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Briefing on Native American Housing

White House Forum on Tribal Housing

Housing remains a critical issue for Indian Country. American Indians and Alaska Natives face some of the worst housing and living conditions in the United States, where 14 percent have no electricity, nearly 12 percent lack plumbing, and 11 percent lack kitchen facilities. In some areas, up to 50 percent of Native homes are without phone service. Additionally, 23 percent of Native households pay 30 percent or more of household income for housing. Barriers to housing development in Indian communities include limited private investment opportunities, poorly functioning housing markets, and abject poverty.



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Background

According to the Census Department's American Community Survey (ACS) for 2010, 54 percent of American Indian and Alaska Native householders owned their own home in 2010. This compares with 65 percent of the overall population. While these statistics demonstrate a relatively low homeownership rate, the more perplexing problem for Native Americans is the condition of housing within tribal communities, and the overcrowding that approaches three times the rate for the general population.

With respect to overcrowding, the ACS reports that:

- Just over 8 percent of American Indian/Alaska Native households are overcrowded, nearly three times that of the national households;
- 1.1 percent of White households are classified as overcrowded.

Past housing studies have been conducted on the extent of housing needs in Indian Country and all have concluded that Indian communities are in critical need of improved housing conditions. The U.S. Department of Housing and Urban Development is currently conducting a Congressionally mandated Native American housing needs assessment to further inform policy in ways that enable tribes to more effectively use existing resources to improve housing conditions. It is also intended to provide important information that will allow HUD to serve tribes more effectively.

The study is critically important because the study has the potential to significantly impact the overall funding for the Indian Housing Block Grant program. This study is expected to be completed in the latter half of 2014.

A 2003 U.S. Commission on Civil Rights study, "A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country," estimated nearly 200,000 housing units are immediately needed to provide

The **National American Indian Housing Council** (NAIHC), founded in 1974, is the only national organization solely representing housing interests of Native people who reside in Indian communities, Alaska Native Villages, and on native Hawaiian Home Land



adequate housing in tribal areas. We believe that number is probably now closer to 250,000 given the rapid increase in population in tribal communities.

Among other ACS information that should be considered are the following:

- 25.9 percent of American Indians and Alaska Natives live below the poverty level, compared to 10.8 percent of Whites and 13.4 percent of the national population.
- \$16,716 is the average per capita income for American Indians/Alaska Natives; \$31,599 for Whites; \$27,041 for the national population.
- \$36,520 is the median household income for American Indians/Alaska Natives; \$54,535 for Whites; and \$51,425 for the national population.

As one can see readily discern, providing safe, decent, and affordable housing against this backdrop is extremely difficult.



Addressing Housing Development Challenges

Programs designed to assist in the development of housing in Native American Communities commonly function under the most challenging of circumstances. Remoteness and limited resources increase the costs of the already limited resources that are available in Native communities. The **Native American Housing Assistance and Self-Determination Act (NAHASDA)**, is the single, largest source of funding for tribal housing across the United States. NAHASDA authorizes funding for the Indian and Native Hawaiian Housing Block Grant programs. Funding for other Indian housing and related community development activities is appropriated annually to a variety of Federal agencies, primarily through the Department of Housing and Urban Development's Office of Native American Programs.

Substantial funding amounts were made available by the American Reinvestment and Recovery Act of 2009 (ARRA) enacted in February 2009. Along with the \$700 million dollars of Indian Housing Block Grant (IHBG) funding from the fiscal year (FY) 2010 Transportation, Housing and Urban Development, and Related Agencies Appropriation Act, these funding levels reversed a decade of funding levels that failed to keep pace with either inflation or the acute housing needs of tribal nations.

However, if the President's Budget Request for FY 2013 were to be approved by Congress as requested, it would mark three consecutive years of flat-lined funding for the IHBG program. Funding levels for housing development, while not the entire solution to ameliorate the dismal housing situation in tribal communities, must be protected. The IHBG is the funding component and life-blood of NAHASDA. It is also a prime example of successful federal legislation that has greatly enhanced tribes' ability to meet their self-determined goal to provide culturally relevant, safe, and quality affordable housing for native people.

For tribes to fully realize the potential of the IHBG program, however, it must be adequately funded. The National American Indian Housing Council (NAIHC) projects, based on inflation, rising construction costs, and other factors, that an investment in the IHBG program of \$875 million per year is needed to begin to meet the backlog of housing needs and bridge the gap in the quality of living conditions between Indian Country and the rest of the nation.



KEY DISCUSSION TOPICS

Housing market in tribal areas

There is very little private investment in tribal housing. Few private homes exist on tribal lands. The private sector is reluctant to invest in tribal areas. There exists a tremendous unmet need to support private and public investment in tribal housing. One such effort to meet this need has been the **Section 184 Indian Loan Guarantee Program**. The 184 program was authorized by the Housing and Community Development Act of 1992 and was intended to foster homeownership on tribal land. It is a single-family mortgage loan program that provides private financing with a guarantee of 100 percent.

Since 1995, 17,380 loans have been guaranteed with a value of just a little over \$2.7 billion. Significantly, more than 50 percent of these loans have been made in just two states – Oklahoma and Alaska, where there are no reservations and loans are overwhelmingly made on fee simple land. In fact, in Oklahoma only 25 of the more than 7,200 loans have been on allotted or tribal trust land. Nationally, more than 80 percent of all loans have been made on fee simple land. These numbers suggest that the Department of Housing and Urban Development’s Office of Native American Programs must focus more attention on the challenges of providing services to tribal members who live on tribal trust or allotted land.

Tax Base

Nothing in Indian Country compares to the tax base available to municipal, county, and State governments. There are limited examples of tribes and tribal communities developing a revenue stream through taxation and providing basic community development and infrastructure. Bonding and other methods to raise capital are desperately needed for infrastructure development.

Infrastructure

Sound physical infrastructure is vital for housing to be an engine of economic development. Challenges to physical infrastructure development include access to capital and financing, conflicting statutory and regulatory provisions, and a need for comprehensive planning. HUD does not collect grantees’ infrastructure plans nor does it measure their investments in infrastructure for affordable homes funded by the IHBG program. (GAO Report February 2010). There is an acute need for sanitation-related infrastructure for Indian housing in general, and the GAO survey indicated a significant need for sanitation infrastructure for HUD assisted housing:

The prohibition of the use of IHS sanitation facilities funding for HUD funded housing/community development projects complicates planning and the ability of tribes to combine resources. Prior to 1982, IHS provided funding for off-site sanitation facilities for newly-constructed HUD homes. After 1982, Congress began to appropriate these funds to



HUD's Indian housing program, and IHS was statutorily precluded from funding this type of facility. These funds were usually transferred to IHS from HUD or the Indian Housing Authorities to provide water, sewer, and solid waste facilities for homes.

Funding for planning and capacity building is limited. NAIHC is in a position to assist in strategic planning and capacity building. The Indian Community Development Block Grant (ICDBG) funded at \$60 million is not adequate. Tribes should receive at least 5 percent, and no less than \$100 million, of the ICDBG given the current state of infrastructure development.

Opportunities, nevertheless, do exist for private investment because the need for housing in Indian Country is so great. There was no bubble to burst in tribal housing. There is a monumental need that only private and public investment can provide.

Resource and Institutional Development

Resources must be made available from federal and non-federal government sources, foundations, non-profits and the private sector in amounts sufficient to enable leveraging, mixed finance and leveraging, and other strategies.

Barriers

Statutory and regulatory provisions too often prevent closer coordination of efforts, both federal and tribal, for tribal housing and related economic development programs. Public Law 638, Contracting and Self-Governance, enables tribes to reduce or eliminate these barriers within a federal agency; however, there are not adequate methods that permit tribes to reduce or eliminate barriers across two or more federal agencies. Constructing new housing requires roads; electrical, water, and waste water systems; and any other number of basic infrastructure elements that come from multiple sources with multiple regulations and requirements; including environmental reviews that vary from federal agency to federal agency.

Opportunities

There are opportunities to include tribes and tribal housing professionals when drafting more user-friendly regulatory methods. There are incalculable benefits of gaining the insights and experiences of tribal housing professionals when notice and guidance material for housing is drafted. Another possibility would be to combine Federal housing programs that have similar purposes under the auspices of a 477-like program administered by the Department of the Interior's Bureau of Indian Affairs.



Tribal Decision-Making

If economic and community development are to take root, Tribes and tribal leaders must include housing as a topic of overriding importance. Tribal housing professionals must include tribal leaders, tribal members, and tribal organizations in the decision-making processes.

Planning and Management Capacity

Management capacity is lacking in tribal communities due in large measure to resource availability. Funding is limited for planning and management capacity and HUD-ONAP's contracting barriers limit, despite the good intentions, adequate and timely responses to capacity issues.

Using Business Plans

To make good use of using business plans requires the capacity to develop business plans preceded by strategic planning. Nearly everyone agrees that a business plan is needed for housing as well as overall economic development; the barrier is more related to the lack of resources in housing that create a "crisis-management" environment. Strategic planning is needed and is a subject area that NAIHC, with adequate funding, could provide Indian Housing Block Grant recipients.

Productive Steps That Could Take Place Immediately

Ensure that outreach and consultation are tribally-driven

Indian Country believes that tribal consultation is at the heart of the government-to-government relationship between tribes and the federal government. Based on a series of Executive Orders, HUD has a long-standing written policy on tribal consultation, which was not appropriately employed at the beginning of the Native American Housing Needs Assessment process. NAIHC would like to propose a remedy for HUD and submit this to be considered as a model for other federal programs related to tribal participation.

NAIHC respectfully requests that HUD establish a permanent **HUD Tribal Advisory Committee** to serve as a point of contact for future consultation efforts. This Committee can serve multiple purposes, including providing guidance and advice on tribal consultation. This Committee should be created immediately to ensure that meaningful tribal consultation is provided for future projects.

Policy decisions should have the active participation of tribal leaders and tribal housing professionals. through the establishment of an **Interagency Native American Housing Task Force** of politically appointed officials to provide and better develop strategies for tribal housing development. Tribal representatives and tribal housing professionals should meet with the federal officials to address the most pressing issues related to housing and community development. The Task Force should at a



minimum include the U.S. Department of Housing and Urban Development (Public and Indian Housing, Office of Native American Programs (ONAP)); U.S. Department of the Interior's Bureau of Indian Affairs; the U.S. Department of Health and Human Services (Indian Health Service (IHS) and Administration for Native Americans (ANA)); and the U.S. Department of Veterans Affairs (Veterans' Administration Direct Home Loans for Native American Veterans Living on Trust Lands); and the White House Office of National Drug Control Policy.

Tribal Participants should include elected tribal officials; the National American Indian Housing Council (NAIHC) Board of Directors and designated staff; the National Congress of American Indians; NAIHC Regional Housing Association representatives the nine NAIHC regions; AMERIND Risk Management Board representatives and designated staff; Office of Hawaiian Affairs representative(s); and the Department of Hawaiian Home Lands representative(s).

Native American Housing Foundation

NAIHC recommends the establishment of a federally-chartered foundation, authorized to accept gifts and donations of real property or capital from private entities. HUD's Office of Native American Programs would use these funds to supplement its congressionally-appropriated funds. Additional resources would be channeled into tribal housing and related economic development activities.

Recommendations and Best Practices

We have outlined myriad obstacles and identified many challenges to housing development throughout this briefing paper. The NAIHC also recognizes that much good work is being done by many tribal housing supporters in the private, public, and nongovernmental sector. This Administration has clearly led the effort to uphold the time-honored principle of a nation-to-nation relationship among the tribal governments and the Federal government.

This week, tribal housing professionals and tribally elected leaders will offer an array of thoughts and recommendations to increase our capacity to better address the housing development needs that are so vital to our tribal economies as well as individual tribal members. As the President of the National Congress of American Indians told the NCAI membership in December, "While the Indian budget must be held harmless, many changes that tribal nations seek are low-cost regulatory fixes that would allow tribal governments to fully contribute to the economic recovery of our nation." That same thing can be said about housing development.

Regulatory Relief:

On November 29, 2011, the Bureau of Indian Affairs (BIA) published a notice of its intension to revise the regulations related to the surface leasing process on Indian lands (25 CFR 162) in the *Federal Register*. According to the BIA, these proposed changes to surface leasing regulations will streamline the approval process for home ownership, expedite economic development, and spur renewable energy development in Indian Country.



Another prime example of a low cost regulatory fix is the recent Administration action in the regulatory area related to the National Environmental Policy Act and categorical exclusions. On May 3, 2012, the Bureau of Indian Affairs published a notice in the *Federal Register* that would add to the categorical exclusions now in the Department's Manual 516 that relate "to the leasing and funding for single-family home sites on Indian land, including associated improvements and easements, which encompass five acres or less of contiguous land." This simple measure will expedite the development of housing in ways that will lead directly to the lessening of overcrowding and the construction of homes.

The Indian Employment, Training, and Related Services Demonstration Act of 1992, Public Law 102-477 ("the 477 Act"), is unique because it permits Federally-recognized Tribes and Alaska Native entities to combine formula-funded Federal grants funds related to employment and training-related programs, into a single plan with a single budget and a single reporting system. Using the 477 Act model in housing would provide consolidation, streamlining and the elimination of some consider data and administrative reporting requirements. In addition to the administrative savings, training and technical assistance and other capacity building efforts would be improved using the 477 Act as a model.

Recommendations for Regulatory Relief:

NAIHC recommends expansion of the Wheeler-Howard Act's Indian preference provisions to employment, vacancies, and promotions within national and regional HUD Office of Native American Program Offices.

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Legislative Remedies:

Congress passed a significant legislative priority for Indian Country when H.R. 205, *Helping Expedite and Advance Responsible Tribal Homeownership Act of 2011* (HEARTH Act), passed the Senate by a 100-0 Vote on July 16. The House of Representatives approved the measure 400-0 in May. Indian Country has strongly supported and actively advocated for the HEARTH Act since its introduction by Representative Martin Heinrich (D-NM) in 2009. The legislation amends the Indian Long-Term Leasing Act of 1955 (25 U.S.C. § 415) to reform federal leasing requirements and encourage housing and community development in Native American communities.



Indian Country supports the inclusion of a new title in the 2012 Farm Bill that includes specific housing programs that make tribes and their tribal members eligible for housing located in rural areas. Funds should be set-aside each year from these programs for tribes, their tribal housing entities, and eligible tribal members; these allocations should be based on need. The United States Department of Agriculture (USDA), specifically the Rural Development mission area, offers various programs that could have signal value to Indian Country if tribes and tribal individuals have access to the programs and do not have to compete with non-Indian jurisdictions for limited funding in rural areas.

Tribal housing supports the reauthorization of the Public and Indian Housing Drug Elimination Program (PIHDEP). The program has expired and has not been funded since 2001. Tribes and tribal housing authorities need the funding that the PIHDEP can provide to address drug issues and criminal activity in tribal housing areas. PIHDEP was created by the Anti-Drug Abuse Act of 1988 and was intended to reduce crime and drug use in public housing communities.



Conclusion

The Native American Housing Assistance and Self-Determination Act (NAHASDA) was enacted to provide Indian tribes and Native American communities with new and creative tools necessary to develop culturally appropriate, safe, decent, affordable housing. While tribes value and appreciate the investment and the efforts that the Administration and the Congress have made, Indian Country has very specific concerns, about the level of assistance and the funding levels associated with tribal housing.

Tribes respectfully requests that the Administration consider these needs against a backdrop that includes the following observation from the Government Accountability Office (GAO) in their Report 10-326, Native American Housing, issued in February 2010 to the Senate Committee on Banking and the House Committee on Financial Services:

NAHASDA's first appropriation in fiscal year 1998 was \$592 million, and average funding was approximately \$633 million between 1998 and 2009. The highest level of funding was \$691 million in 2002, and the lowest was \$577 million in 1999. For fiscal year 2009, the program's appropriation was \$621 million. However, when accounting for inflation, constant dollars have generally decreased since the enactment of NAHASDA. The highest level of funding in constant dollars was \$779 million in 1998, and the lowest was \$621 million in 2009. 1

The needs in Indian Country have not lessened since this report was issued just two and a half years ago. In fact, a cursory review of the Department of Commerce's Bureau of the Census data suggests the needs continue to increase along with a growing and ever younger population. In a report prepared in November 2011² the Census reported that the nation's American Indian and Alaska Native population increased by 1.1 million between the 2000 Census and 2010 Census, or 26.7 percent, while the overall population growth was 9.7 percent; the median income of American Indian and Alaska Native households was \$35,062 compared with \$50,046 for the nation as a whole; the percent of American Indians and Alaska Natives that were in poverty in 2010 was 28.4 percent compared to the 15.3 percent for the nation as a whole; the percentage of American Indian and Alaska Native householders who owned their own home in 2010 was 54 percent compared with 65 percent of the overall population. As can be easily seen, the challenges are daunting. Tribes are, nevertheless, confident that working together with federal counterparts will build a mutually beneficial partnership that will help both Indian Country and the federal government find ways to create an environment that will address these challenges.

Indian Country would like to thank President Obama and members of his Administration for hosting this important White House Forum on Tribal Housing. This opportunity to express Indian Country's views and aspirations in tribal housing will help to create programs that promote sustainability and development for America's most needy population. NAHASDA is a key element in improving the overall living conditions in Native America. The path to a self-sustaining economy is not achievable

¹ See GAO Report 10-326 at www.gao.gov/products/GAO-10-326

² See Census at http://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb11-ff22.html



without a robust housing sector and tribal housing conditions will not be improved without adequate funding. NAHASDA is not just about constructing houses—it is about building tribal communities—communities where health and safety are a top priority and where education can take root. Not only is the tribal economy impacted, but so too are the lives of families and individuals who live in substandard housing.

Indian Country truly values the Administration's continued support of Native American communities. The NAIHC is eager to work together with the federal government on all issues pertaining to Indian housing programs and living conditions for America's First People. Together, we can continue the important work of building healthy, vibrant, and robust tribal communities throughout Indian Country.

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