issued under paragraph (1) shall—

(A) invite public comments regarding such transition requirements and final regulations to carry out this Act; and

(B) include a general notice of proposed rulemaking (for purposes of section 564(a) of title 5, United States Code) of the final regulations under subsection (b).

(b) ~~FINAL~~ REGULATIONS.—

(1) TIMING.—The Secretary shall issue ~~final~~ regulations necessary to carry out this Act not later than September 1, 1997, and such regulations shall take effect not later than the effective date of this Act.

(c) ~~(2)~~ NEGOTIATED RULEMAKING PROCEDURE.—

(1) ~~(A)~~ IN GENERAL.—Notwithstanding sections 563(a) and 565(a) of title 5, United States Code, all regulations, ***rulemaking and all amendments thereto*** required under this Act shall be issued according to a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5, United States Code.

(2) ~~(B)~~ COMMITTEE.—

(A) ~~(i)~~ IN GENERAL.—The Secretary shall establish a negotiated rulemaking committee, in accordance with the procedures under the subchapter, for the development of proposed regulations under subparagraph (A).

(B) ~~(ii)~~ ADAPTATION.—In establishing the negotiated rulemaking committee, the Secretary shall—

~~(I)~~ **(i)** adapt the procedures under the subchapter described in clause (i) to the unique government-to-government relationship between the Indian tribes and the United States, and shall ensure that the membership of the committee include only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes; and

~~(II)~~ **(ii)** shall not preclude the participation of tribally designated housing entities should tribes elect to be represented by such entities.

(d) ~~(c)~~ EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act

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