

ADDRESSING THE HOUSING CRISIS IN INDIAN  
COUNTRY: LEVERAGING RESOURCES AND  
COORDINATING EFFORTS

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HEARING  
BEFORE THE  
COMMITTEE ON  
BANKING, HOUSING, AND URBAN AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED TWELFTH CONGRESS  
SECOND SESSION

ON

EXAMINING THE LACK OF SAFE, AFFORDABLE, HIGH-QUALITY HOUSING OPPORTUNITIES IN INDIAN COUNTRY AND EXPLORING INDIAN HOUSING, INFRASTRUCTURE, AND COMMUNITY DEVELOPMENT TO ENSURE HIGH-QUALITY HOUSING OPPORTUNITIES ARE EASILY ACCESSIBLE TO TRIBES AND THEIR HOUSING ORGANIZATIONS

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# **ADDRESSING THE HOUSING CRISIS IN INDIAN COUNTRY: LEVERAGING RESOURCES AND COORDINATING EFFORTS**

**THURSDAY, MARCH 8, 2012**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
*Washington, DC.*

The Committee met at 10:04 a.m. in room SD-538, Dirksen Senate Office Building, Hon. Tim Johnson, Chairman of the Committee, presiding.

## **OPENING STATEMENT OF CHAIRMAN TIM JOHNSON**

Chairman JOHNSON. Good morning. I call this hearing to order.

Today, the Committee will continue examining an issue of great importance to me and so many in my home State of South Dakota: the lack of safe, affordable, high-quality housing opportunities in Indian Country. During my time in Congress, I have worked to improve the housing options available to American Indians, including being an original cosponsor of the Native American Housing Assistance and Self-Determination Act of 1996, NAHASDA. Unfortunately, as those living in Native communities know all too well, the critical housing needs far outpace the resources devoted to the problem.

The Census Bureau reported in 2008 that Native Americans are almost twice as likely to live in poverty as the rest of the population. For the same year, the GAO reported that nearly 46 percent of Native households were overcrowded, a rate that was almost three times as high as the rest of the country. According to the 2009 Annual Homeless Assessment Report, American Indians make up less than 1 percent of the general population, but 8 percent of the country's homeless population. Together, we must work to reverse this trend.

In 2010, I chaired a joint Banking and Indian Affairs Committee field hearing in Rapid City, South Dakota, to examine creative solutions to the Indian housing crisis. Prior to the hearing, I brought HUD Secretary Donovan to the Rosebud Sioux Reservation so that he could see firsthand the immediate challenges facing Native communities. We heard from several witnesses who all echoed the need for housing funds. I support their calls for sufficient funding and will continue fighting for such funding as a member of the Appropriations Committee. But it is also important that we collaborate and leverage existing resources to provide housing in these tough economic times. These resourceful ideas are not meant to free the

Federal Government of its treaty and trust responsibility; rather, these ideas should serve as another avenue for us to work together to address the housing crisis facing Indian Country.

As Chairman of this Committee, I am committed to ensuring that programs across many Federal agencies that address Indian housing, infrastructure, and community development are easily accessible to tribes and their housing organizations. It is also critically important that Federal agencies engage in a government-to-government relationship and participate in meaningful consultation with tribes on housing issues and other important matters. That is why I have invited all of you to testify today. Each of your agencies plays an important role in Indian housing or housing-related infrastructure and community development. I look forward to hearing from you about how your agencies collaborate to make sure your work provides the most efficient and effective housing assistance possible in Indian Country.

Longer term, the Committee is beginning to lay the foundation for the reauthorization of NAHASDA next year. It will be important for all of us concerned about Indian housing to work closely on this reauthorization, including tribes and their housing agencies.

With that, are there any Members who wish to make a brief opening statement?

Senator AKAKA. Mr. Chairman?

Chairman JOHNSON. Yes, Senator Akaka.

#### **STATEMENT OF SENATOR DANIEL K. AKAKA**

Senator AKAKA. Thank you, Mr. Chairman, for your leadership in holding this important hearing.

Chairman Johnson, you and I, along with Senators Tester, Crapo, and Johanns, also serve together on the Indian Affairs Committee where we have been examining the various obstacles that hold tribal nations back from achieving the goals of self-sufficiency and economic development.

One of the many core problems that plague Indian Country is the state of Indian housing, and you all know that very well. It is estimated that 90,000 Native families are homeless or underhoused and that 200,000 new housing units are currently needed. Due to this shortage, many Indian homes are severely overcrowded, and many lack the basic features that most Americans take for granted, such as access to electricity, a kitchen, or even connection to a sewer system.

This lack of housing also has significant impacts on other areas of tribal life. Insufficient housing makes it harder for tribes to attract teachers to educate their children and law enforcement officers to protect their citizens and the local community. Also, it creates barriers to economic development, standing in the way of business opportunities that would benefit both tribes and local communities by creating jobs.

Addressing these issues is not easy. However, it is vital that we do, and for the well-being of the tribal economies to help tribes provide for the basic needs of their members.

With that, Mr. Chairman, I am very pleased to be here with you today as we continue the good work of the Banking Committee as

we examine how to address the housing needs of Native communities. Thank you.

Chairman JOHNSON. Thank you, Senator Akaka.

I want to remind my colleagues that the record will be open for the next 7 days for opening statements and other materials you would like to submit. Now I would like to briefly introduce the witnesses that are here with us today.

Sandra Henriquez was confirmed by the Senate unanimously in 2009 as HUD's Assistant Secretary for Public and Indian Housing, where she oversees the Office of Native American Programs.

Doug O'Brien has served as USDA's Deputy Under Secretary for Rural Development since 2011, where he works with the Rural Housing Service and other agencies that are important to Indian housing.

Robert McSwain is Deputy Director for Management Operations at the Indian Health Service. He is a member of the North Fork Rancheria of Mono Indians in California. Mr. McSwain was confirmed by the Senate in 2008 and served as the IHS Director until May 2009.

Jodi Gillette is the Deputy Assistant Secretary of Indian Affairs for Policy and Economic Development at the Department of the Interior. She is an enrolled member of the Standing Rock Sioux Tribe located in North and South Dakota.

We welcome all of you here today and look forward to your testimony about this important issue.

Ms. Henriquez, you may proceed.

**STATEMENT OF SANDRA B. HENRIQUEZ, ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Ms. HENRIQUEZ. Thank you and good morning, Chairman Johnson and Senator Akaka. It is a pleasure to appear before you, and I would like to express my appreciation for your continuing efforts to improve the housing conditions of American Indian, Alaska Native, and Native Hawaiian peoples.

The Office of Public and Indian Housing is responsible for the management, operation, and oversight of HUD's Native American and Native Hawaiian housing and community development programs. These programs are available to all 566 federally recognized tribes and the State of Hawaii's Department of Hawaiian Home Lands. Since President Obama took office, we have worked to create a new chapter in our nation-to-nation relationship, one built not on Federal mandates but on expanding interagency collaborations, strengthening tribal partnerships, and developing programs that better meet the needs of the Native communities, and today I would like to discuss how HUD is making progress in all of these areas.

At a time when we are all being asked to do more with less, it is more critical than ever to identify inefficiencies, streamline programs, and find ways to work together and pool Federal resources to benefit the families and communities we work to serve. For years, HUD has worked closely with several Federal agencies that serve Indian country, including the Bureau of Indian Affairs, Indian Health Services, the Departments of Agriculture and Energy,

the Federal Emergency Management Agency, and the Environmental Protection Agency. We know that increased interagency collaboration helps stretch Federal resources and assures that Native communities are actually receiving the support they need from the Federal Government, and the results of that collaboration are clear.

Whether it is our work with BIA to reduce the title status report delays, to increase access to capital for Native Americans and Alaska Natives living on trust land, or our partnership with FEMA to provide homes to retain Native teachers who were previously unable to find adequate housing on reservation land, or our work with USDA, EPA, HHS, and BIA to improve the quality and long-term viability of water and wastewater infrastructure projects, or our Greener Homes Summit where multiple agencies collaborated on a strategy to provide tribes with a one-stop approach to training and technical assistance in energy efficiency and sustainability, HUD is doing everything we can to eliminate duplicative efforts, conserve precious resources, and improve service delivery in Indian Country.

But our commitment to collaboration goes even deeper than our work with other Federal agencies. Indeed, history has shown that failure to include the views of tribal leaders in policies that affect tribes has often led to undesirable and at times devastating results. By contrast, we have seen that meaningful dialogue between Federal officials and tribal leadership has vastly improved the U.S. Federal policy and government-to-government relations, and I would like to speak briefly about a few efforts that reflect that new understanding.

In October 2008, the President signed into law NAHASDA, and as part of NAHASDA, a negotiated rulemaking process was established that allows HUD and tribal leadership to work together to develop regulations that support implementation of the act. Tribally elected communities and HUD held six negotiated rulemaking sessions in 2010 which produced a draft proposed rule, which we hope to have finalized by the end of this year.

In addition, this May, we will publish a Federal Register notice announcing the creation of a separate negotiated rulemaking Committee to propose changes to the Indian Housing Block Grant formula, and HUD anticipates holding the first meeting of this new rulemaking committee in the fall of 2012.

In our consultations with tribes, we were told time and again just how critical it was that we reform the Indian Housing Plan and Annual Performance Report, to streamline the planning and reporting process, and move from a grant-based program year to a fiscal year program, as well as to get money out the door faster and into the hands of the communities that needed it. I am proud to say that we have responded, and over the next year, we should see the benefits of how the new IHP/APR, which include ability to more accurately track activities and expenditures, spend down the oldest IHBG funds first, and speed up the obligation by tribes of funding from September to June.

And, finally, in 2010, we launched a study of the unique housing needs in Indian Country. HUD's last comprehensive study of housing needs in Native countries was 15 years ago, and in order for HUD to fully respond to the current needs in Indian Country, we first need a clearer picture of what those needs are.



So this study, we can begin to develop a long-term and long overdue economic and community development reinvestment strategy. And to ensure that tribal concerns and ideas are incorporated into the study, HUD will hold six additional consultations this year and begin field work in 2013.

Chairman, I believe that a housing needs study as well as the revised IHP/APR and the negotiated rulemaking are but a few examples of how HUD is not just investing in Native families, as important as that is, but writing a new chapter in Native American policy that emphasizes inclusion, growth, and creative responses to the needs of tribal communities. We are becoming a better partner to the tribes, a partner that is working to build a stronger, better America, where every Native family and community has a fair shot.

So thank you again, Mr. Chairman and Members of the Committee, for the opportunity to appear before you today. I would be happy to answer any questions that you may have.

Chairman JOHNSON. Thank you, Ms. Henriquez.

Mr. O'Brien, you may proceed.

**STATEMENT OF DOUG O'BRIEN, DEPUTY UNDER SECRETARY FOR RURAL DEVELOPMENT, DEPARTMENT OF AGRICULTURE**

Mr. O'BRIEN. Chairman Johnson, Senator Akaka, thank you for inviting USDA to testify on the issue of housing in Indian Country. The Obama administration is acutely aware of and committed to overcoming the longstanding barriers to homeownership on tribal lands, borrowers' credit issues, challenges with security on trust land, and a complicated leasing process, all of which hinder capital investment on Indian lands. USDA is particularly committed to improving our service to Indian Country.

The Office of Tribal Relations, located within the Office of the Secretary, was created to ensure that all relevant programs and policies are efficient, accessible, and developed in consultation with the governments they impact. And in order to address civil rights complaints and to pave the way for stronger relationships with Native American farmers and ranchers, USDA's Keepseagle settlement will make \$760 million available to successful claimants, provide education and technical assistance to Native American farmers and ranchers, and require that regulations and policies be reformed to better assist them.

At the direction of President Obama and Secretary Vilsack, USDA has also taken a number of actions that will significantly reduce existing challenges to affordable housing in Indian Country, and we are designing these approaches through a government-to-government consultation process because meaningful dialogue between Federal officials and tribal officials greatly improves Federal policy designed to be delivered to the tribal communities.

Since President Obama's 2009 Memorandum on Tribal Consultation and Collaboration, a team from across USDA has been reviewing how tribal consultation informs program implementation. Rural Development is part of this effort, and our staff continues to dialogue with tribal leadership at the local, regional, and national level.

Because of consultation and our experience on tribal lands, we know that lack of infrastructure is a major issue. Along with my fellow panel members, USDA serves on the Tribal Infrastructure Task Force that focuses on Federal agency collaboration to address the need for safe drinking water and basic sanitation. In February 2011, this group produced a report containing 10 recommendations for increasing access to programs in Indian Country. Rural Development is committed to working with this group to implement these recommendations.

Beyond addressing critical infrastructure issues, USDA is working with the Bureau of Indian Affairs to discuss land and lending issues that create challenges to extending credit on trust land. As a result of these meetings, USDA and the BIA are drafting a memorandum of understanding that will allow both agencies to better understand each other's programs and the technical requirements for their delivery in Indian Country.

When we at Rural Development talk about housing, we think about it in the context of the entire rural community. It is infrastructure and facilities, it is businesses and jobs that support families as well as individual homeowners. Rural Development staff delivers programs through a network of local offices. These programs support essential public facilities and services such as water and sewer systems, health clinics, emergency facilities, electric, telephone, and broadband services. Rural Development promotes economic development in rural areas by providing loans, grants, and other assistance.

From 2001 to 2011, Rural Development assistance benefiting tribes totaled more than \$3 billion. Because we have State and area offices in and near tribal communities, we are able to cultivate relationships with tribal leaders, lenders, realtors, community-based organizations, and others.

To maximize these relationships, we not only have a national Native American tribal coordinator, we also have tribal coordinators located at each Rural Development State Office. In housing in particular, we have invested \$1.3 billion in Indian Country over the past 10 years. We have seen the impact of such investment firsthand.

Just last month, Rural Development's Under Secretary Dallas Tonsager took part in a ribbon cutting held by the Maliseet Tribe in Maine to celebrate their first multi-family apartment complex. When the tribe broke ground in November 2010, the Tribal Housing Authority had 40 families on a waiting list for housing. The completion of this housing complex moves this tribe in the right direction.

For a community to access housing programs, it must have access to insurance products, a historic challenge on trust lands. We have been working to develop solutions. For example, the AMERIND Risk Management Corporation is a risk management agency administering a tribally owned risk management pool that covers homes and other structures on Indian lands. A Rural Development Administrative Notice was published last November, advising staff that the AMERIND could save borrowers money and increase capital in tribal communities.

All of us on this panel have been working to improve coordination across agencies, and we are proud of the progress that this Administration has made. These collaborative efforts provide us the best opportunity yet to significantly reduce the barriers that have made it difficult for Indian Country to access Government programs. We look forward to continuing to work closely with tribes to create more homeownership opportunities.

Again, I want to thank you for the opportunity to speak before you today, and I am ready to answer any questions.

Chairman JOHNSON. Thank you, Mr. O'Brien.

Mr. McSwain, you may proceed.

**STATEMENT OF ROBERT G. MCSWAIN, DEPUTY DIRECTOR FOR MANAGEMENT OPERATIONS, INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Mr. MCSWAIN. Thank you, Chairman Johnson and Senator Akaka. I am really pleased to be here today to talk about and certainly discuss this important issue of Native American housing as well as the infrastructure development, and the infrastructure development certainly in an area that we play heavily in. I, too, want to thank everyone for your leadership on bringing this topic to the forefront.

The IHS is keenly aware of the need for adequate housing throughout Indian Country and role to address the requirements for adequate infrastructure to support new and existing housing.

The IHS has the primary responsibility for providing water supply, along with solid and liquid waste disposal facilities for American Indian and Alaskan Native homes and communities as part of delivering our total program. As you know, our total program consists of clinical care, preventative care, and public health, and the Sanitation Facilities Construction program is a critical part of our effort to deliver the care we do.

IHS works cooperatively with tribes in providing these essential facilities. Enhancing tribal capabilities and building partnerships based on mutual respect are key factors in the success of this IHS program. The IHS also coordinates and advocates on behalf of and in cooperation with tribes to seek resources from other Federal agencies as my colleagues at the table.

The Sanitation Facilities Construction program, as I mentioned, is an integral component of the IHS disease prevention activities. The IHS has carried out this program since 1959 using funds appropriated for Sanitation Facilities Construction to provide potable water and waste disposal facilities for American Indian and Alaska Native people. As a result—and you have seen this data before—the rates of infant mortality and mortality rate for gastroenteritis and other environmentally related diseases have been dramatically reduced by about 80 percent since 1973. IHS physicians and health professionals credit many of these health status improvements to IHS' provision of water supplies, sewage disposal facilities, development of solid waste sites, and the provision of technical assistance to tribally owned/operated sewer utility organizations. An important part of our partnership is to work with tribes. Our first partner is the tribes. And the most important piece I can leave you with today is our consultation with tribes to develop the Sanitation

Deficiency data system, where we map out the entire needs across the country and by areas, rank-order the projects that we want to address, and that becomes our total system.

As of November, the list to correct sanitation deficiencies totaled \$3.1 billion, with those projects that are considered economically and technically feasible totaling \$1.46 billion. We can talk about what is feasible and what is not, and you probably know that already.

Relative to coordination with other agencies, the IHS has coordinated with States, tribes, local governments, and other Federal agencies since the first sanitation facility that was built in Elko, Nevada, in 1958, which led to the passage of Public Law 86-121 in 1959.

In 2007, as was mentioned by my colleague, certainly the Department, the Department of Agriculture, the Department of Interior, Housing and Urban Development, and Health and Human Services formed an Infrastructure Task Force that was referenced earlier, and the important part of this is that this is, in fact, an ability to coordinate amongst all agencies that have a vital interest in Indian housing and Indian—certainly Indian housing and the support infrastructure that occurs.

Approximately 43 percent of all IHS SFC-funded projects over the last 5 years were funded either partially or entirely with contributions from others. You will hear all of us talk about leveraging the other, and that is what we do. That is what we work with the tribes to do.

The challenge before us, though, is that the sanitation facilities infrastructure grows every year—the needs grow, the population grows. And, of course, then what has happened in the meantime was in 2006 the EPA did change the arsenic rule, and immediately we had 18,000 homes that were impacted. Currently, we have now 36 systems serving 42,000 people that are out of compliance with the new arsenic rules.

Tribally owned and operated facilities is huge, and let me just close by saying that the most important part we can do is work with tribes on operation and maintenance. There has got to be training. There has got to be certainly startup supplies and equipment to help them maintain their systems when we have built them and transferred them.

With that, this concludes my remarks, and I would be happy to answer any questions you may have, Mr. Chairman.

Chairman JOHNSON. Thank you, Mr. McSwain.

Ms. Gillette, you may proceed.

**STATEMENT OF JODI GILLETTE, DEPUTY ASSISTANT SECRETARY OF INDIAN AFFAIRS FOR POLICY AND ECONOMIC DEVELOPMENT, DEPARTMENT OF THE INTERIOR**

Ms. GILLETTE. Good morning, Mr. Chairman and Senator Akaka and Members of the Committee. My name is Jodi Archambault Gillette, and I am the Deputy Assistant Secretary for Indian Affairs at the Department of the Interior. I thank you for shining a spotlight on this very important housing situation in Indian Country as well. Growing up on the Pine Ridge Indian Reservation, I know firsthand the lack of adequate housing has an incredible strain on

a community of family and a nation. I only can talk about the agency perspective, but you well know, as Mr. McSwain noted, that the population continues to grow, and unless we take measured steps that will result in a great degree of success, the conditions may only worsen.

I am pleased to provide you with the Bureau of Indian Affairs' activity in providing home improvement assistance and our role in assisting individual Indians in the pursuit of homeownership. The BIA's Office of Indian Services runs the Housing Improvement Program. This program addresses the Department's strategic goal of serving Indian communities by improving the quality of life of eligible Indians by helping to eliminate substandard housing and homelessness. The program's activities include housing repairs and renovations of existing homes and construction of modest homes for families who do not own a home but own or lease land where a home can be built. The BIA's policy and methodology ensures that we are providing housing assistance to the neediest of the needy. We look at qualifications that include disability, elderly, children, number of children in the household, and income to determine who would qualify for this program. Consistent with the goals of this self-determination, the program is 95 percent operated by tribes through 638 contracts or self-governance compacts. Those tribes participating in the program must comply with appropriate regulations.

In addition to providing home improvement assistance, we also have an important role in the mortgage process. The BIA's Land Titles and Records Office is the official Federal office for recording all title conveyance and encumbrance documents for Indian lands within the LTRO's jurisdiction. The LTRO is also the Federal office for the examination and certification of title to Indian trust and restricted lands. The LTRO issues an official Federal certificate of title to Indian lands known as the Title Status Report, or TSR, which is the legal land description, the current ownership, and the recorded liens and encumbrances on the ownership for a specific tract of Indian trust or restricted land. The TSR is required by lending institutions to verify that the loan applicant has acquired a leasehold interest on tribal land or that the loan applicant has total ownership of the trust land, and that the title is clean and clear of any liens against the property so that the loan application process can move forward.

In 2004, the BIA entered into an MOU with the Departments of Agriculture and Housing and Urban Development for the purposes of establishing a framework for partnering among the agencies to improve assistance to American Indians and Alaska Natives in the development of affordable housing on trust and restricted lands, reservations, and in approved service areas. Our goal is to assist tribes in improving their living environment through the delivery of quality housing and resolving issues that delay processing of mortgage loans to eligible Indians.

Additionally, we have partnered with HUD's Office of Native American Programs, Rodger Boyd and folks, to provide training to lenders in order to educate the lenders concerning the title process for Indian mortgages and to better facilitate and improve the efficiency of the mortgage process. Anytime a mortgage is approved,

it has the potential to improve the quality of life for Indians, and requests for Title Status Reports for the mortgage purposes are and will remain a high priority within the BIA.

Also, we are in the process of revising leasing regulations as part of the effort to return control of land use decisions to tribal management and to streamline surface leasing processes to promote homeownership, economic development, and clean energy. We anticipate issuing final regulations later this year. We have gone through two rounds of tribal consultation, and we look forward to having some finality on this shortly.

In addition to these proposed leasing regulation revisions, the Department strongly supports the Helping Expedite and Advance Responsible Tribal Homeownership Act, or HEARTH Act, both the House and Senate versions. The HEARTH Act would restore tribal authority to govern leasing on tribal lands and to promulgate regulations for the governance of those leases, while preserving the statutory tools available to the Secretary for carrying out the trust responsibility to tribes. Passage of the HEARTH Act has the potential to significantly reduce the time it takes to approve leases for homes and small businesses.

This concludes my prepared statement, and I would be happy to respond to any questions you may have.

Chairman JOHNSON. Thank you, Ms. Gillette.

We will now begin asking questions of our witnesses. Will the clerk please put 5 minutes on the clock for each Member for their questions?

Ms. Henriquez, I was pleased to see HUD issued a notice earlier this week announcing a revised tribal consultation process for the needs assessment. Meaningful tribal consultation is key to ensuring a sound study. Can you briefly explain how HUD addressed tribal concerns about this initial process?

Ms. HENRIQUEZ. Thank you for the question, Mr. Chairman. Initially, we set out to do listening sessions or, I would say, consultations, small "C." We really met in seven consultations around the Nation. We asked people to attend, to both look at the—to talk about the housing needs survey to be done, to look at the survey that had been done and the instrument used in 1996, and then to build upon that with changes in recommendations and so on.

As that process went forward, we began to hear more conversation among tribal leaders that it was not a full consultation process, formal consultation. And with conversations both with two of the industry groups representing both tribal housing entities and tribal leaders, both NCAI and NAIHC, we decided that we should take a step back and that we should go into a formal consultation, much more formalized, deliberative process with tribal leaders. We held one of those sessions last July here in Washington. We just did another one on Monday afternoon in conjunction with NCAI's leadership meeting that is being held this week. And we have planned to do five others across the country between now and June.

We find, as I said in my testimony, and all of us find that when—we want to make this successful, we want to make sure that it is done well and it is done right, and we want to make sure that it is responsive in as many ways as possible with what tribal

leaders really want to have come out of this survey. And so that's why we decided we should take a deep breath, take a step back, re-engage in a much more formalized way and go forward.

So we are doing some groundwork, background work right now that can go forward, but the formal design will wait until the end of this formal consultation period.

Chairman JOHNSON. Mr. McSwain, for years Congress has prohibited IHS from using appropriated funds to pay for sanitation facilities infrastructure for HUD-funded homes. To what extent has this prohibition led to homes being constructed with inadequate drinking and wastewater systems? And should Congress remove the prohibition?

Mr. MCSWAIN. Thank you, Mr. Chairman. The prohibition, as you described, appears in our bill language every year in our appropriation that says we cannot support infrastructure for new HUD homes. Part of that is a history related to NAHASDA and how the dollars were actually routing. When NAHASDA was passed, the dollars went directly to the various housing authorities and did not come to the Indian Health Service. And so there was—and I cannot say for certain if that is the absolute cause, but that was part of it.

But I would want to assure you, Mr. Chairman, that, for example, on average we still serve 200 homes a year, even though we are not providing the infrastructure, it is coming through the housing authorities, the fact that we have the engineers on the ground, they are actually sitting there and working with the community on the what the total housing needs are. And, granted, we ensure that the water systems we are allowed to put in have sufficient capacity for any additions that may come, the tribe has planned through HUD housing. But that has been the prohibition, and it has not really—we kind of work with the tribes to leverage resources to pick up the gap. But that is a prohibition, and we have been mindful of that.

Chairman JOHNSON. Should Congress remove the prohibition, in your opinion?

Mr. MCSWAIN. In my opinion, if they fix the other end of it, which is the way that the dollars come from HUD to the tribal housing authorities, that they really do include infrastructure or work out something else, I think I would—before I express my final opinion, I would certainly need to consult with my Director, Dr. Roubideaux, before I would respond.

Chairman JOHNSON. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

I want to tell this panel that your testimonies were well received here, and thank you so much for what you all are doing.

Ms. Henriquez, in the last reauthorization of the Native American Housing Assistance and Self-Determination Act, the Native Hawaiian provision was not reauthorized. Title 8 is a block grant housing program for Native Hawaiians who reside on Hawaiian homelands. This title was added to NAHASDA in the year 2000. In the year 2008, NAHASDA was reauthorized without Title 8. Without congressional reauthorization, the risk that funding could be cutoff has had a detrimental effect on Native Hawaiian housing programs.

Would your Department support the reauthorization of the Native Hawaiian provisions within the next reauthorization of NAHASDA?

Ms. HENRIQUEZ. Thank you for the question, Senator. I would answer your question in this way: We continue both in our budget and in the President's budget to include funding for Native Hawaiian homelands for the infrastructure and for the building of homes under NAHASDA. I think that expresses our commitment moving forward and continuing, and we would like to work with you and Members of this Committee and the Chairman moving forward to make sure that all peoples in both Indian Country and in Native Hawaiian homeland and Native Alaskan lands are protected and covered.

Senator AKAKA. Thank you very much.

Mr. O'Brien, Secretary O'Brien, USDA is in the process of streamlining to address budget shortfalls in the rural development programs. What impact will this have on tribal assistance within these programs?

Mr. O'BRIEN. Senator, thank you for that question. As you pointed out, in particular in the last two appropriations cycles, the rural development mission area as well as, of course, many other components of the Federal Government, has experienced decreases in its appropriations. About 2 or 3 months ago, Secretary Vilsack announced a blueprint for stronger service that indicated how we were going to manage this change, and for rural development, it included the closure of 43 of our 500 or so offices across the country for rural development. Those offices were chosen, looking at some farm bill legislation that actually directed a sister agency on how they choose to close offices, by looking at those that had two or fewer staff as well as those that were 20 miles or closer to another office. Also, Rural Development has the discretion to look at workload, to look at the needs of the community, and we are in the process of closing those 43 offices.

Now, that said, Rural Development continues to have more than 450 offices throughout rural America, and work continues and we will continue to work closely with tribal communities and other communities in rural places.

The USDA, the President's budget for 2013 continued to propose and request almost \$50 million in set-asides for infrastructure and business programs for tribal communities, for Hawaiian homelands, and Alaska Native communities. And most of USDA's rural development programs continue to have a priority for distressed communities, many of which, of course, as was pointed out by both Senators today, are included in tribal communities.

It does present challenges because the people in distressed communities tend to be some of the most resource intensive to serve, but it has changed that we are proactively trying to manage.

Of course, and last, a key component of being able to continue to serve these communities will be to work with our sister agencies to make sure that we leverage our dollars most efficiently and, most importantly, that we continue the consultation process so we know what the governments in the 575 individual tribal communities, nations, need most.

Senator AKAKA. Thank you, Mr. Chairman.



Chairman JOHNSON. Mr. O'Brien, the GAO found in a 2010 study that several tribal housing authorities had little or no interaction with or knowledge of USDA programs that could assist them meet their housing needs. I have not heard that in South Dakota where Elsie Meeks, who comes from the Pine Ridge Indian Reservation, is the State Rural Development Director and has worked closely with the tribes. Nationally, what has USDA done to enhance outreach to American Indian tribes?

Mr. O'BRIEN. Senator, thank you for that question, and thank you for pointing out the exemplary work that our State Director Meeks does in South Dakota. In many ways, the work that is done in South Dakota is looked to as a model in how we can expand and improve upon our delivery across the country.

Since that GAO report, I will talk about three things very quickly. One is that we have had an aggressive public service announcement campaign in both print and radio where we have utilized real stories of tribal citizens who have utilized our housing business infrastructure programs and have used the media outlets that are most listened to or read by tribal communities.

We have also had an aggressive training program within the USDA itself because, you know, to address the problem of lack of access and knowledge by the tribal communities, we really need to educate our own workforce. So our national Native American Coordinator has worked with different components within Rural Development to make sure that our own employees understand how we can work and partner with tribal communities.

The final thing I will mention is our aggressive agenda on tribal consultation that we find so valuable as we work through many, many issues—regulatory issues, funding issues, just basic process issues. We have had in the last 2 years more than 25 either formal consultations, roundtables with national tribal leaders or national virtual convenings. I have had the privilege to participate in a number of those. In fact, just this morning I spent an hour with Chief Baker of the Cherokee Nation to talk about the issues there. So thank you for that question.

Chairman JOHNSON. Ms. Gillette, the BIA administers a Housing Improvement Program, a home repair, renovation, and replacement grant program. How does this program interact with HUD and other programs?

Ms. GILLETTE. Well, as I stated earlier, we do have an existing MOU, and we try to ensure that we do not have overlap between the different programs. We have specific regulations that govern the Housing Improvement Program, and they really are, we feel, meeting the needs of a specific part of the population on reservations that are not able to qualify for some of the programs at other agencies. And so this is really trying to address the needs of the very needy residents of the reservation.

Chairman JOHNSON. For the whole panel, each of your agencies has a specific mission but collectively play an important role in helping ensure high-quality housing opportunities are available in Indian Country. How do you coordinate efforts on this front? Do you have formal agreements established with other agencies to provide housing and related services in Indian Country? Do agencies provide training to employees through the agreements so the agree-

ments are implemented on the ground? Let us begin with you, Ms. Henriquez.

Ms. HENRIQUEZ. Thank you, Mr. Chairman. I would say that, first of all, our mission and our vision at HUD, particularly as it relates to housing in Indian Country, is to understand, most importantly, the mission and vision of tribes themselves, and our role is to help them accomplish their mission. And we see our partnership role from that lens directly.

We have a number of formal agreements we have discussed here with a number of agencies both here and others that are not here, such as FEMA and so on. And we provide training not just for our own employees through our six regional Native American program offices across the country. We also provide training and working with Native American industry groups through their auspices as well, both for our employees but also, in addition, for Native American tribes and their members, again, to figure out what their vision is and help them reach and attain those goals.

Chairman JOHNSON. Mr. O'Brien?

Mr. O'BRIEN. Thank you, Mr. Chairman, for that question. I will just mention three sort of formal relationships that we have with our Federal partners to better serve tribal communities.

The first is the Tribal Interagency Infrastructure Task Force, as was referred to in prior testimony, where we work with our sister agencies on infrastructure issues. Some of the difficult issues, for instance, how we deal with the environmental process when you are leveraging funds in a particular project and the different avenues that the tribal community—they need to deal with, you know, two or three or maybe even four different Federal agencies on their environmental processes.

We have been able to make progress so that in a number of instances we have been able to work with our Federal agencies so that one of the agencies is the lead agency, so that the tribal community can work with one contact person. And to the degree that we are able, we coordinate our processes and, looking at our regulations, how we can better match our regulations to make it easier for the tribal communities to deal with.

The other one I will mention is the memorandum of understanding we have with BIA—or that we are working on drafting with BIA to deal with the complicated leasehold and property interest when we are trying to provide funding that requires secured interest.

And the final one I will mention is the Administrative Flexibility Task Force that the White House has led to help Federal agencies have a platform of conversation to make sure that we are not be duplicitous and that we can be the best partner possible on tribal lands.

Chairman JOHNSON. Mr. McSwain?

Mr. MCSWAIN. Thank you, Mr. Chairman. As Mr. O'Brien has mentioned, certainly the ITF is one that we have operated, and one of the people that is not at the table is EPA, which we do a lot of work with EPA in partnership in addressing Indian communities as well as my other colleagues here.

One of the major accomplishments I can point out is that during certainly the appropriation for the American Recovery and Rein-

vestment Act, in a partnership we actually partnered with EPA, and by doing so we cobbled our money that we got with their money, and it actually resulted in 160 new projects off that long list. And I want to point out that we basically share our Sanitation Deficiency System list with all of our colleagues, and it becomes sort of a working punch list for all of us so that we all can—so it is an ability for all of us to look at the list and pick and choose what meets our particular agency's authorities.

So if we can do one thing and certainly USDA or HUD or BIA or EPA can do something else, then we kind of work it together, and we are constantly talking with tribes, and tribes come in to talk to us. And they are making the rounds. They are actually talking to all of us. And I want to echo the comment by Mr. O'Brien about the President's flexibility Executive order. I happen to be on a housing group that is having a dialogue in that group on how we can simplify the process for tribes to really access resources to meet their needs, and that is one that I think is another venue that has really been successful.

Chairman JOHNSON. Ms. Gillette, do you have any comments to follow up with, including on Mr. O'Brien's MOU? Please provide us with a timeline.

Ms. GILLETTE. We have been engaged in discussions for at least a year on the MOU, and from the discussions in creating an MOU, we have also found different areas that we need to collaborate better on, including improving communication between not just the people in Washington, D.C., but throughout the field. Part of that is having interpreters that are cross-trained in understanding both the USDA systems, because USDA is a very large agency, and then the unique trust status of the lands in Indian Country.

So you have two systems that are needing to have better communication, and we are trying to do that through regular conversations and training, and that is actually growing out of the MOU discussions. MOU discussions have been taking place, like I said, for a year, and we really wanted to identify some of the places that make the most sense. So we are in a first-draft process. How soon we can get that out, you know, we are hopeful by the fall we will have something. That is being pretty conservative. I think we can do it quicker than that, but I am going to probably have to work with USDA to try to make some kind of timeline like that.

But also from the discussions on the MOU, we have also identified places that we really do have to look at our own regulations and find ways to accommodate for the unique status of Indian lands, and then also for the different kinds of programs that are available through USDA that tribes and individual Indian landowners traditionally have not been able to access because of their unique status.

So we are looking at both regulatory changes in that respect as well as the statutory changes that could improve the access for everyone in Indian country.

Then the other thing I wanted to just reiterate is this work is all complementary to the Administrative Flexibility Initiative that the President directed all of the agencies to find ways to work together to reduce the unnecessary administrative burdens that are placed on tribes and local governments and State agencies so that

we can use most of those resources to look at producing better outcomes rather than duplicative processes throughout the agencies. Although the Administrative Flexibility Initiative is just a year old, we have a number of conversations that have been ongoing, and this initiative is really going to allow us to provide deliverables within a specific timeline in the Administration, and that is being run out of the Office of Management and Budget and the Domestic Policy Council.

Chairman JOHNSON. Thank you.

Senator Akaka?

Senator AKAKA. Thank you very much, Mr. Chairman.

Again, I want to repeat that I like what you all are saying and that you are working jointly to help the indigenous people here with MOUs, also being partnered with the tribes, and working 95 percent programs operated by the tribes. And so this indicates joint efforts on your part, and I commend you for that.

Mr. McSwain, there is a significant need in Indian Country for wastewater infrastructure, and you mentioned that the IHS mission is to raise the health status of American Indian and Alaska Native people to the highest possible level by providing comprehensive health care and preventive health services. To support the IHS mission, the Sanitation Facilities Construction program provides American Indian and Alaska Native homes and communities with essential water supply, sewage disposal, and solid waste disposal facilities.

My question to you is: How does IHS prioritize tribal need in its SFC program?

Mr. MCSWAIN. Thank you, Senator Akaka. It begins with us having a conversation at the community level with each of the tribes, and from that we actually develop their needs as they have them. And then we compile them into certainly the national need, but it is basically every area—Alaska would be sitting down with their villages and corporations—and determining what the total need is, and that gets captured in a national setting in terms of the total need, and that is the total need I talked about, which is \$3.4 billion.

Each of the areas then meets with their tribes, and the tribes in their discussion will rate and rank their particular needs across the State, and we represent those. And when we get an appropriation, we go work that list again with those tribes.

So every tribe, certainly we break it down between water, sewer, and solid waste disposal for each of the tribes, and so we have a rate and ranking even within each of those.

So we are able to really cast a very detailed description of what the needs are, but they are reflective of the fundamental tribal consultation, tribes telling us what their needs are. After all, when we go on to the reservation, we need their permission. We also give them the option if they want to build it, they can assume it and build it. It is their choice. But if we build it, we build it with their approval, site selection, architecture, how we deliver the actual three major services. But that is essentially—I hope I have answered your question, but basically it is this \$3.4 billion and \$1.4 feasible is—obviously there is a big difference when it is going to cost a lot to—and maybe it is—I found out on the Navajo, for exam-

ple, you have to go quite a ways to find potable water, which means you are doing pipelines and you are finding places to build. And this is not unique to Navajo but certainly an example.

But, again, those particular projects are consulted with the tribes, and we have that list, and the very first dollar we get for the allocation goes to the one that they choose.

Senator AKAKA. Thank you for your response.

Ms. Gillette, how does the housing situation in Indian Country impact the Department's ability to provide teachers to BIA schools and law enforcement officers to Native communities?

Ms. GILLETTE. Well, it is something that impacts our ability to recruit and retain key employees in those different agencies. And as you noted in your opening remarks, housing not only affects needy tribal members, but it also affects the ability for professionals to stay home as well, and it affects our ability to bring people in as employees for different law enforcement or education roles. And so this is something that we do provide. We have approximately 3,419 units across Indian Country in 131 different sites. We know that there is difficulty in how this is all structured because we have limited funds to expand the units that are out there. We also have an issue with the ability for us to maintain that because the only way we can maintain the units is by the rental income that we receive, and that rental income has to be set based on similar units in the local community, and sometimes the local community does not have comparable units.

So we struggle with maintaining, even when we do build, but we are looking at different ways to revise some of those regulations to establish rental rates and trying to find innovations and making sure that we have a more realistic approach to providing housing for professionals in our agencies.

Senator AKAKA. Thank you. Thank you very much, all of you, for your responses, and I want to thank our Chairman for his leadership in this area as he continues to work on this.

Thank you very much, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Akaka.

I have just a couple more questions. Ms. Gillette, given the BIA's responsibility for managing American Indian trust land, how have delays in approving leases impacted housing construction and economic development in Indian Country? I have heard numerous horror stories related to the delays in approving leases over the years.

Ms. GILLETTE. With our undertaking of revising the leasing regulations as it relates to home sites, we have looked at these since the beginning of this Administration. Actually, this is the first time these regulations are going to be fully revamped in 50 years, and so this is a huge undertaking for the Department. In the past, the leasing regulations were grouped under agricultural and non-agricultural, so you had all of the different types of leasings grouped into other leases.

The proposed rule, what we plan to do with that is separate the different types of leases out to homeownership, renewable energy, and business leasing. And so the homeownership aspect of it, you know, generally the revisions make the procedures for leasing more transparent and as explicit as possible. We have also provided procedures for amendments, assignments, sub-leases, which they

have—they are not in there currently, and we are addressing leases for single-family homes and housing for public purposes on Indian lands. The proposed regulations will provide for a 30-day timeframe in which the BIA must issue a decision on a complete residential lease application; otherwise, it is deemed approved. And that is something that timeframes have not been imposed with the current regulations. We also have standards for disapproving leases that have not been in place either, so we are trying to make those more consistent. We also have provisions in there that really talk to the specifics of enforcement of lease violations.

Chairman JOHNSON. Thank you.

Mr. McSwain, given IHS' primary mission to provide for the health of American Indians, can you give us a sense of the negative impact unsafe and overcrowded housing has on the health of Native communities? In South Dakota, I have seen far too many inadequate homes on reservations that house two, three, or more families, which causes a number of problems, including black mold.

Mr. McSWAIN. Thank you, Mr. Chairman. I do not have the actual numbers, but anecdotally, hearing about black mold, in particular North and South Dakota, is really, I believe, clearly on our radar. The biggest issue is sort of the recurrent issues that are happening with black mold up particularly in the higher parts of North Dakota.

I am personally aware of some of those, and actually had discussion with the tribal leaders, about how to address those. A lot of it has to do with the fact that they have low-lying water and how homes are built and the fact that they are not really built properly to deal with those particular environmental conditions.

But I do not have any numbers on it, but I am aware, certainly hearing from tribal leaders about the overcrowding and the numbers of families that are in a particular house certainly indicates that a few more houses would be appreciated by them. But certainly I do not have the numbers that would correlate to how extensive and quantify the overcrowding, but anecdotally, it is occurring.

Chairman JOHNSON. Thank you all for your testimony and for being here with us today. Each of the agencies you represent plays an important role in providing American Indian families with safe, affordable, and high-quality housing options.

This hearing is adjourned.

[Whereupon, at 11:09 a.m., the hearing was adjourned.]

[Prepared statements and responses to written questions supplied for the record follow:]

### PREPARED STATEMENT OF CHAIRMAN TIM JOHNSON

Good morning. I call this hearing to order.

Today, the Committee will continue examining an issue of great importance to me and so many in my home State of South Dakota—the lack of safe, affordable, high-quality housing opportunities in Indian Country. During my time in Congress, I have worked to improve the housing options available to American Indians, including being an original cosponsor of the Native American Housing Assistance and Self-Determination Act of 1996. Unfortunately, as those living in Native communities know all too well, the critical housing needs far outpace the resources devoted to the problem.

The Census Bureau reported in 2008 that Native Americans are almost twice as likely to live in poverty as the rest of the population. For the same year, the GAO reported that nearly 46 percent of Native households were overcrowded, a rate that was almost three times as high as the rest of the country. According to the 2009 Annual Homeless Assessment Report, American Indians make up less than 1 percent of the general population, but 8 percent of the country's homeless population. Together, we must work to reverse this trend.

In 2010, I chaired a joint Banking and Indian Affairs Committee field hearing in Rapid City, South Dakota to examine creative solutions to the Indian housing crisis. Prior to the hearing, I brought HUD Secretary Donovan to the Rosebud Sioux Reservation so that he could see first-hand the immediate challenges facing Native communities. We heard from several witnesses who all echoed the need for housing funds. I support their calls for sufficient funding and will continue fighting for such funding as a member of the Appropriations Committee. But, it is also important that we collaborate and leverage existing resources to provide housing in these tough economic times. These resourceful ideas are not meant to free the Federal Government of its treaty and trust responsibility. Rather, these ideas should serve as another avenue for us to work together to address the housing crisis facing Indian Country.

As Chairman of this Committee, I'm committed to ensuring that programs across many Federal agencies that address Indian housing, infrastructure, and community development are easily accessible to tribes and their housing organizations. It's also critically important that Federal agencies engage in a government-to-government relationship and participate in meaningful consultation with tribes on housing issues and other important matters. That's why I've invited all of you to testify today. Each of your agencies plays an important role in Indian housing or housing-related infrastructure and community development. I look forward to hearing from you about how your agencies collaborate to make sure your work provides the most efficient and effective housing assistance possible in Indian Country.

Longer term, the Committee is beginning to lay the foundation for the reauthorization of NAHASDA next year. It will be important for all of us concerned about Indian housing to work closely on this reauthorization, including tribes and their housing agencies.

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### PREPARED STATEMENT OF SANDRA B. HENRIQUEZ

ASSISTANT SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MARCH 8, 2012

Good morning Chairman Johnson, Ranking Member Shelby and Members of the Committee. It is a pleasure to appear before you, and I would like to express my appreciation for your continuing efforts to improve the housing conditions of American Indian, Alaska Native and Native Hawaiian peoples.

The Office of Public and Indian Housing is responsible for the management, operation and oversight of HUD's Native American and Native Hawaiian housing and community development programs. These programs are available to all 565 federally recognized Indian tribes and the State of Hawaii's Department of Hawaiian Home Lands. We serve these entities directly, or through their tribally designated housing entities (TDHE), by providing formula-based housing block grants and loan guarantees designed to support affordable housing and community development. Our partners are diverse; they are located on Indian reservations, in Alaska Native Villages, and on the Hawaiian Home Lands.

Before we begin exploring the ways that Federal agencies working in Indian Country can do a better job of coordinating efforts to broaden economic development opportunities, I would like to provide the committee with a brief overview of the programs administered by the Office of Native American Programs (ONAP) at HUD.

### ONAP Programs

HUD administers four programs specifically targeted to Native American and Alaska Native individuals and families:

- Indian Housing Block Grant program;
- Title VI—loan guarantee program;
- Section 184—Single Family Home Loan Guarantees; and
- the Indian Community Development Block Grant Program (ICDBG).

In implementing these programs, the Department recognizes the right of tribal self-governance and the unique relationship between the Federal Government and tribal governments, established by long-standing treaties, court decisions, statutes, Executive Orders, and the United States Constitution. Each of the 566 federally recognized tribes has its own culture, traditions, and government. The Department strives to balance respect for these individual tribes with regulations and procedures that ensure accountability and consistency.

HUD also administers two programs specifically targeted to Native Hawaiians eligible to reside on the Hawaiian Home Lands.—***Native Hawaiian Housing Block Grant*** program and the ***Native Hawaiian Loan Guarantee Program***. The block grant program for Native Hawaiians is administered through the State Department of Hawaiian Home Lands and is augmented by a home loan guarantee program.

#### ***Indian Housing Block Grant***

The Indian Housing Block Grant (IHBG) is ONAP's largest program, both in terms of dollars appropriated and population served. It was authorized by the Native American Housing Assistance and Self-Determination Act (NAHASDA) in 1996. IHBGs are awarded to eligible Indian tribes or their tribally designated housing entities (TDHE) for a range of affordable housing activities that primarily benefit low-income Indian families living on Indian reservations or in other Indian service areas. The amount of each grant is based on a formula that considers local needs and the number of units developed with 1937 Housing Act funding and currently managed by the tribe or its tribally designated housing entity (TDHE). The block grant approach offers each tribe the flexibility to design, implement, and administer unique, innovative housing programs, based on local need.

#### ***Title VI—Loan Guarantees***

NAHASDA also authorized the Title VI program, which offers recipients of the IHBG (tribes and their TDHEs) a loan guarantee program that encourages long-term projects and the leveraging of a variety of funding sources. Under Title VI, HUD can guarantee 95 percent of a loan for affordable housing activities. Borrowers pledge a portion of their current and future IHBG funds as security. This program has provided an incentive for lenders to get involved in the development of tribal housing.

#### ***Section 184—Single Family Home Loan Guarantees***

The Section 184 program was authorized by the Housing and Community Development Act of 1992, as amended. It is a single-family mortgage loan program that provides a 100 percent guarantee for private mortgage loans issued to eligible borrowers. Eligible borrowers include American Indian and Alaska Native families and individuals, Indian tribes, and TDHEs. There are no income limits. Loans are used to purchase, construct, rehabilitate, refinance, or purchase and rehabilitate a home located on a reservation or within an Indian area. A one-time, 1 percent guarantee fee is charged; it can be financed or paid in cash at closing. The maximum mortgage term is 30 years.

#### ***Indian Community Development Block Grant Program (ICDBG)***

This program was authorized by the Housing and Community Development Act of 1974. ICDBG is a competitive program, open to federally recognized tribes and certain tribal organizations. Each year, approximately 1 percent of the Community Development Block Grant appropriation is set-aside for ICDBG.

Some examples of ICDBG projects include construction of health clinics and other public facilities including gymnasiums and cultural centers; housing rehabilitation; health and education facilities; infrastructure, including roads, power, water, and phone lines; and waste water systems.

#### ***Native Hawaiian Housing Block Grant (NHHBG)***

The NHHBG program, Title VIII of NAHASDA, was authorized by the Hawaiian Home Lands Homeownership Act of 2000. The Department of Hawaiian Home Lands (DHHL) is the sole recipient. The NHHBG is designed to primarily benefit



low-income Native Hawaiians who are eligible to reside on the Hawaiian Home Lands. Eligible activities are the same as for the IHBG program. DHHL provides many housing services, including counseling and technical assistance, to prepare families for home purchase and ownership. DHHL is also using NHHBG and other funds to invest in infrastructure for future housing development.

#### ***Section 184A—Native Hawaiian Loan Guarantee Program***

Section 184A was established by Section 514 of the American Homeownership and Economic Opportunity Act of 2000, which amended the Housing and Community Development Act of 1992. The program is similar to Section 184, but is intended for Native Hawaiians eligible to reside on the Hawaiian Home Lands.

#### **Collaborations that Improve Service Delivery and Foster Economic Opportunities**

##### ***Federal Partnerships***

HUD collaborates with several Federal agencies that serve Indian Country; specifically the Bureau of Indian Affairs (BIA), Indian Health Services (IHS), the Departments of Agriculture (USDA) and Energy (DOE), the Federal Emergency Management Agency (FEMA), and the Environmental Protection Agency (EPA).

Although short and/or long-term cost savings are difficult to project, economies of scale should result from enhanced coordination and collaboration among Federal agencies. Increased collaboration among and within agencies will help ensure that Native Americans are receiving the support they need from Federal programs.

##### ***HUD–BIA Partnership***

In 2004, Assistant Secretaries' from HUD, U.S. Department of Agriculture (USDA) and Bureau of Indian Affairs (BIA) executed an Interagency Memorandum of Understanding (MOU) to improve the delivery of Federal programs and services for the benefit of Native Americans. While the primary focus of the MOU is to reduce the BIA's Title Status Reports (TSR) process down to 30 days.

The inability to secure title in a timely fashion has reduced access to capital for Native Americans and Alaska Natives living on tribal trust, allotted, and individual trust land (tribal lands). With evidence of clear title, land-use decisions can be more easily made and enacted, and business opportunities and job creation is possible. Building an efficient system for title delivery will pave the way for increased collaboration between tribes and government agencies, financial institutions, corporations, and builders.

Since the MOU was executed, the HUD–BIA partnership has produced several advancements including a reduction of processing time for TSRs, streamlined and synchronized administrative functions between the BIA and HUD offices when obtaining a mortgage on tribal lands, and developed staff training on a national recordation process. While the partnership has produced many positive results, there is still room for improvement in order to bring the titling process to market rate standards, and ultimately encourage economic development in Indian Country.

##### ***HUD and FEMA***

Since its inception in 2008, HUD and the Federal Emergency Management Agency (FEMA) have partnered to distribute nearly 1,900 mobile homes to Tribes all across the country. These homes were originally purchased by FEMA as emergency disaster housing but were never occupied.

In 2011, HUD decided to use our partnership with FEMA to tackle a very specific another housing issue in Indian Country—retaining good teachers. Teacher turnover rates on tribal land are very high due to the lack of affordable housing options. HUD's 2011 mobile home distribution became a Teacher Housing Initiative designed to retain good Native teachers in Indian Country. HUD distributed over 550 mobile homes in 2011 under this initiative. The tribes only pay for set-up and transportation costs and can use HUD's Indian Housing Block Grant funds or any other tribal funds to pay for these expenses.

##### ***Infrastructure Task Force***

An Inter-Agency Infrastructure Task Force ("Task Force") came into effect on June 2007 following the signature by the Department Secretaries of two Memoranda of Understanding (MOU) to develop strategies to improve access to safe drinking water and basic sanitation in Indian country.

The Federal partners of the Task Force are the U.S. Department of Agriculture (Rural Development—USDA–RD), the U.S. Environmental Protection Agency (EPA), the U.S. Department of Health and Human Services through the Indian Health Service, the U.S. Department of Housing and Urban Development (HUD), and the U.S. Department of the Interior (Bureau of Indian Affairs—BIA).

This group continues to meet on a routine basis to address the provision of quality water and waste water infrastructure services in support of tribal housing and tribal communities. As part of this effort a workgroup was established to develop a plan of action with all the possible recommendations for streamlining the multi-agency requirements placed on Tribes in order to receive Federal funding for water and wastewater infrastructure construction projects.

This working group provided their recommendations in February 2011 in a report titled, *Overview of Tribal Water Infrastructure Funding Application Processes and Recommended Paperwork Streamlining Opportunities*. The report contains 10 recommendations including: coordination of agency grant funding cycles, additional use of IHS sanitation deficiency system priority list by all Federal partners, develop a standard environmental review process and Federal agency cross training.

The larger Task Force is currently focusing on issues of sustainability in an effort to improve the quality and long-term viability of water and waste water infrastructure projects.

#### *Greener Homes National Summit*

In September 2011, the third annual Greener Homes National Summit was held in Denver, sponsored by ONAP. This conference brought together HUD, DOE, EPA and USDA, and is considered a hallmark of tribal and Federal participation. This 3-day conference fostered discussions to promote energy efficient tribal homes and communities, and encouraged economic development of renewable energy sources and energy efficiency technologies.

Federal agencies collaborated on a strategy to provide tribes with a coordinated, “one-stop” approach to training and technical assistance in energy efficiency and sustainability, which would eliminate duplicative efforts and conserve resources for both tribes and the Federal agencies involved.

### **Tribal Collaboration**

#### *Housing Needs Study*

HUD is conducting a comprehensive, nationally representative HUD study on the extent of housing needs in Indian Country and Hawaii. The last comparable study was conducted in 1996. In 2010 and 2011, HUD held seven regional outreach meetings with tribal housing stakeholders as well as a national tribal consultation meeting in Washington, DC to seek tribal input on the research approach and survey instrument design. The study’s outreach plan and survey instruments have been refined based on input from these sessions and comments from the expert panel convened specifically for the study.

Despite these efforts, there was concern from the tribal community that tribal leaders did not have the opportunity to review the study through formal tribal consultation. In response to that concern, HUD committed to hold additional tribal consultations on the survey instruments and study design in 2012 and begin the field survey work in 2013.

HUD is working with the National Congress of American Indians (NCAI) and the National American Indian Housing Council to host six regional consultations and two national consultations beginning in March of this year. The first national consultation took place earlier this week in conjunction with NCAI’s Executive Council Winter Session. The second national meeting will take place in June. Dates and locations for the regional meetings are being finalized.

In the meantime, the secondary data collection and analyses are underway.

#### *Negotiated Rulemaking to Implement the NAHASDA Reauthorization Act*

On October 14, 2008, the President signed into law the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (the Act). Section 105 of the Act contains the requirement to engage in negotiated rulemaking to create regulations for those provisions of the Act that are not self-implementing. HUD held six negotiated rulemaking sessions in fiscal year 2010, which produced a draft proposed rule.

This proposed rule was published in the *Federal Register* on November 18, 2011. Public comments were due on January 17, 2012. HUD received 20 public comments and is currently reviewing them. Preparations are being made to review the public comments and make any final adjustments. The rule will again be placed into Departmental and OMB clearance. After that process is complete, the final rule will be published in the *Federal Register*.

In May of this year, HUD will publish a *Federal Register* notice announcing the creation of a separate negotiated rulemaking committee to propose changes to the IHBG formula. The notice will request nominations to represent tribes on this new

committee. HUD anticipates holding its first meeting of this negotiated rulemaking committee in the fall of CY 2012.

#### *Indian Housing Plan (IHP) Conversion Update*

In 2005, the Office of Native American Programs (ONAP) started the process of converting the Indian Housing Block Grant (IHBG) program from a grant-based program to a fiscal year-based program. This major administrative change was the number one priority requested through the eight consultation sessions that were held around the country that year.

Since then, a tribal workgroup assisted HUD in developing the new IHP/APR form that is being implemented now. The new IHP/APR incorporates statutory changes from the 2008 NAHASDA Reauthorization, and extensively streamlines the planning and reporting process for IHBG funding.

The new IHP/APR also collects new data on program activities and tribal housing need. In response to the GAO report *Tribes Generally View Block Grant Program Effective, but tracking of Infrastructure Plans and Investments Needs Improvements*, the IHP will now track infrastructure in the section where the grantee identifies their low income and all families 'needs', as well as adding 'infrastructure to support housing' as a specific eligible activity. The APR will track as a specific outcome 'improve quality of existing infrastructure'.

In the past year, there has been intensive training around the country to ensure that everyone has the opportunity to learn about the new IHP/APR, and the administrative changes that are occurring with the shift to a fiscal year-based program. Additional training sessions will be available starting this summer.

The transition thus far has been a success. Over the next year we should see the benefits of this change. Improvements include: the ability to track activities and expenditures using only one IHBG grant rather than having multiple open grants; expenditure of the oldest IHBG funds first; ONAP obligation of most the fiscal year funding by late June rather than in September or later.

#### *Administrative Flexibility Working Groups on Native American Issues*

In February 2011, the President issued a Memorandum to Federal agencies entitled "Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments." This memorandum instructed Federal agencies to work with tribal governments—as well as States and localities—to reduce unnecessary administrative burdens and focus available resources to achieve better program outcomes. Based on comments and input from tribes and Native American business leaders, the Domestic Policy Council (DPC) and the Office of Management and Budget (OMB) convened five interagency working groups, comprised of senior program managers, to focus on areas that Indian Country identified as priorities. HUD is actively involved in working groups on Housing and also Loans and Credit (the other working groups include Training and Employment, Broadband Service, and Workforce Development). Goals for these groups include:

- **Housing.** This group is developing a matrix of Federal housing, community, and economic development programs across the various agencies to increase the visibility of available resources and determine how to make these programs more accessible.
- **Loans and Credit.** The goal of this group is to ensure that Federal loan and credit programs are deployed to tribal economies through: improved flexibility under existing loan and credit program authority; improved and innovative deployment, oversight and accountability of loan programs in Indian Country; reduction in inefficiencies or disconnections between existing programs; and improvement in knowledge of programs through better training and technical assistance.

Working groups have reached out to Tribes to receive input through written comments, conference calls, and discussions at conferences and other events.

#### **Closing**

Thank you again, Mr. Chairman, and Members of the Committee, for the opportunity to appear before you today. I look forward to continuing to work with you and your staffs on these issues. I would be happy to answer any questions you may have.

**PREPARED STATEMENT OF DOUG O'BRIEN**  
 DEPUTY UNDER SECRETARY FOR RURAL DEVELOPMENT  
 DEPARTMENT OF AGRICULTURE

MARCH 8, 2012

**RURAL DEVELOPMENT**

Chairman Johnson, Ranking Member Shelby, and Members of the Committee, I want to start by thanking you for inviting me to testify here today and to represent United States Department of Agriculture (USDA) on the issue of housing in Indian Country.

When we talk about housing at Rural Development, we often speak of the entire rural community—its infrastructure and facilities, its businesses, as well as the individual homeowner. Programs at USDA span a wide range of areas that have an impact on Indian Country, including food safety, housing, business development, telecommunications, water systems, crop insurance, nutrition, research, and of course the programs designed to assist farmers. According to the National Congress of American Indians, agriculture is the second largest employer in Indian Country. As such, Secretary Vilsack is committed to a USDA that faithfully serves Tribal governments, Tribal communities, and individual American Indians and Alaska Natives.

The Office of Tribal Relations (OTR), located within the Office of the Secretary, is the primary point of contact for Tribal consultation and collaboration within USDA and works with all USDA agencies to ensure that relevant programs and policies are efficient, easy to understand, accessible, and developed in consultation and collaboration with the American Indian and Alaskan Native governments they impact. OTR is responsible for improving our government-to-government relations between USDA's various agencies and Tribal governments, advising Secretary Vilsack on Tribal issues and concerns, Tribal consultation, the Alaska Native Claims Settlement Act (ANCSA), and issues impacting Tribal members. OTR works cooperatively and collaboratively across USDA to build an integrated approach to issues, programs, and services that address the needs of American Indians and Alaskan Natives. We believe that the efforts and commitment of OTR in partnership with all USDA is guiding the Department toward a more flexible and sustainable approach in addressing the needs of Tribal governments, the communities they serve, and the individuals living on Tribal lands.

Since President Obama's 2009 Memorandum on Tribal Consultation and Collaboration, a dedicated team from across USDA has been working to re-examine existing departmental policies and regulations regarding Tribal collaboration and consultation and how USDA programs are utilized in Indian Country. In 2010 we held a series of joint consultation regional events where we heard from Tribal elected officials and their representatives about program rules and the challenges to stronger utilization of USDA programs in Indian Country. Rural Development took part in those regional venues and RD staff and leadership have participated many times at the local, regional and national level in ongoing dialogue with Tribal leadership.

On June 9th, 2011 President Obama signed an Executive Order establishing the first White House Rural Council. The White House Rural Council's goal is to improve coordination of programs across Government and encourage public-private partnerships to promote increased economic prosperity and improved quality of life in rural communities. Chaired by Secretary Vilsack, the Council is responsible for helping coordinate Federal investments in rural areas and continues to hear from a wide variety of rural stakeholders, including Tribal governments. The Council breaks down program silos and finds areas for better collaboration and improved flexibility in Government programs. To further this objective, in August 2011 the Rural Council convened the White House Native American Business Leaders Roundtable with Tribal representatives, economic development experts, and Federal policymakers. At this roundtable participants discussed challenges Tribal businesses face, including access to capital, job skills and training shortfalls, and limited broadband deployment and adoption in Tribal communities. Just last week, Federal representatives and Tribal business and Government leaders participated in a Capital Access roundtable at the Reservation Economic Summit (RES) 2012, where we continued to delve deeper into the challenges and barriers faced in accessing necessary capital to build strong rural economies in Indian Country. The feedback and insight gained by my colleagues is being incorporated into our ongoing efforts to address economic growth in Indian Country, and USDA looks forward to all we can achieve with our partners in the Federal Government and in Indian Country to create more opportunity in Native American communities.

USDA is also addressing civil rights complaints that go back decades in order to pave the way for new and stronger relationships with the rural farming and ranching communities found throughout Indian Country. In October 2010, Secretary Vilsack announced the settlement of a decades-long discrimination case brought against the Department by Native farmers and ranchers: *Keepseagle v. Vilsack*. Up to \$760 million in monetary relief, debt relief, and tax relief is available to successful claimants. The claims period closed in December 2011 and we anticipate payments to successful claimants this calendar year. As part of the settlement of the *Keepseagle* case, the Secretary will appoint a Council on Native American Farming and Ranching that will meet regularly to further advise USDA on how our programs can build strong rural farming and ranching communities. We expect the appointment of the Council members to occur in the coming months.

Furthermore, USDA continues to be an active participant on the Tribal Infrastructure Task Force to address the ongoing need for safe drinking water and basic sanitation in Indian Country. Between 2003 and 2009, the combined funding from the Task Force Agencies—USDA, Environmental Protection Agency (EPA), Indian Health Service (IHS) and the Department of Housing and Urban Development (HUD)—provided 80,941 Tribal homes access to safe drinking water and 43,562 Tribal homes access to basic sanitation. In August 2011, USDA Rural Development provided a \$12 million grant and \$3.34 million loan to Mni Waste Water Company to complete phase II of a multi phase project to replace a failing water system that serves the Cheyenne River Sioux Tribe Reservation, as well as Meade and Perkins Counties in South Dakota. In fact, prior to this investment Rural Development hosted an interagency funding meeting with the Cheyenne River Sioux Tribe where the tribe spelled out its priorities and challenges associated with this project in front of Federal officials from USDA, the Indian Health Service, HUD and EPA—all of which also actively participate in the task force. These numbers demonstrate significant progress made by the Task Force agencies, but we recognize that more work is needed. To this end, the Task Force is refocusing its goals around the principle that access to safe drinking water and basic sanitation should be provided through entities that are sustainable and implemented through integrated agency planning that links the development goals of the tribe with the need for such services and infrastructure. This principle fits well with USDA Rural Development programs that are committed to improving the economy and quality of life in rural areas.

In recent months, USDA has been working to improve our program delivery to Tribal governments, communities and individuals they serve. As an outgrowth of the *Keepseagle* settlement, USDA has established a technical assistance network in partnership with the Intertribal Agriculture Council. The network works across Indian Country in 13 regional locations to provide needed technical assistance on the ground so that Tribal governments, communities and individuals have a stronger understanding of USDA programs and of how to strategically plan for their communities' growth. And finally, USDA launched a Strike Force initiative in southeastern States that is now expanding to western States with substantial Native American populations. The Strike Force initiative ensures that the Federal agencies (both within and beyond USDA) partner to provide effective and targeted technical assistance. These technical assistance efforts do not duplicate one another; instead, they complement and catalyze the efforts of staff from numerous agencies. USDA recognizes that Federal program managers need to strive to provide seamless technical assistance and we also recognize that in many rural communities, this type of targeted technical assistance is needed to uncover the best strategies to vision and build strong communities and families. We believe that these efforts will ensure the unique challenges of Native Americans, living both on and off reservations, will be addressed.

To better serve tribes and to ensure Rural Development investments flow onto Tribal lands, it is both pragmatic and necessary that we work in cooperation with elected Tribal officials, adhere to Tribal ordinances and laws, and partner with other Federal agencies such as the Indian Health Service, the Bureau of Indian Affairs (BIA), HUD, and many other Federal partners. Rural Development has exceptional staff in our nationwide network of State-level field offices and area offices across the rural landscape. These individuals work closely with Tribes and dedicated partners on a daily basis in the for-profit and nonprofit sectors. Rural Development staff in the local offices deliver programs for all three agencies in the Rural Development mission area—the Rural Business and Cooperative Service, Rural Housing Service and Rural Utilities Service. By being located in rural communities, we are able to cultivate important relationships with Tribal leaders, Tribal professional staff, lenders, realtors, community-based organizations, redevelopment authorities, leadership groups, and others. Each State-level Rural Development office maintains a Native American Tribal Coordinator to assist Tribes with their development interests by

providing technical assistance and programmatic knowledge throughout the application process. Rural Development provides financial programs to support essential public facilities and services such as water and sewer systems, housing, health clinics, emergency service facilities, electric, telephone and broadband services. Rural Development promotes economic development in rural areas by providing loans, loan guarantees, grants, and other assistance to applicants, including tribes, Tribal members, individuals and families, banks, and community-managed lending pools. And RD, I am proud to say, has a long history of investing in Tribal economies. From 2001 to 2011, Rural Development assistance benefiting tribes totaled more than \$3 billion. I believe we can continue on this path and even do more, if funds are available.

On the issue of housing in Indian Country, Rural Development understands the history of challenges as well as the opportunities that lie before us. USDA Rural Development continues to work closely with national organizations like the National Congress of American Indians, the National American Indian Housing Council (NAIHC), and the National Center for American Indian Enterprise Development to communicate Rural Development's program information to their members and affiliates. Over the past 10 years, our Rural Housing Service has invested nearly \$1.3 billion dollars that has benefited American Indians and Alaska Natives. Our Single Family Housing (SFH) Direct and Guaranteed loan programs helped over 7,200 American Indian and Alaska Native families become homeowners. RD's SFH Home Repair program funded home repairs for over 2,900 American Indian and Alaska Native families.

Over the same period, our Multi-Family Housing (MFH) Direct Loan program supported the construction of 67 properties and made nearly 1,200 rental units available to Tribal members. Housing Preservation Grants have helped repair or improve 1,412 American Indian and Alaska Native occupied housing units. Our MFH Guaranteed Loan program has supported the construction of 5 properties with 217 rental units available to Tribal members.

We have seen the impact of such projects first-hand. Just last month, our Under Secretary for Rural Development, Dallas Tonsager, had the privilege of taking part in a ribbon cutting ceremony held by the Maliseet Tribe to celebrate their first multi-family apartment complex. Working with our State office in Maine, the Maliseet Tribe broke ground in November 2010 at a time when the Tribal Housing Authority had 40 families on a waiting list for housing. This six unit housing complex, the first Multi-family housing facility funded in part by USDA Rural Development on Maliseet land, is a step in the right direction toward providing affordable housing to this community. But we would like to do more throughout Indian Country, and we are working to develop additional solutions to increase the availability of our loan programs to Tribal lands.

Over the last year, USDA staff have been meeting regularly with BIA staff to discuss land and lending issues that create challenges when extending credit for projects on trust land. As a result of these meetings a new MOU between USDA and BIA is currently being drafted which will improve the working relationships between USDA and BIA staff, allowing BIA personnel to better understand each of RD's programs and the associated technical requirements for delivery to American Indians, Alaska Natives and Indian tribes, and our own staff to better understand BIA responsibilities. On the subject of home ownership, the MOU will also foster collaboration to increase home ownership as well as home repair and rehabilitation opportunities by identifying and addressing barriers to leasing, mortgage approval, lien perfection, and foreclosure proceedings in Tribal courts. I am hopeful that this MOU will pave the way toward easier access to RD programs and ultimately provide increased homeownership opportunities in Indian Country.

RD has also been working hard to reduce the burden of costs associated with homeownership on Tribal lands. Historically, insurance and insurance-like products have been unavailable, difficult to access, or expensive on trust lands owned by tribes and Tribal members. In some instances this lack of insurance may have been an impediment to utilizing Rural Development financing for projects on Tribal lands. In practice, Rural Development requires Federal and applicable State laws and regulations to be followed when insuring Rural Development financed projects, but barring those limitations there is no legal or programmatic reason to deny the use of an appropriate insurance-like product on any project financed through Rural Development's Single Family Housing Direct Loan programs, and RD is working to develop solutions. The AMERIND Risk Management Corporation is a risk management agency that administers a tribally owned risk management pool for coverage of homes and other structures on Indian lands where there has been a lack of affordable insurance. Through discussions with AMERIND, RD is optimistic that we will be able to bring them into the insurer pool for RD projects, and normalize the

use of this product, which will make access to our housing products more amenable in Indian Country. A Rural Development Administrative Notice was published in November 2011 advising staff that the use of AMERIND coverage could save borrowers money and increase the available capital in Native communities.

We have worked hard with the BIA, HUD, the VA and NAIHC on all of these issues over the years. But we still need to improve access to our programs in any way that we can. Hopefully, trust reform and the BIA's new leasing regulations will help. But agencies, Rural Development included, will need to think creatively about how they can best provide their financing products to Tribal lands.

We look forward to publishing a final rule on the Substantially Underserved Trust Areas (or SUTA) provision in the weeks ahead. RUS published a Proposed Rule in December 2011 and closed the comment period on January 17th, 2012. Once published, the final rule will allow RUS to make our water, electric, telecom and broadband programs more affordable and accessible for projects financed within Trust Areas. We need to do a better job of working across agencies, both in the field and in Washington, DC, so that we better know each of our missions and capabilities, which will better enable us to resolve issues when they arise. We also need to work more closely with tribes so that Tribal leaders, Tribal councils and Tribal courts better understand the steps that they can take on their own as well as in partnership with Federal agencies to create more homeownership opportunities on Tribal lands. And finally, we need to work more closely with lenders to make sure the proper incentives are in place so that Federal loan guarantee programs are also used on Tribal lands. Our recent work with Tribal communities and other government entities makes me hopeful that we can continue to make progress on these issues.

I want to thank you for the Committee for the opportunity to speak here before you today.

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#### **PREPARED STATEMENT OF ROBERT MCSWAIN**

DEPUTY DIRECTOR, MANAGEMENT OPERATIONS  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

MARCH 8, 2012

Mr. Chairman and Members of the Committee:

Good afternoon. My name is Robert McSwain and I am the Deputy Director for Management Operations of the Indian Health Service (IHS). I am pleased to have this opportunity to appear before you today, and discuss the important issue of Native American housing and infrastructure development.

We are keenly aware of the need for adequate housing throughout Indian Country and of equal importance is the requirement for adequate infrastructure to support new and existing housing. Housing and supporting infrastructure are critical factors for a healthy living environment.

The IHS has the primary responsibility for providing water supply, along with solid and liquid waste disposal facilities for American Indian and Alaskan Native (AI/AN) homes and communities as part of delivering a comprehensive health program. The IHS provides sanitation facilities through construction projects to serve existing homes and communities, and for most new and like new homes. The IHS works cooperatively, as close partners, with tribes in providing these essential sanitation facilities. Enhancing tribal capabilities and building partnerships based on mutual respect are key factors in the success of this IHS program. The IHS also coordinates and advocates on behalf—of and in—cooperation with Tribes to seek resources from other Federal Agencies to support needed facilities.

#### **IHS/Federal Special Trust Responsibilities**

The IHS plays a unique role within the U.S. Department of Health and Human Services (HHS), to meet the Federal special trust responsibility by providing health services and resources to the 565 federally recognized AI/AN Tribes. IHS provides comprehensive health services to approximately 2.1 million AI/ANs through a system of IHS, Tribal, and Urban Indian (I/T/U) operated health service units and programs, based on authorities founded in treaties, judicial determinations, and Acts of Congress.

The mission of the Agency is to raise the physical, mental, social, and spiritual health of AI/ANs to the highest level, in partnership with the population we serve. The Agency aims to assure that comprehensive, culturally acceptable personal and public health services, including traditional medicine, are available and accessible

to the service population. Our obligation is to promote healthy AI/AN people, communities, and cultures, and to honor the inherent sovereign rights of Tribes.

The IHS seeks to work in partnership with the Tribal communities it serves and, as such, IHS health care facilities and their administration includes Tribal representatives who closely participate, as key stakeholders, in the health services preparedness and delivery system. Current public laws, Federal policies, and individual Tribal governance decisions determine the role and relationship IHS has with each Tribe, and the corresponding level and methods of health services delivery, support, oversight, control, and resources IHS provides.

#### **IHS Organization and Capabilities**

The IHS Headquarters (IHS-HQ) is located in Rockville, Maryland. The Agency has 12 strategically located Area Offices across the United States, which include IHS and Tribally operated hospitals and ambulatory health centers, as well as 34 Urban Indian health programs, located in 36 States. The I/T/U health care system provides patient care and public health services within Indian reservations and communities, and has well-established ongoing partnerships with Tribal governments and programs.

#### **Role of the IHS in the Provision of Sanitation Facilities Infrastructure**

Sanitation Facilities Construction (SFC) is an integral component of the IHS disease prevention activities. The IHS has carried out this program since 1959 using funds appropriated for SFC to provide potable water and waste disposal facilities for AI/AN people. As a result, rates of infant mortality, the mortality rate for gastroenteritis and other environmentally related diseases have been dramatically reduced by about 80 percent since 1973. IHS Physicians and health professionals credit many of these health status improvements to IHS's provision of water supplies, sewage disposal facilities, development of solid waste sites, and the provision of technical assistance to Tribally owned water and sewer utility organizations. Today, while less than 1 percent of the U.S. population is without access to safe water more than 12 percent or about 48,000 AI/AN homes, are without access to safe water or adequate wastewater disposal facilities and those families that live in these homes are still at an extremely high risk for gastrointestinal and respiratory diseases at rates similar to developing countries. Many of these homes without service are very remote and may have limited access to health care which increases the importance of improving environmental conditions in the home as part of a comprehensive public health program.

IHS plans, designs and provides professional engineering and construction project management services for approximately 400 SFC projects annually with a total cost of over \$190 million, which includes contributions from other agencies. The program manages annual project funding that includes contributions from Tribes, States and other Federal agencies. SFC projects can be managed by IHS or by tribes under the Indian Self Determination and Education Assistance Act. All SFC projects are carried out from beginning to end in cooperation with the Tribes to be served by the facilities. Projects are funded and implemented through an agreement between the Tribe and IHS. In these agreements tribes agree to ownership of the provided facilities as well as operation and maintenance responsibilities.

Annually, IHS works with Tribes to develop an inventory of needed sanitation facilities known as the Sanitation Deficiency system (SDS). The SDS data has sanitation deficiencies of homes by community and a priority ordered list of projects to address all of those deficiencies. As of November 2011, the list of all projects to correct sanitation deficiencies totaled almost \$3.1 billion, with those projects that are considered economically and technically feasible totaling almost \$1.46 billion. About 231,000 or 60 percent of AI/AN homes are in need of new or improved sanitation facilities. Maximum health benefits are achieved by addressing existing sanitation needs and by providing needed facilities to new homes as they are constructed.

Over 97 percent of IHS SFC funds are utilized for two types of projects. Regular projects to serve existing homes are selected in priority order from SDS. Housing projects to serve new and like new homes, serve Indian homes being constructed or rehabilitated by the Bureau of Indian Affairs Housing Improvement Program, Tribes, individual homeowners, or other Federal agencies except for new HUD housing. Housing projects are funded based on a priority based classification system.

#### **Coordination with States, Tribes and other Federal Agencies**

The IHS has coordinated with States, Tribes, local government and other Federal agencies since the first sanitation facilities project at Elko, Nevada, in 1958 which led to the passage of P.L.86-121, the Indian Sanitation Facilities Construction Act, in 1959. Now coordination occurs at all levels of Federal agencies from HQ to the local level for specific projects.



In 2007 the Environmental Protection Agency (EPA), Department of Agriculture (USDA), Department of Interior (DOI), Housing and Urban Development (HUD), and Health and Human Services (HHS) formed an Infrastructure Task Force (ITF) and signed two Memoranda of Understanding (MOU) to achieve the commitments made by the United States in 2002 under the United Nations Millennium Development Goals for improved access to safe drinking water and basic sanitation in Indian Country. Specifically, the United States committed to reduce the number of tribal homes lacking access to safe drinking water and basic sanitation by 50 percent by 2015. The ITF has Federal agency members as well as tribal representatives. A subgroup of the ITF was chartered to identify, prioritize and categorize barriers and recommended solutions. The barriers and recommended solutions developed by the subgroup can be divided into three major themes:

1. Infrastructure Funding,
2. Operation and Maintenance funding, including support for tribal capacity development,
3. Programmatic Coordination

The ITF continues to meet quarterly and have continued to work on these themes. To track progress in meeting the goal the agencies use IHS SDS data. A current priority of the ITF is to develop and implement strategies to support sustainable tribal operation and maintenance (O&M) organizations with the intent to target limited infrastructure funding specifically toward access.

A positive outcome of the ITF was the coordination of American Recovery and Reinvestment Act sanitation projects by IHS and EPA. Projects were agreed upon in consultation with tribes at the IHS Area and EPA Regional level and two agreements were developed to move the EPA projects and funding to IHS for nearly 160 projects totaling \$90 million. We have been able to agree upon standard reporting requirement which are now used for all IHS and EPA projects. We have also standardized and streamlined interagency agreements between the two programs.

All members of the ITF have been working to streamline all paperwork and processes for tribal programs from the application process through National Environmental Policy Act (NEPA) determinations. Last year a process was developed in Alaska with EPA, IHS, USDA and the State of Alaska to streamline sanitation project implementation in Alaska.

In Arizona, as a result of the efforts of the agencies under the ITF two regular coordination activities are ongoing. There is a Multi-Agency Tribal Infrastructure Collaborative which has representatives from various Arizona State agencies, EPA, HUD, USDA, DOI, the Navajo, Phoenix and Tucson IHS Areas, the Intertribal Council of Arizona, plus other participants. We also have seen a group of water and waste water system technical assistance providers start to meet and coordinate technical assistance for Tribal O&M groups.

For IHS projects, coordination with other Federal agencies has always been a priority. We have historically handled this at the project level beginning with project preplanning. For projects serving existing homes, this begins in the SDS inventory of projects and is used by IHS and the Tribes to determine funding needs and possible contributions from the State, and other Federal agencies. This information is used by IHS and the Tribes to seek and secure these sources of funding before IHS can execute the project. Many projects on SDS require funding from more than the IHS appropriations because of the vast number and scale of the projects on the list. EPA uses SDS data to select EPA Indian Set-Aside projects to access Clean Water Act and Safe Drinking Water Act State Revolving Funds. So, coordination with other Federal agencies is imperative.

Those projects that serve new and like new homes funded with SFC housing funds, are also often partially funded with outside contributions especially those for renovated homes also known as like new homes. IHS does not have the authorization to provide household plumbing, so, in many cases, other sources of funds are used to complete renovations and provide household plumbing. These projects also require advanced coordination and planning.

Approximately 43 percent of all IHS SFC funded projects over the last 5 years are funded either partially or entirely with contributions from others. Using these contributions IHS is able to serve homes or buildings that are not eligible for IHS funding, such as using contributed funds for provision of offsite sanitation facilities for new HUD homes funded through the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA). We use contributed funds to serve new NAHASDA homes because IHS is not authorized to use IHS construction funds for this purpose.

All projects require some coordination between IHS, the Tribes, States and other Federal agencies. In addition to funding, there is coordination that occurs under NEPA determinations which progresses to acquisition of easements. With mixed sources of funding in many IHS projects, the NEPA processes can become much more complex. After the systems are constructed, coordination still occurs to support long term technical assistance for operations.

### **Challenges in Providing Safe Water and Waste Disposal Facilities in Indian Country**

The needs for sanitation facilities infrastructure grow every year. Growth is partially from population growth and inflation, but changing environmental laws and regulations have an impact on need which can create a long term O&M impact. This long term O&M impact is due to the operational cost and complexity of some of the facilities needed.

For example, the arsenic rule went into effect in 2006 and promptly our data indicated 18,000 additional homes impacted in 38 communities. Currently, EPA data shows there are now 36 systems on tribal lands serving 42,700 people out of compliance for Arsenic. EPA data includes BIA and other systems that are not part of the IHS needs data. While treatment may be possible, in most cases, the types of treatment needed may double or more the costs of water service. In addition, treatment requires highly trained and certified operators who may not be supportable by a small rural water system. In many of these systems, we are working with the tribes to regionalize water systems or looking to new water sources to avoid treatment. It is necessary to balance upfront costs with long term operation costs. Arsenic is just one example. The groundwater and disinfection bi-products rules also add new complexity of operations for all of rural America.

Tribally owned and operated water and waste water systems are aging. Much of the major infrastructure components were constructed nearly 30 years ago. Population growth, new environmental laws and the need for system repairs and replacement also affects the annual infrastructure need.

IHS along with other Federal agencies is seeking a way to make the operation and maintenance of sanitation facilities constructed in Indian Country sustainable. This requires a multi-tiered approach, beginning with the design and construction of facilities appropriate to the operational capacity of the local community. Federal agencies need to support operator training, and necessary startup supplies and equipment to the O&M organization to improve the operating capacity of the community as we construct new facilities. To have sustainable facilities there needs to be sustainable O&M organizations that, in addition to operating the facilities, can set and charge user fees, along with disconnecting users for nonpayment. All Federal agencies are seeking ways to coordinate the activities of our O&M technical assistance providers to support this vision.

Since 1982, Congress prohibited the use of IHS sanitation facilities construction funds for HUD funded homes in appropriations bills. Before NAHASDA was passed in 1996, the IHS received funding directly from HUD to serve HUD homes. Afterwards, all funds went to the Tribally Designated Housing Entities (TDHEs) across the country and reduced funding provided to the IHS through HUD to address infrastructure for HUD homes. This has reduced coordination between HUD and IHS. IHS is willing to assist in site selection, planning design and construction if the TDHE desires. We can also assist in the coordination with other Federal agencies to fund the needed facilities

### **Summary**

In summary, IHS seeks to provide the best culturally acceptable health services to all federally recognized Tribes, while respecting their tribal sovereignty, and tribal self-determination. IHS is committed to providing comprehensive health services to Indian Country including the provision of sanitation facilities to support housing. In addition, IHS will continually seek opportunities to improve our communication, integration, and coordination with all Federal, State, local, and Tribal partners.

Finally, IHS participates in forums to review, discuss, and improve Federal-level coordination of infrastructure to improve access to safe water supply and wastewater disposal facilities throughout Indian Country.

This concludes my remarks, and I will be happy to answer any questions you may have. Thank you.

**PREPARED STATEMENT OF JODI GILLETTE**

DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS  
DEPARTMENT OF THE INTERIOR

MARCH 8, 2012

Good morning, Mr. Chairman and Members of the Committee. My name is Jodi Gillette; I am the Deputy Assistant Secretary for Indian Affairs. I am here today to provide the Department of the Interior's (Department) testimony on the Bureau of Indian Affairs' (BIA) role in assisting individual Indians in the pursuit of homeownership. While we recognize that the Department of Housing and Urban Development (HUD) has primary responsibility for the development of new housing for the Federal Government and for development of affordable housing in Indian Country, my statement will provide some background information on the BIA's Housing Improvement Program (HIP). I will also discuss the current process and procedures for obtaining a Title Status Report (TSR) within the BIA, and our efforts to promote homeownership.

**Housing Improvement Program**

The HIP addresses the Department's strategic goal of serving Indian communities by improving the quality of life of eligible Indians by helping to eliminate substandard housing and homelessness in or near federally recognized reservation communities. The program includes housing repairs and renovations of existing homes and construction of modest homes for families who do not own a home but have ownership of or lease sufficient land suitable for housing. The BIA policy and methodology ensures that the neediest of the needy are provided housing assistance by implementing eligibility criteria that is identified in 25 C.F.R. Part 256.14.

The HIP is 95 percent contracted or compacted by tribes. Tribes participating in the program must comply with regulations found in 25 of C.F.R. Part 256 (Housing Improvement Program).

On September 28, 2004, the BIA entered into a Memorandum of Understanding with the Departments of Agriculture and HUD for the purpose of establishing a framework for partnering among the agencies to improve assistance to American Indians and Alaska Natives in the development and operation of affordable housing on trust or restricted lands, reservations, and in approved service areas. Our goal is to assist tribes in improving their living environment through the delivery of quality housing and in resolving issues that delay processing of mortgage loans to eligible Indians.

**Land Title Grant Procedures**

The BIA has Land Titles and Records Offices (LTRO) located at 8 of its 12 regional offices: the Alaska Regional Office in Anchorage, Alaska; the Eastern Oklahoma Regional Office in Muskogee, Oklahoma; the Great Plains Regional Office in Aberdeen, South Dakota; the Northwest Regional Office in Portland, Oregon; the Pacific Regional Office in Sacramento, California; the Rocky Mountain Regional Office in Billings, Montana; the Southern Plains Regional Office in Anadarko, Oklahoma; and the Southwest Regional Office in Albuquerque, New Mexico. Each LTRO is the official Federal office for recording all title conveyance and encumbrance documents for Indian lands within the LTRO's jurisdiction. The LTRO is also the Federal office for the examination and certification of title to Indian trust and restricted lands. The official Federal certificate of title to Indian lands is the Title Status Report (TSR). The TSR reports the legal land description, the current ownership, and the recorded liens and encumbrances on ownership for a specific tract of Indian trust or restricted land. The issuance of TSR's for mortgages is the top priority of the Land Title and Records Offices. We strongly support programs that improve or develop housing on Indian lands for Indian people.

The certified title is required by the lending institution to verify that the loan applicant has acquired a leasehold interest on Tribal land or that the loan applicant has total ownership of the trust land, and that the title is clean and clear of any liens against the property so the loan application process can move forward.

Once the mortgage has been approved using the BIA-generated TSR, the document is sent to the LTRO for recording purposes with a request for a second certified TSR. HUD requires the subsequent TSR showing the mortgage as an encumbrance to the Title before the loan is guaranteed. Some lending institutions also require this additional TSR before releasing the funds.

There are very few differences in the production of TSR's from location to location. When there are, often those differences are dictated by the particular lending institution or Federal agency providing the loan. Requirements and standard operating procedures vary from Federal agency to Federal agency. The BIA LTRO's strive to

accommodate these differences, as we support the mission to provide home loans to Indian people. Private lending institutions also have varying requirements and procedures, consequently our process for providing TSR's may vary to accommodate the lender.

Since the inception of the Federal loan programs, the mortgage requests for certified titles have been a high priority for the LTROs. We have made significant changes to our title program over the past several years aimed at improving our ability to deliver in an accurate and timely manner in all aspects of our Indian land title operations, including the processing of TSRs. Previously, the procedure to request a TSR for mortgage purposes required that all requests first go through the Agency Superintendent at the relevant BIA office through the Regional Director on behalf of the tribal member. Recently, the BIA Division of Land Title and Records (DLTR) and its Land Titles and Records Offices changed their business model from a passive model or "examine-and-certify-title-only when-requested" to a proactive business model of "title-on-demand" that requires the title to all Indian trust and restricted lands be maintained in an up-to-date certified status at all times. In December, 2011, the DLTR redesigned the TSR to improve its readability and to make it similar to commercial title products. The redesigned TSR is produced and certified as a completely digital title report that is stored in a TSR repository as part of the Trust Asset and Accounting Management System (TAAMS). The certified digital TSR can be retrieved from TAAMS as an electronic digital image file that can be printed and mailed or can be attached to an email message and sent directly to the TSR requestor, whether the requestor is a BIA agency office or a mortgage lender. Beginning in January 2012, the LTROs began the process of producing digitally certified TSRs for more than 212,000 tracts of Indian trust and restricted land. The title ownership to each tract of land is re-certified and a new digital certified TSR produced after any conveyance of ownership, whether by deed or probate order. We have additional changes planned in the near future which will further improve the quality of the data in our title system, thus improving our overall product.

In the 2004 MOU between the Departments of Housing and Urban Development, Agriculture, and the Interior, the BIA's Realty and LTRO programs agreed to provide the necessary products and services within 30 days to keep the process moving forward to assist Indians in becoming homeowners. Lenders can utilize the information in those TSR's to insure that the lands are free of liens and are available for mortgaging.

The BIA Division of Land Titles and Records has partnered with the HUD Office of Native American Programs to provide training to lenders in order to educate the lenders concerning the title process for Indian mortgages, and to facilitate and improve the efficiency of the mortgage process. Anytime a mortgage is approved it has the potential to improve the quality of life for Indians. As stated earlier, requests for title status reports for mortgage purposes are and will remain a high priority for the Bureau. The implementation of TAAMS has increased efficiency and cost savings in the management of Indian lands and in the production of TSRs for mortgage purposes.

#### **Proposed Leasing Regulations and the HEARTH Act**

Indian Affairs is in the process of revising leasing regulations as part of the effort to return control of land use decisions to tribal management and to streamline surface leasing processes to promote homeownership, economic development, and clean energy. The comment period on those proposed regulations ended over a month ago, and we anticipate issuing final regulations later this year.

In addition to proposing revisions to existing leasing regulations, the Department strongly supports the Helping Expedite and Advance Responsible Tribal Homeownership Act (HEARTH Act), both the House and Senate versions, H.R. 205 and S. 703 respectively. The HEARTH Act would restore tribal authority to govern leasing on tribal lands and to promulgate regulations for the governance of those leases, while preserving the statutory tools available to the Secretary for carrying out the trust responsibility to tribes. This model ensures that tribal regulations provide a mechanism for environmental review and public comment, exempting the Secretary for liability from claims by parties to the lease, and authorizing the Secretary to cancel a lease that is not in accordance with approved tribal regulations.

Both versions of the HEARTH Act would amend certain sections of 25 U.S.C. § 415 (the Indian Long-Term Leasing Act) to permit tribes that choose to develop their own leasing program to approve and enter into certain leases without prior express approval from the Secretary of the Interior. Under both pieces of legislation, willing tribes would initially submit their own leasing regulations to the Secretary of the Interior for approval. Following Secretarial approval of such leasing regulations, tribal governments would process leases for tribal trust land at the tribal

level, pursuant to their own laws, without a requirement for further approval of the Secretary. This has the potential to significantly reduce the time it takes to approve leases for homes and small businesses.

This concludes my prepared statement. I will be happy to respond to any questions you may have.



**RESPONSE TO WRITTEN QUESTION OF CHAIRMAN JOHNSON  
FROM SANDRA B. HENRIQUEZ**

**Q.1.** Ms. Henriquez, I'd like to get your thoughts on the question I posed to Mr. McSwain regarding health effects of poor housing conditions. As I've said, I've seen far too many inadequate homes on reservations that house two or more families, which cause a number of problems such as black mold. Tribal leaders and those involved with the schools have also raised the issue that kids living in overcrowded conditions have trouble finding places to study or even rest at night.

Can you give us your sense of the negative impact unsafe and overcrowded housing has on the health and well being of Native communities?

**PIH Response**

**A.1.** The Office of Native American Programs (ONAP) has received anecdotal evidence about the negative impact overcrowded housing has on the health and well-being of Native American families, and in particular, children. Children living in overcrowded homes are more likely to have immediate health and safety issues. Children are often doubled up in bedrooms with siblings or other family members, or sleep in other areas of the house, such as the living room or kitchen. Poor ventilation in overcrowded conditions spreads disease and contributes to mold growth.

Children in overcrowded housing conditions are often exposed to drug and alcohol abuse at a much younger age—either within the household by a family member or outside the household as the child is seeking to avoid the overcrowded situation. The stress created by overcrowded living conditions can contribute to increased verbal and physical abuse as well.

Overcrowding affects learning and education. There is often no space or a quiet place for a child to do school work. Without an appropriate place to sleep or study, these children do not perform well in school. Some tribally designated housing entities (TDHEs) have made a connection between children living in overcrowded conditions and high truancy rates. Ultimately, families and children living in overcrowded units suffer long-term financial consequences.

From a housing management standpoint, overcrowding conditions make it more difficult to maintain a home and causes additional wear and tear on the unit, which contributes to such factors as mold growth. Mold growth can cause respiratory illness and exacerbate asthma symptoms. Children, the elderly and pregnant women are the most vulnerable to mold-related illnesses.

To combat this situation, Tribes and TDHEs have developed youth programs to give children a place to go after school. However, the most effective measure to combat the negative effects of

overcrowding is to provide additional units to reduce the number of overcrowded units.

HUD's Indian Housing Needs Study will attempt to quantify the number of overcrowded units and delineate between units that are overcrowded due to a lack of housing options (*i.e.*, homelessness) and units that are overcrowded by choice—through multigenerational living. To address the latter, TDHEs are constructing units to take into consideration cultural preferences such as multigenerational living, cooking, heating and storage needs.

HUD has taken a proactive stance on mold abatement and remediation in Indian Housing. This includes annual training on mold prevention in each ONAP region and site visits and technical assistance in areas hardest hit by mold and poor air quality. ONAP has also provided Imminent Threat grants through the Indian Community Development Block Grant program for severe mold infestation.