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United States Senate
COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510–6450
http://indian.senate.gov

March 2, 2006

The Honorable Judd Gregg
Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

The Honorable Kent Conrad
Ranking Member
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Chairman Gregg and Ranking Member Conrad:

This letter responds to your request for the Senate Indian Affairs Committee's views and estimates on the President's Fiscal Year 2007 budget request for Indian programs. We support the President's goals of funding programs with proven performance accountability while reducing the federal deficit. However, we disagree with many of the proposed funding cuts.

In addition, we urge the Committee's consideration of another matter before the Indian Affairs Committee. The Indian Affairs Committee will work to provide a statutory settlement of the *Cobell v. Norton* litigation involving Indian trust funds management. However, we do not yet know what the settlement amount will be for this class action involving hundreds of thousands of claimants. We request that, in the event the legislation scores, the Committee provide a reserve fund in the resolution. We will advise you of the proposed settlement figure when we arrive at it.

I. General Background Supporting the Committee's Budget Recommendations.

Native Americans, a group that includes American Indians, Alaska Natives, and Native Hawaiians, continue to confront tremendous challenges in

obtaining basic services such as health care, housing, and education. In a study published last year, Harvard University researchers concluded that policy of self-governance, which encourages tribes to build and administer their own programs, is working to improve Indians' socioeconomic status.[1] We support such programs. But we must warn, as does the study, that tremendous disparities continue to exist between American Indian and Alaska Native people and the overall U.S. population. The existence of Indian gaming does not negate these disparities. Poverty of services and opportunity continues to haunt Indian peoples.

The U.S. Department of Interior identifies 561 federally-recognized tribes in the United States. For the 2000 Census, 4.3 million people identified themselves as American Indian or Alaska Native, of which 2.4 million identified themselves as only American Indian or Alaska Native. The 2000 Census observed a 25% growth in the Indian population on reservations and a 21% growth off reservations.

Funding for Indian programs falls under the United States' trust obligation to Indian tribes generally. This unique political and fiduciary relationship is grounded in the United States Constitution, treaties, federal statutes, and Supreme Court case law. The federal government's obligation also arises in part from cessions of millions of acres of land from Indian tribes to the United States in exchange for peace, protection of tribal sovereignty, and promises to provide a variety of programs and services. While the federal policy toward Indians has shifted over time, sometimes radically, for the last thirty years, both the Congress and the Administration have encouraged a policy of Indian self-determination, which encourages tribes to develop programs that best serve their members, lessens dependence on the federal government, and ensures their participation in the nation's economy.

Despite recent gains, Indians continue to rank well below the national average in measures of health, education, income, and welfare. Indicators of this disparity include the following:

Indians' Health Status Is Lower Than the Overall U.S. Population. Indians' and Alaska Natives' life expectancy is almost 4 years less than the overall U.S. population. Death rates from a variety of diseases are

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[1] American Indians on Reservations: A Databook of Socioeconomic Change Between The 1990 And 2000 Censuses, Jonathan B. Taylor and Joseph P. Kalt, January 2005; The Harvard Project on American Indian Economic Development.

astronomically higher than for the general population. For example, Indians have a 670% higher death rate from alcoholism, a 318% higher death rate from diabetes, and a 650% higher death rate from tuberculosis than the general population.

The Poverty Rate Is Higher for American Indian and Alaska Natives Than for the United States Overall. The average annual poverty rate for American Indian and Alaska Natives between 1999 and 2001 was 24.5%. The average poverty rate nationally was 11.6%. Nearly one-quarter of Native Americans live in poverty.[2]

Unemployment Is a Persistent Problem. The Bureau of Indian Affairs measured Indian unemployment at 49% of the available labor force in 2003.[3] This percentage ranges among tribes and among states. The Aroostook Band of Micmac Indians in Maine, for example, has an estimated 88% unemployment rate. The Oglala Sioux Tribe of Pine Ridge, South Dakota, has an unemployment rate of 87%.

Suicide Is Disproportionately Higher Among Indians. At a June, 2005 hearing before the Senate Committee on Indian Affairs, Surgeon General Richard Carmona testified that the suicide rate for American Indians and Alaska Natives ages 15 to 34 is three times the national average. For every suicide, he estimated there were 13 non-fatal attempts to commit suicide. Access to mental health facilities is non-existent for many tribal members.

Telephone Subscribership Is Significantly Lower Than the National Average. Telephones and the access they provide, taken for granted by most Americans, often are not available in Indian Country. A January, 2006 Government Accountability Office report, *Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands,*found that only 69% of American Indian households on tribal lands had telephone service.[4] Alaska Native village households had a somewhat higher subscribership of 87%. These percentages contrast to the 98% of households nationally which have telephone subscribership.

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[2] U.S. Census Bureau, "Poverty in the United States: 2001," *Current Population Reports*, September 2002, p. 7.

[3] American Indian Population and Labor Force Report 2003, p ii., Bureau of Indian Affairs, Office of Tribal Services.

[4] Percentages were based on the 2000 Census.

II. Four General Comments.

The Committee wishes to offer general comments on four issues we hope the budget resolution will accommodate:

- passage of legislation to reauthorize and amend the Indian Health Care Improvement Act;
- statutory settlement of the *Cobell v. Norton* litigation involving Indian trust funds management;
- annual adjustments to the Indian Health Service for inflation, pay costs and population growth; and
- the continued need for infrastructure development in Indian Country, including health facilities, schools, housing, and water and wastewater systems.

Each of these issues is discussed below.

A. Reauthorization of the Indian Health Care Improvement Act

The Committee requests that the budget resolution contain an allocation sufficient to cover the costs of the changes we anticipate making to the Indian Health Care Improvement Act in S.1057. The reauthorization legislation, S. 1057, will improve access to health care for Indians by streamlining bureaucracy and removing barriers to access such as cost-sharing and premiums for Medicaid.

The Congressional Budget Office (CBO) is still working on its cost estimate of S. 1057 as reported last October by this Committee; however, new provisions contained in the Indian Health Care Improvement Act Amendments of 2005 are expected to increase both discretionary and direct spending. Due to changes in S. 1057 from the predecessor bill, S. 556, introduced and reported out during the 108th Congress, the Committee anticipates the costs to be lower than the CBO cost estimate for S. 556, attached hereto. In November, 2004, CBO estimated that implementing S. 556 would increase direct spending by $238 million over the 2005-2014 time period. However, the impact of the Deficit Reduction Act of 2006 upon new direct spending for S. 1057 is unknown. When CBO completes its cost estimate of S. 1057, we will forward a copy to the Budget Committee.

B. Settlement of the *Cobell* Trust Funds Litigation

The Committee has pending before it S. 1439, legislation sponsored by Senators McCain and Dorgan which would establish a fund for a lump sum settlement of the claims for an historical accounting in the *Cobell v. Norton* litigation involving the federal government's mismanagement of individual Indian trust funds.

Settlement of the *Cobell* lawsuit has been one of our highest priorities for the 109th Congress, but we have not yet arrived at a settlement amount, or determined how, or if, the proposal will score. Settlement numbers mentioned in recent discussions with the parties are still several billions of dollars apart.

However, resolution of this matter is extremely important for Indian Country for the following reasons:

- The litigation has been pending for ten years, and resolution within the court system will likely not occur in a timely manner.
- For the last several fiscal years, the Department of the Interior has annually requested over $100 million dollars to perform an historical accounting in order to meet its legal obligations. Congressional settlement of the litigation would eliminate the need to continue an historical accounting.
- Resolution of the *Cobell* litigation without congressional action will likely leave unresolved other matters, such as funds mismanagement, leaving open the possibility of additional lawsuits against the United States.

We wanted to call this very important issue to the Budget Committee's attention, and ask that Budget Committee provide a reserve fund in the budget resolution to accommodate settlement legislation.

C. Annual Adjustments for Mandatory Increases for IHS

The FY 2007 budget request for the Indian Health Service includes increases totaling $156.7 million over the FY 2006 enacted level for pay costs, population growth, inflation and staffing requirements at new facilities – so-called "built-in" increases.

The Committee strongly supports these increases. In this respect, the Department of Health and Human Services FY 2007 budget formulation process reflects tribal comment and tribally-determined budget priorities developed and presented through the tribal consultation process. We believe that similar increases need to be included in the budget resolution and in projected budgets (the "outyears") in order to maintain current services.

D. Development of Infrastructure in Indian Country

The need for infrastructure in Indian Country - whether for schools, health centers, housing, detention facilities, courts, water and sewer systems - is dire. Thus, we oppose the Administration's proposed decreases in FY 2007 for a number of programs that provide this necessary infrastructure development in American Indian and Alaska Native communities.

In our FY 2006 "views and estimates," this Committee urged that the BIA Education Construction and IHS Health Facilities Construction programs, in particular, be resumed at previous funding levels despite the proposed "one-year moratorium" on construction. This Committee's concern is heightened this year with proposals for a longer "pause" on construction of new projects in Indian Country, and the Committee urges that the budget resolution include FY 2007 funding for infrastructure development.

Infrastructure programs in various agencies or departments are discussed below.

1. Indian Health Service

Health Facilities Construction

Health facilities are an integral part of Indian communities. With the health disparities and resulting impacts on tribal public safety, economies and education levels, updated health facilities are needed to improve the lives of Indians and their communities. According to the U.S. Department of Health and Human Services, Indian Health Service, *Health Care Facilities FY 2007 Planned Construction Budget* (February 11, 2005), the unmet needs were nearly $1.5 billion, with maintenance and improvement on current facilities reaching $482 million.

The FY 2006 budget request presented the idea of a "one-year pause" on Health Facilities Construction. Congress nevertheless did provide some funding to continue the construction program. In FY 2007, the President's Budget again proposes a "pause." Given the backlog for health care construction projects, this Committee urges the restoration of funding, at the FY 2006 enacted level, to continue this important program.

2. Bureau of Indian Affairs

Education Construction

The FY 2007 budget request would fund the Education Construction program, which includes Replacement School Construction, Advance Planning and Design, Employee Housing, and Facilities Improvement and Repair, at an overall level which is $49.4 million below the FY 2006 enacted level, or $157.4 million.

Since 2001, President Bush has requested and Congress has appropriated $1.6 billion in funding to begin or complete replacement of 37 schools. However, given BIA's inventory of nearly 5,000 education buildings, which, on average, are 60 years old, and the fact that one-third of the 184 BIA schools are in poor condition and in need of either replacement or significant repair, the Committee cannot support the proposed reductions to both Education Construction and School Facilities Improvement and Repair. The Committee concurs with the Administration's proposal for a new budget subactivity, Replacement Facility Construction, under which individual buildings on school campuses would be replaced when entire new education facilities are not needed.

3. Department of Housing and Urban Development

NAHASDA Block Grant Program

The Native American Housing Assistance and Self-Determination Act (NAHASDA), enacted in 1996, is the main statutory authority under which the federal government carries out its responsibility to provide housing to American Indian and Alaska Natives.

The Committee is concerned about the gradual erosion of funding for the NAHASDA block grant program over the past several years. The block grant program was funded at $654 million in FY 2004, $622 million in FY 2005, and $630 million in FY 2006. The Committee appreciates that the FY 2007 budget request, which proposes a level of $625 million, does not propose the

substantial cut included in last year's request. However, because of inflationary pressures, the FY 2007 requested level will result in fewer homes being built for an Indian population that is growing and in need of safe, decent and affordable housing.

The housing needs of tribal communities are acute. Approximately 90,000 Indian and Alaska Native families are homeless or underhoused; nearly 15% of homes in tribal areas are overcrowded, compared to 5.7% of homes of the general U.S. population, according to the 2000 Census; and it is estimated that nearly 200,000 housing units are immediately needed to provide adequate housing in tribal areas. Recent NAHASDA funding levels have been inadequate to address these tremendous needs.

4. Department of Justice

Construction of Correctional Facilities in American Indian and Alaska Native Communities Discretionary Grant Program

The Construction of Correctional Facilities in American Indian and Alaska Native Communities Discretionary Grant Program is designed to support the construction of jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

In September, 2004, the U.S. Department of Interior Office of Inspector General issued the report, *"Neither Safe Nor Secure": An Assessment of Indian Detention Facilities*, which outlined the deplorable and life-threatening conditions of Indian jails. The report noted the following: that 79% of facilities fall below minimum staffing levels on a regular basis; that poorly maintained facilities provide ample opportunity for escape; that Indian detention facilities experience unusually high rates of suicide, a trend that generally correlates with reduced staff supervision and the influence of drugs and alcohol; and that Indian Country jails have become dilapidated to the point of condemnation. The report clearly documents an ongoing crisis in Indian jails, a crisis that the Committee does not believe will be adequately addressed if the Construction of Correctional Facilities program is eliminated, as proposed, and its funding placed under the COPS three-year non-reoccurring funding scheme.

Testimony from tribal governments and tribal law enforcement agencies before this Committee have identified 15 new detention facilities that are immediately needed.

In FY 2006, $9 million was provided for Indian detention facilities, an increase of $4 million over FY 2005. The Committee recommends that the Construction of Correctional Facilities program continue to be funded separately from the Tribal COPS Program, and that an additional $27 million be identified in the FY 2007 Department of Justice budget to construct the first three new detention facilities.

5. Environmental Protection Agency

Clean Water State Revolving Fund

The EPA State and Tribal Assistance Grants program is made up of two components: infrastructure assistance and categorical grants. The Committee is concerned about the proposed FY 2007 decrease in infrastructure assistance funding under the Clean Water State Revolving Fund (CWSRF). The CWSRF helps tribes and states meet their significant infrastructure needs by funding the construction of wastewater treatment facilities and other water projects, including non-point source, storm water, and sewer overflow. The CWSRF was funded at $850 million in FY 2005 and $900 million in FY 2006; the FY2007 request, however, would decrease the fund to $678.5 million. Tribes receive 1.5% of CWSFR appropriations. The level of need in Indian Country, however, is far greater than this amount is able to address. The Indian Health Service estimated in FY 2005 that for Indian Country, it would cost more than $634 million to correct inadequate and non-compliant wastewater treatment systems or to construct systems where none currently exist.

Water for Alaska Native Villages

The Committee is concerned about the proposed decrease, from $35 million in FY 2006 to $14.8 million requested for FY 2007, for Alaska Native villages. The State and Tribal Assistance Grants program's infrastructure assistance program component provides for construction of wastewater and drinking water facilities to address serious sanitation problems. The Indian Health Service estimated in FY 2005 that it would cost more that $26 million just to address the worst deficiencies in Alaska Native villages which have either inadequate and non-compliant wastewater treatment systems or which lack safe water supply and sewage disposal systems.

6. Department of Agriculture

Rural Community Advancement Program

The Rural Community Advancement Program provides community facilities loans and grants to tribes for water and waste disposal projects. Of that total amount, there is an amount for community facilities grants to tribal colleges. The Committee is concerned about the proposed decrease, from $25 million in both FY 2005 and FY 2006, of which $4.5 million in both fiscal years was for grants to tribal colleges, to $9 million requested for FY 2007, with no amount provided for grants to tribal colleges.

III. Other Committee Recommendations on Specific Programs

What follows is this Committee's recommendations on several proposed increases and decreases to other specific programs which serve Indian people.

A. Bureau of Indian Affairs

Roads Maintenance

The Indian Country transportation system includes 24,500 miles of Bureau of Indian Affairs-owned roads and 777 BIA-owned bridges, and an additional 24,000 miles of roads and 3,617 bridges for which the BIA is obligated to provide maintenance activities. The Roads Maintenance program provides maintenance and repairs not eligible for funding under the Highway Trust Fund. The Committee has received significant evidence of the extremely poor, even dangerous, conditions that exist on roads and bridges throughout Indian Country, and has received no evidence to suggest that those conditions have been addressed adequately. Therefore, the Committee opposes the Administration's proposed $2 million decrease in funding for FY 2007, and recommends that the program be funded at no less than the FY 2006 enacted level of $27.4 million.

Contract Support Costs

The Committee appreciates the Administration's request for an increase of $19 million over the FY 2006 enacted level for BIA Contract Support Costs, which we understand will enable indirect costs to be funded at 100% for contracting tribes. Contract Support Costs cover administrative expenses, such as for financial management or personnel systems, incurred by Indian

tribes as a result of assuming the operation of tribal programs. Indian Country has made Contract Support Costs a high funding priority, and the Committee is pleased with the FY 2007 requested level.

Welfare Assistance

The budget request includes a decrease of $11 million for the BIA welfare assistance program. This program provides general financial assistance for Indians who have no access to Temporary Assistance to Needy Families (TANF) assistance, do not meet TANF eligibility requirements, or have exceeded the time limit for TANF services. Funding under this program may also be used for burial assistance and assistance for those with children, including short-term homemaker services, and adoption or guardianship subsidies. The Committee is not aware that there is any anticipated decrease in the demand for welfare assistance and urges restoration of funds for these basic services.

Johnson O'Malley

The Administration proposes to eliminate the Johnson O'Malley assistance grants program, which was funded at $16.4 million in FY 2006. This program provides assistance to Indian tribes and public schools for basic educational needs of Indian children, such as school supplies, nominal clothing subsidies, transportation, and afterschool programs that provide tutoring and counseling. The program administrators at the local schools may also serve as liaisons between the Indian parents or students and school administrators.

Although the Administration has suggested that similar programs are available through the Department of Education, none have been specifically identified. The Committee recommends restoration of funding for this culturally-relevant program for Indian students.

Education Management

The Administration is proposing a $9 million increase over FY 2006 for BIA Education Management, of which $2.5 million is requested to realign education offices in the field and in headquarters to a more centrally coordinated organization, and place senior executives in education line office positions. While this Committee is sensitive to BIA's need for senior managers to oversee education and other programs, we want to insure foremost that there are sufficient resources to meet basic student needs.

Law Enforcement

BIA Law Enforcement would receive a $4.5 million increase. $2.7 million of this increase is proposed for staffing at new detention facilities. $1.8 million is for BIA law enforcement officers and equipment to be allocated at locations with the most serious crime. Indian Country public safety has been a particular priority of the tribes in the past few years, and the Committee strongly recommends that additional funding be provided for law enforcement and related justice programs. Support for this requested increase is particularly important given the expiration of funding for 759 of 1,800 new tribal law enforcement officers hired since 1999 under the COPS Program. Funding for these 759 positions will expire at the end of 2006.

Indian Energy Development

The Committee is pleased that the FY 2007 budget requests $2 million in new funds for implementation of Indian energy resource development, as outlined in the Energy Policy Act of 2005. Of this total, $1.4 million would be for grants to tribes for energy development activities, and $600,000 for BIA oversight, including approval of tribal energy resource agreements and technical assistance. We support this requested FY 2007 funding.

United Tribes Technical College (UTTC) and Crownpoint Institute of Technology

The Committee is disturbed that, as the Administration proposed in the FY 2006 budget request, funding is eliminated in FY 2007 for the United Tribes Technical College (UTTC) and Crownpoint Institute of Technology. UTTC and Crownpoint have demonstrated high levels of success in educating Indian students. The Committee urges that funding for these two institutions be restored to the FY 2006 enacted level, plus the cost of inflation.

Indian Land Consolidation Program

The Committee strongly supports the proposed increase for the Indian Land Consolidation program of approximately $25.4 million over the FY 2006 enacted level, or $59.5 million. This program allows the Department of the Interior to consolidate ownership of highly fractionated Indian lands by purchasing fractional land interests from individual Indian landowners and restoring them to tribal ownership. The requested level of funds will enable the acquisition program to expand by nearly two times the number of small, fractionated interests estimated to be acquired in FY 2006. The purchase of fractionated interests, which is an important part of the Department's trust

reform efforts, will not only restore lands to tribal ownership, but also reduce record-keeping and otherwise unavoidable expenses required in administering tens of thousands of small fractional interests in land. The purchase of these interests will also reduce the number of individual estates subject to probate by the Department of Interior.

B. Department of Education

Indian Education Programs

The Committee notes that FY 2007 funding for Indian education programs at the Department of Education has remained the same or is proposed for slight decreases. These programs fund such activities and services as public school programs for Indian children; supplemental education programs for Native Hawaiian and Alaska Native children; operation and improvement of tribally-controlled post-secondary vocational and technical institutions; and improvement and expansion of Tribal College capacity and the capacity of Alaska Native and Native Hawaiian serving post-secondary institutions.

Unfortunately, the proposed FY 2007 funding levels do not consider the growing American Indian and Alaska Native population, inflation costs or other factors unique to the education of Indian students. Because of this, the proposed funding levels for Indian education programs are disappointing.

33% of the American Indian and Alaska Native population is under the age of 18. According to the Department of Education, Indian students are below the national average on national math, reading, and science assessments and lag behind most other races in these subject areas. Many of the schools educating Indian children are not meeting adequate yearly progress (AYP), as required by the No Child Left Behind. Only 30% of BIA and tribal schools meet AYP, compared with 70% for the states. Indian students also have higher rates of absenteeism, suspension, and expulsion than their non-Indian peers. 11.4% of American Indian and Alaska Native students received special education services in 2002.

As the Administration has acknowledged, most American Indian and Alaska Native students attend schools in small towns and rural areas. These schools face increased challenges in meeting the requirements of the No Child Left Behind Act, ranging from the difficulties of recruiting and retaining highly qualified teachers to work in rural areas, to higher transportation costs to cover gasoline and vehicle maintenance and repair. Despite the challenges facing

Indian students and schools, the President's FY 2007 budget proposal does not include an adjustment for inflation or population growth. Thus, funding for the growing Indian population will actually decrease.

The Committee also objects to the proposed elimination of various Department of Education programs, such as Even Start, Safe and Drug-Free Schools and Communities, and other programs that fund valuable programs and services to schools educating Indian children.

C. Indian Health Service

Health Care Facilities Construction

The IHS Health Care Facilities Construction program funds the construction of health facilities, including the initial equipment, that provide direct health care services for American Indians and Alaska Natives. This program designs and builds health care facilities and staff housing according to a priority system based on needs of the IHS and Indian tribes.

Despite a continuing backlog of critically needed health care facilities, as noted above, the FY 2007 budget request of $17.7 million is a decrease of $20.1 million from the enacted FY 2006 level of $37.8 million, and a decrease of $70.9 million from the FY 2005 enacted level. The FY 2007 budget request will provide funding to complete one project. No additional planning funds are requested to address the remaining projects on the IHS 5-Year Priority Construction List or other unmet needs.

Given the tremendous need, the Committee is troubled that the one-year moratorium on IHS facility construction established by the Administration during FY 2006 is proposed to be effectively extended into FY 2007. We recommend that funding be restored to the FY 2006 enacted level.

Urban Indian Health Program

The Committee opposes the proposed elimination of the Urban Indian Health Program, which was funded at $32.7 million in FY 2006. The 2000 census indicated that as much as 66% of the American Indian and Alaska Native population lives in urban areas. The 34 urban Indian organizations serve 430,000 eligible Indian users at 41 sites throughout the U.S., and provide health services such as dental, pharmaceutical, vision, alcohol or mental health treatment, suicide prevention and family wellness.

The budget request stated that this program duplicates other services available, primarily from community health centers. However, no evaluation or evidence has been provided to support this contention, or to examine the impacts of eliminating funding for this program. The Committee is concerned that by eliminating funding, access to health care will not be available and the health levels of these Indians will be eroded. The Committee recommends that funding be restored to the FY 2006 enacted level.

Contract Support Costs

As noted under the BIA section above, the Committee similarly supports the Administration's requested increase for IHS Contract Support Costs of $5.6 million over the FY 2006 enacted level. The Committee notes, however, that, in contrast to BIA, even with this increase, IHS will not fully fund tribes' actual contract support costs. We support funding to do this.

American Indian/Alaska Native Youth Suicide Prevention Initiative

The FY 2007 budget request includes $3 million in new funding for a collaborative program between the Indian Health Service and the Substance Abuse and Mental Health Services Administration focused on American Indian and Alaska Native youth suicide prevention.

Addressing Indian youth suicide prevention, intervention, and treatment has been a priority issue before this Committee. We strongly support the request for this new program.

Uniform Financial Management System

The Committee notes that the Administration has proposed an increase of $11 million to fund a Uniform Financial Management System (UFMS) for the IHS. While the Committee does not object to funding to enhance the agency's management systems, we are concerned that this requested increase may be proposed at the expense of direct health care services to Indians - such as Health Facilities Construction and the Urban Indian Health Program - and note also that tribal management systems assisted by contract support costs should be supported.

D. Department of Housing and Urban Development

NAHASDA Technical Assistance and Training

Technical assistance and training have been key components of making the Native American Housing Assistance and Self-Determination Act (NAHASDA) as successful as it has been over the past decade. By far the major provider of technical assistance and training to the Native community is the National American Indian Housing Council (NAIHC), a 32-year-old consortium of more than 460 tribes and Alaska Native villages that provides assistance to tribal housing authorities and tribally-designated housing entities. Training and technical assistance are effective tools in maintaining compliance with statutory or regulatory requirements, and in addressing new issues facing the tribally-designated housing entities, such as identification and remediation of methamphetamine use in tribal housing.

In FY 2005, the NAIHC received $4.6 million to provide technical assistance and training; that amount was reduced to $2 million in FY 2006. The FY 2007 budget proposes to eliminate federal support for these much-needed activities. The Committee supports continued funding for the Council to provide technical assistance and training at the current level.

E. Department of Justice

In addition to the Construction of Correctional Facilities in American Indian and Alaska Native Communities Discretionary Grant Program, discussed above, the Department of Justice has historically supported tribal police services, courts, legal representation, and juvenile and behavioral health programs through four programs:

- the Tribal Courts Assistance Program, which supports the development, implementation, enhancement and continuing operation of tribal justice systems;

- the Indian Alcohol and Substance Abuse Demonstration Program, which is designed to reduce crimes associated with the distribution and abuse of alcohol and controlled substances in tribal communities by mobilizing these communities to implement or enhance innovative, collaborative efforts to address public safety issues related to alcohol and substance abuse;

- the Tribal COPS Program, which includes hiring and training of new law enforcement officers, training of existing forces, purchasing of basic standard issue equipment, technology and vehicles; and

- the Tribal Youth Program, which provides grants to tribes to improve tribal juvenile justice systems and develop and implement culturally-sensitive delinquency prevention programs, alcohol and substance abuse prevention programs, and interventions for tribal youth. The Mental Health Initiative and Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) Project are part of the Tribal Youth Program.

The Committee has received significant testimony from Indian tribes and tribal law enforcement agencies that funding for law enforcement and justice systems is one of the highest priorities for Indian tribes again in FY 2007, as tribal law enforcement is often the only law enforcement service available in Indian Country. Indian tribes have broad civil jurisdiction, and criminal jurisdiction for offenses committed by Indians on Indian land, and they rely on tribal judicial systems to maintain law and order.

For FY 2007, the Administration proposes to eliminate the Tribal Court Assistance, Indian Alcohol and Substance Abuse, and Tribal Youth programs, and have those programs funded instead through the Tribal Community Oriented Policing Services (COPS) program at a level of $31 million. This represents a 33 percent reduction in funding from the FY 2006 enacted level. The Committee strongly opposes the recommendation to abolish the Tribal Court Assistance, Indian Alcohol and Substance Abuse, and Tribal Youth programs and to move all tribal activities into COPS, which could subject these important programs to the COPS program's three-year non-reoccurring funding scheme.

The Committee recommends that the FY 2007 funding levels for these programs be increased or maintained at the FY 2006 level as follows: Tribal Courts Assistance Program to be funded at no less than $8 million; Indian Alcohol and Substance Abuse Demonstration Program to be funded at no less than $5 million; Tribal COPS Program to be funded as requested at $31 million; and Tribal Youth Program to be funded at no less than $10 million.

F. Department of Agriculture

Tribal Land Acquisition Loans

Within the Farm Service Agency, the Tribal Land Acquisition Loans program provides loans to tribes that do not have adequate funds to acquire lands or interest in lands within the tribe's reservation or Alaska Native community. The Committee supports the proposed FY 2007 request of $4 million, which is double the FY 2006 level of $2 million. This program will complement efforts of the Department of the Interior to consolidate ownership of highly fractionated Indian lands through purchase, restoring these parcels to tribal ownership.

The Committee on Indian Affairs appreciates the opportunity to give our views on the FY 2007 budget request, and looks forward to continuing to work with you to ensure that programs that serve American Indians and Alaska Natives are adequately funded.

Sincerely,

John McCain
Chairman

Byron L. Dorgan
Vice Chairman

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

November 30, 2004

S. 556
Indian Health Care Improvement Act Amendments of 2004

As reported by the Senate Committee on Indian Affairs on November 16, 2004

SUMMARY

S. 556 would authorize the appropriation of such sums as necessary through 2015 for the Indian Health Care Improvement Act, the primary authorizing legislation for the Indian Health Service (IHS). The bill also contains specific authorizations for loans and loan guarantees for urban Indian organizations and a commission on Indian health care. In addition, the bill also would affect direct spending, primarily through provisions that would make it easier for IHS to enter into capital leases and make changes to the Medicaid program.

CBO estimates that implementing S. 556 would cost $2.4 billion in 2005 and $31.8 billion over the 2005-2014 period, assuming appropriation of the necessary amounts. We also estimate that enacting the bill would increase direct spending by $8 million in 2005, by $69 million over the 2005-2009 period, and by $238 million over the 2005-2014 period.

S. 556 would preempt state licensing laws in certain cases, and this preemption would be an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA); however, CBO estimates that the costs of that mandate would be small and would not approach the threshold established in UMRA ($60 million in 2004, adjusted annually for inflation). Other provisions of the bill would establish new or expand existing programs for Indian health care. It also would place new requirements on Medicaid and the State Children's Health Insurance Program (SCHIP) that would result in additional spending of about $35 million over the 2005-2009 period. This bill contains no private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 556 is shown in Table 1. The costs of this legislation fall within budget function 550 (health).

TABLE 1. ESTIMATED BUDGETARY EFFECTS OF S. 556

	By Fiscal Year, in Millions of Dollars									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION										
Estimated Authorization Level	2,977	3,026	3,093	3,165	3,243	3,321	3,401	3,484	3,569	3,657
Estimated Outlays	2,353	2,843	2,995	3,131	3,212	3,289	3,368	3,450	3,535	3,621
CHANGES IN DIRECT SPENDING										
Estimated Budget Authority	7	42	90	44	46	96	49	51	104	54
Estimated Outlays	8	12	13	15	21	24	28	36	38	43

BASIS OF ESTIMATE

For the purpose of this estimate, CBO assumes that S. 556 would be enacted near the start of calendar year 2005 and that the authorized amounts will be appropriated for each fiscal year.

Spending Subject to Appropriation

The estimated effects of S. 556 on spending subject to appropriation are shown in Table 2. IHS programs were authorized for 2004 by the Department of the Interior and Related Agencies Appropriations Act, 2004 (Public Law 108-108).

Existing Indian Health Service Activities. S. 556 would authorize the appropriation of such sums as necessary for the Indian Health Service through 2015. The agency's responsibilities under the bill would be broadly similar to those in current law. CBO's estimate of the authorized level for IHS programs is the appropriated amount for 2004 adjusted for inflation in later years. The estimated outlays reflect CBO's current assumptions about spending patterns for IHS activities. (The pending omnibus appropriation act, H.R. 4818, would provide $2.985 billion in funding for IHS activities in fiscal year 2005).

TABLE 2. ESTIMATED EFFECTS OF S. 556 ON DISCRETIONARY SPENDING

	By Fiscal Year, in Millions of Dollars										
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Spending Under Current Law[a]											
Budget Authority	2,921	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	2,909	605	159	71	5	0	0	0	0	0	0
Proposed Changes:											
Existing Indian Health Service Activities											
Estimated Authorization Level	0	2,973	3,025	3,092	3,165	3,243	3,321	3,401	3,484	3,569	3,657
Estimated Outlays	0	2,352	2,841	2,994	3,131	3,212	3,289	3,368	3,450	3,535	3,621
Loan Guarantees for Urban Indian Organizations											
Estimated Authorization Level	0	*	1	1	0	0	0	0	0	0	0
Estimated Outlays	0	*	*	*	*	*	*	0	0	0	0
Commission on Indian Health Care Entitlement											
Authorization Level	0	4	0	0	0	0	0	0	0	0	0
Estimated Outlays	0	1	2	1	0	0	0	0	0	0	0
Total Changes in Spending Subject to Appropriation											
Estimated Authorization Level	0	2,977	3,026	3,093	3,165	3,243	3,321	3,401	3,484	3,569	3,657
Estimated Outlays	0	2,353	2,843	2,995	3,131	3,212	3,289	3,368	3,450	3,535	3,621
Spending Under S. 556											
Estimated Authorization Level[a]	2,921	2,977	3,026	3,093	3,165	3,243	3,321	3,401	3,484	3,569	3,657
Estimated Outlays	2,909	2,958	3,002	3,066	3,136	3,212	3,289	3,368	3,450	3,535	3,621

NOTE: * = Less than $500,000.

a. The 2004 level is the amount appropriated for that year. The pending omnibus appropriation act (H.R. 4818) would provide $2.985 billion in funding for IHS activities in fiscal year 2005.

Loan Guarantees for Urban Indian Organizations. Section 509 of the bill would establish a loan guarantee program for urban Indian organizations. Under this new program, the federal government would provide loans or loan guarantees, with a term of up to 25 years, for construction or renovation by urban Indian organizations. The bill would not require any guarantee fees to be charged to the organizations and would not limit the percent of the loan that would be insured by the federal government. CBO therefore assumes that IHS would insure up to 100 percent of the loan value and that borrowers would not be charged any guarantee fees.

The new loan program would be considered a discretionary federal credit program and would require appropriation to establish a limit on the total value of outstanding loans and loan guarantees and to provide a credit subsidy for the cost of such loans and loan guarantees. Based on discussions with officials from the National Council of Urban Indian Health, CBO

estimates that the total value of loans and loan guarantees would be $30 million. Using the Small Business Administration's 7(a) general business loan program as a guide, CBO assumes that, like small businesses, the default rate for loans made to urban Indian organizations would be about 10 percent and that recoveries on such loans would be about 50 percent. Using those assumptions, CBO estimates that the subsidy rate for the new loan program would be 5 percent, and that establishing the loan program would cost about $2 million over the next five years, assuming appropriation of the necessary amounts.

Commission on Indian Health Care Entitlement. Section 815 would authorize the appropriation of $4 million for a commission that would study establishing a legal entitlement for Indians to receive health care services. The members of the commission would have to be appointed within five months of the bill's enactment and would be required to submit a final report to the Congress no later than 18 months after that. Assuming the appropriation of the authorized amount, CBO estimates that implementing this provision would cost $1 million in 2005, $2 million in 2006, and $1 million in 2007.

New Hospital for Fort Berthold Indian Reservation. S. 556 contains a provision that would authorize the appropriation of $20 million for the construction of a new hospital on the Fort Berthold Indian Reservation in North Dakota. CBO estimates that this provision would have no effect on spending because it is also contained in a separate piece of legislation (S. 1146, the Three Affiliated Tribes Health Facility Compensation Act) that the Congress recently cleared.

Direct Spending

S. 556 contains several provisions, primarily related to leasing by IHS and the Medicaid program, that would affect direct spending. The bill's estimated effects on direct spending are shown in Table 3. Overall, CBO estimates that enacting the bill would increase direct spending by $8 million in 2005 and $238 million over the 2005-2014 period.

The effects of each provision are discussed in more detail below. IHS-funded health programs are commonly divided into three groups: those operated directly by the Indian Health Service, those operated by tribes and tribal organizations under self-governance agreements, and those operated by urban Indian organizations. For this estimate, they are referred to collectively as Indian health programs.

TABLE 3. ESTIMATED EFFECTS OF S. 556 ON DIRECT SPENDING

	By Fiscal Year, in Millions of Dollars									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Spending on Health Facilities										
Estimated Budget Authority	0	31	78	32	32	82	33	34	86	35
Estimated Outlays	0	0	0	2	7	9	12	18	20	23
Consultation with Indian Health Programs										
Estimated Budget Authority	*	*	1	1	1	1	1	1	1	1
Estimated Outlays	*	*	1	1	1	1	1	1	1	1
Exempt Indians from Cost Sharing										
Medicaid										
Estimated Budget Authority	3	5	5	5	6	6	7	8	8	9
Estimated Outlays	3	5	5	5	6	6	7	8	8	9
SCHIP										
Budget Authority	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	1	1	1	1	*	*	*	*	*	*
Exempt Indians from Premiums										
Medicaid										
Estimated Budget Authority	2	3	3	3	3	3	3	3	3	3
Estimated Outlays	2	3	3	3	3	3	3	3	3	3
SCHIP										
Budget Authority	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	*	*	*	*	*	*	*	*	*	*
Medicaid Interaction with SCHIP										
Estimated Budget Authority	*	*	*	*	1	1	1	1	1	1
Estimated Outlays	*	*	*	*	1	1	1	1	1	1
Medicaid Managed Care Provisions										
Estimated Budget Authority	1	2	3	3	3	4	4	4	5	5
Estimated Outlays	1	2	3	3	3	4	4	4	5	5
Scholarship and Loan Repayment Recovery Fund										
Estimated Budget Authority	*	*	*	*	*	*	*	*	*	*
Estimated Outlays	*	*	*	*	*	*	*	*	*	*
Total Changes in Direct Spending										
Estimated Budget Authority	7	42	90	44	46	96	49	51	104	54
Estimated Outlays	8	12	13	15	21	24	28	36	38	43

NOTES: Components may not sum to totals because of rounding. SCHIP is the State Children's Health Insurance Program.

* = Costs or savings of less than $500,000.

Spending on Health Facilities. IHS already has the authority to enter into leases, contracts, or other agreements with tribes or tribal organizations that have title to, a leasehold interest in, or a beneficial interest in facilities that would be used by IHS to deliver health care services. Section 308 of the bill would require that all such arrangements be treated as operating leases for the purposes of the Balanced Budget and Emergency Deficit Control Act.

Under the bill, CBO anticipates that IHS would enter into arrangements that should be treated as capital leases because those arrangements would effectively allow IHS to acquire new buildings. Consistent with government rules for accounting for obligations, the full cost of those leases should be recorded in the budget as new budget authority at the time the lease agreements are signed. That budget authority—estimated to be about $440 million over the 2005-2014 period—is determined by calculating the discounted present value of the anticipated lease payments. Spending of that budget authority would occur over the term of the various leases (that is, outlays would significantly lag behind the budget authority).

For this estimate, CBO assumed that IHS would begin signing new capital leases starting in 2006. Based on information from IHS, we anticipate that those leases would be used for a variety of construction projects, including inpatient hospitals, outpatient hospitals, and staff quarters. We assume that IHS would not begin to make lease payments until 2008; payments in that year would total $2 million and then rise gradually to $23 million by 2014. Both the level of spending that might occur under the bill and the types of projects that might be financed are uncertain, and IHS spending may be more or less than the amounts CBO has estimated.

Consultation with Indian Health Programs. Section 409 would encourage state Medicaid programs to consult regularly with Indian health programs on outstanding Medicaid issues by allowing states to receive federal matching funds for the cost of those consultations. Those costs would be treated as an administrative expense under Medicaid and divided equally between the federal government and the states. CBO anticipates that a small number of states would take advantage of this provision, increasing federal Medicaid spending by about $200,000 in 2005 and by $7 million over the 2005-2014 period.

Exempt Indians from Cost Sharing. Section 412 would prohibit Medicaid and SCHIP from charging cost sharing to Indians for services provided directly or upon referral by Indian health programs. The provision also would require that payments by Medicaid and SCHIP for services provided directly by those programs could not be reduced by the amount of cost sharing that Indians otherwise would pay.

Medicaid. CBO anticipates that this provision's budgetary effect would stem primarily from eliminating cost sharing for referral services. Current law already prohibits Indian health

programs from charging cost sharing to Indians who use their services. In addition, Medicaid pays almost all facilities operated by IHS and tribes based on an all-inclusive rate that is not reduced to account for any cost sharing that Indians would otherwise have to pay.

Using Medicaid administrative data, CBO estimates that about 225,000 Indians are Medicaid recipients who also use IHS, and that federal Medicaid spending on affected services would be about $400 per person annually in 2005. The amount of affected spending would be relatively low because Medicaid already prohibits cost sharing in many instances, such as long-term care services, emergency services, and all services for children and pregnant women. For the affected spending, CBO assumes that cost sharing paid by individuals equals 2 percent of total spending—Medicaid law limits cost sharing to nominal amounts—and that eliminating cost sharing would increase total spending by about 5 percent as individuals consume more services. Overall, CBO estimates that the provision would increase federal Medicaid spending by $3 million in 2005 and by $62 million over the 2005-2014 period.

State Children's Health Insurance Program. SCHIP regulations already prohibit states from charging cost sharing to Indian children enrolled in the program. As a result, the provision's impact on SCHIP spending reflects higher payments to Indian health programs and the use of additional referral services by adult enrollees that some states cover in waiver programs. CBO estimates that the additional spending would total $1 million in 2005 and $5 million over the 2005-2014 period. The provision's effects would be limited in later years because total funding for the program is capped.

Exempt Indians from Premiums. Section 412 also would exempt Indians from paying any premiums under Medicaid or SCHIP. Based on information from the Government Accountability Office on the limited extent to which states charge premiums in those programs and Medicaid administrative data, CBO estimated that this provision would affect about 5,000 Medicaid recipients, and that the loss of premium payments from those individuals would raise federal Medicaid spending by $2 million in 2005 and by $29 million over the next 10 years.

CBO also estimates that this provision would affect federal SCHIP spending by less than $500,000 annually. As noted above, Indian children do not pay premiums under SCHIP, so the provision would affect only adult recipients.

Medicaid Interaction with SCHIP. The changes in SCHIP spending outlined above also would lead to slightly higher Medicaid spending. Total funding for SCHIP is limited by statute, and CBO anticipates that many states will experience funding shortfalls over the 10-year projection period. CBO also assumes that states will partly offset those funding shortfalls by expanding Medicaid eligibility, which would allow states to continue receive

federal matching funds, albeit at a less-favorable matching rate. Since S. 556 would increase spending in SCHIP, it also would increase the extent to which states use Medicaid funds to offset funding shortfalls in SCHIP. CBO estimates that this interaction would raise federal Medicaid spending by less than $500,000 in 2005 and by about $5 million over the 2005-2014 period.

Medicaid Managed Care Provisions. Section 413 contains three provisions that would affect Medicaid spending on services provided in managed care settings.

Pay Indian Health Programs at Preferred Provider Rates. States that rely on managed care organizations (MCOs) to provide care to Medicaid beneficiaries and have an IHS presence commonly require MCOs to include Indian health programs in their networks or otherwise allow access to services provided by those programs. In other instances, states pay Indian health programs directly for services provided to Indians enrolled in managed care. Although Indian health programs are generally eligible for Medicaid reimbursement from MCOs, they may not be paid at the same rates as preferred providers. S. 556 would require that managed care organizations pay Indian health programs at least the rate paid to preferred providers. As an alternative, state Medicaid programs could pay the increased amounts directly to Indian health programs.

Under current law, about 200,000 Indians on Medicaid receive health care services through MCOs. Based on Medicaid administrative data, CBO estimates that about a third of Indians in Medicaid managed care also use Indian Health providers, mainly for primary care services. Assuming that a third of those enrollees use non-preferred providers, CBO estimates that providers serving about 23,000 Indians would receive rate increases by 2009. Based on administrative spending data for Indians in managed care and assuming that rates under the bill would be 20 percent higher than under current law, CBO estimates that the bill would increase payments to providers of about $150 per year in 2009, some of which would be paid through managed care plans and the balance directly by the states. Assuming the regular Medicaid match rate for plan spending and a 100 percent match rate for direct payments to facilities operated by IHS and tribes, CBO estimates that the bill would increase federal Medicaid payments by less than $1 million in 2005 and by about $16 million over the 2005-2014 period.

Submission of Claims. The bill also would prohibit MCOs from requiring enrollees to submit claims as a condition of payment to contracting Indian health programs. CBO anticipates that Indian health programs would be able to bill more, raising federal Medicaid spending by less than $1 million in 2005 and by $5 million over the 2005-2014 period.

Require States to Contract with Indian Health Programs. Finally, S. 556 would require states to enter into agreements with MCOs that are run by an Indian health program. CBO

anticipates that the provision would increase the number of Indians who receive care from MCOs. Because payments to those MCOs would be reimbursed at a 100 percent federal matching rate (instead of the regular matching rate), CBO estimates that this provision would increase federal Medicaid spending by less than $1 million in 2005 and by $13 million over the 2005-2014 period.

Scholarship and Loan Repayment Recovery Fund. Section 111 would allow the Secretary of Health and Human Services to spend amounts collected for breach of contract from recipients of certain IHS scholarships. Under current law, those funds are deposited in the Treasury and not spent. Because the Secretary's ability to spend those funds would not be subject to appropriation, the provision would increase direct spending. Based on historical information from IHS, CBO estimated that the provision would increase spending by about $150,000 in 2005 and by $3 million over the 2005-2014 period.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

Intergovernmental Mandates

S. 556 would preempt state licensing laws in cases where a health care professional is licensed in one state but is performing services in another state under a funding agreement in a tribal health program. This preemption would be an intergovernmental mandate as defined in UMRA; however, CBO estimates that the loss of any licensing fees resulting from the mandate would be small and would not approach the threshold established in UMRA ($60 million in 2004, adjusted annually for inflation).

Other Impacts

S. 556 would reauthorize and expand grant and assistance programs available to Indian tribes, tribal organizations, and urban Indian organizations for a range of health care programs, including prevention, treatment, and ongoing care. The bill also would allow IHS and tribal entities to share facilities, and it would authorize joint ventures between IHS and Indian tribes or tribal organizations for the construction and operation of health facilities. The bill would authorize funding for a variety of health services including hospice care, long-term care, public health services, traditional Indian health care, and home and community-based services.

The bill would prohibit states from charging cost sharing or premiums in the Medicaid or SCHIP programs to Indians who receive services or benefits through an Indian health

program. The bill also would require states that operate managed care systems within their Medicaid programs to enter into agreements with Indian health programs that operate managed care systems. CBO estimates that these requirements would result in additional spending by states of about $35 million over the 2005-2009 period. Some tribal entities, particularly those operating managed care systems, may realize some savings as a result of these provisions.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

This bill contains no private-sector mandates as defined in UMRA.

PREVIOUS CBO ESTIMATE

On November 30, 2004, CBO transmitted a cost estimate for H.R. 2440, the Indian Health Care Improvement Act Amendments of 2004, as reported by the House Committee on Resources on November 19, 2004. The language in the two bills is almost identical, and CBO estimates that their budgetary effects would be the same.

ESTIMATE PREPARED BY:

Federal Costs: Eric Rollins
Impact on State, Local, and Tribal Governments: Leo Lex
Impact on the Private Sector: Stuart Hagen

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis