

TESTIMONY OF
REID PEYTON CHAMBERS
SONOSKY, CHAMBERS, SACHSE & ENDRESON
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
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Mr. Chairman and members of the Committee, my name is Reid Peyton Chambers. For the past twenty-three years, I have been a partner in Sonosky, Chambers, Sachse and Endreson, a Washington law firm that represents Indian tribes and tribal organizations, with offices at Suite 1000, 1250 Eye Street, N.W., Washington, D.C. 20005. Prior to that time, I served as Associate Solicitor for Indian Affairs at the Department of the Interior during the Nixon and Ford Administrations. I have also taught Federal Indian law as a faculty member at UCLA, an Adjunct Professor at Georgetown, a Visiting Professor at Tulsa University Law School and a Visiting Lecturer at Yale University Law School and I have served as one of the editors of Felix S. Cohen's Handbook of Federal Indian Law (1 982 rev. ed.).

I am appearing here at the Committee's request to discuss the concerns of my client the Assiniboine and Sioux Tribes of the Fort Peck Reservation with regard to the implementation of the Trust Fund Accounting System and its impact on the Tribes' revolving loan, or Re-lending Program.

By way of background, the Fort Peck Tribes established a Tribal Credit Committee forty years ago, in 1959, with the approval of the Secretary of the Interior, to provide loan and credit services to tribal members. The Fort Peck Tribal Credit Committee, in conjunction

with the Bureau of Indian Affairs, operates a Tribal Re-lending program under the Indian Financing Act of 1974. The policies and plan under which the program has been administered are set out in a document titled "Declaration of Policies and Plan of Operation For The Fort Peck Tribal Revolving Credit Program" which was approved by the Secretary of the Interior. These policies and plan have been in effect since 1959. The regulations governing tribal credit programs require annual audits.

The Tribal Re-lending program is a vital source of loans for many tribal members. The Fort Peck Reservation is located in a remote corner of northeast Montana. Unemployment among tribal members at Fort Peck is at or usually over fifty percent. Over half of the people live below the poverty line. Because of their poor financial condition, many Indians at Fort Peck are generally ineligible for ordinary loans because they do not have sufficient assets or income that can be pledged as collateral.

Many individual Indians at Fort Peck hold small interests in allotted lands on the Reservation that are held by the United States in trust for their benefit. In some cases, these trust lands have been leased for grazing, agriculture and mineral purposes. As you know, if income is generated by the trust land, it is collected by Department of the Interior and deposited to trust accounts for the benefit of the individual Indian holding an interest in the land. These trust accounts are referred to as "Individual Indian Money" or "IIM" accounts. The accounts, and the funds deposited to them, are held in trust by the United States. The amount of income generated by individual Indian trust land and deposited to any individual Indian's IIM account, tends to be very small and will fluctuate over time.

The Tribal Re-lending program was established to provide individual tribal members the ability to use this limited capital to obtain consumer, educational and economic development loans. The vast majority of the loans made under the program are short term loans to meet emergency needs. These include medical expenses and medical travel, utility bills to avoid shut-off of utility services, funeral expenses and other bills and obligations that cannot be made due to shortfalls in income. The short term loan limit is two thousand (\$2,000) dollars per person. Most loans range from \$100 to \$2000. In 1998, for example, the Tribal Re-lending program made 8500 loans totaling approximately \$2 million. Unlike commercial lenders, the Tribal Re-lending Program is willing to secure repayment of loans by an assignment of income deposited to an IIM account. Assignments of income from IIM accounts is the primary basis on which Program secures loans made to tribal members. Under the Tribes' Plan of Operation for the Program, short term loans must be fully secured.

As the Committee knows, the Office of Trust Funds Management (OTFM) in connection with implementing its new TFAS System in the Billings Area and the centralization of trust records-instituted new requirements this Spring for liens on and disbursements from IIM accounts for Billings Area tribes. In doing so, OTFM insisted that tribal credit programs comply with these new requirements before OTFM would permit any liens upon or distribution from IIM accounts to repay existing tribal loans. However, OTFM never provided the Fort Peck Tribes -- or, I believe, any tribal program in the Billings Area -- with a written list of these new requirements, or with any training about the new requirements before they implemented the new program in the Billings Area. Consequently, the Fort Peck Tribal Credit Office has only learned of these requirements in a piecemeal

fashion, usually as OTFM refused to approve a disbursement from a particular debtor's account to satisfy a loan until some new administrative requirement was satisfied. Because the Fort Peck Re-lending Program is a revolving credit program that can only make new loans as old ones are repaid, the Program was effectively shut down by late June as OTFM refused to release IIM account funds to satisfy over 400 tribal credit program loans.

On July 20, BIA Deputy Commissioner Hilda Manuel then placed an administrative hold on *all* disbursements from all IIM accounts to satisfy delinquent debts in the entire Billings Area. This hold was subsequently lifted after a July 28 meeting between OTFM and all of the Billings Area Tribes. At that meeting, it became evident that the only real problems OTFM had were with a single tribal program — not Fort Peck's. There was no basis whatever, in my view, for shutting down all tribal programs because of deficiencies in a single program.

At this meeting, BIA and OTFM officials also promised that new requirements would not be implemented until after OTFM met with tribal credit programs and developed a system that would satisfy both programs. After specific discussions with Fort Peck tribal leaders, OTFM officials agreed to place holds on IIM accounts at Fort Peck where the borrower has signed a promissory note authorizing an assignment of DM account income in the event of delinquency, and where the borrower has received a notice from the Credit Program announcing a delinquency and a right to a hearing.

Despite OTFM's promises in July, OTFM continues to insist on additional

requirements before it will place holds on IIM accounts at Fort Peck. There is still no written list of the additional requirements detailing what needs to be done to ensure that a valid security interest in an IIM account may be collected. OTFM and BIA have not met with the Fort Peck program to develop suitable standards and procedures, as promised at the July meeting. As a result, the Tribal Credit Office at Fort Peck continues to experience significant problems in collecting because they continue to receive repeated requests for new information from OTFM that is not required under the law and has never been provided before.

Most recently, in August the Fort Peck Tribal Credit Program sought to collect on 180 loans in the amount of \$38,560. This request for disbursement was not processed, because OTFM demanded that the Tribal Credit Office provide OTFM with a complete payment history on each of the loans before they would release the funds. This information had never been provided by Tribal Credit and was certainly not part of the agreement that was reached with the Tribal Program in July. Nevertheless, OTFM claims this information is necessary in order to verify that there is an outstanding debt. This however is a function of the tribal credit program, not OTFM. There is no basis for the Department to replace tribal management of audited tribal credit programs — which at Fort Peck have operated successfully for 40 years.

Again, the Tribal Credit Office procedures require that a security interest in an IIM account be signed, along with the loan documents. In addition, if an IIM account holder is in default on such a loan, the Tribal Credit Office is required to send -- certified return receipt requested -- a so called "Kennerly" letter informing the person of the default and the right to

a hearing on the default. The person can either waive their right to a hearing and give Tribal Credit permission to collect on the outstanding debt or request a hearing. If all of these procedures are followed and all of these documents are provided to OTFM, then OTFM has no basis for questioning the administration of the tribal credit program. Most importantly, OTFM agreed not to do this at the July meeting in Billings.

OTFM's continuing obstinacy threatens the very existence of the revolving loan program at Fort Peck. The Fort Peck Tribal Credit Program has served a vital need and worked effectively for several decades. OTFM's persistent failure to process the requests for payment - without meeting with the Fort Peck Tribes as promised to develop a jointly acceptable procedure and list of requirements -- is foreclosing the only source of capital for many impoverished families on the Fort Peck Reservation. The Tribes need this Committee's help to put a stop to this.