



NATIONAL CONGRESS OF AMERICAN INDIANS

NCAI WRITTEN TESTIMONY TO U.S. SENATE COMMITTEE ON INDIAN AFFAIRS ON “S.1352, *THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF- DETERMINATION REAUTHORIZATION ACT OF 2013*”

JULY 31, 2013

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On behalf of the National Congress of American Indians (NCAI), thank you for the opportunity to provide testimony about our views on S.1352, The Native American Housing Assistance and Self-Determination Reauthorization Act of 2013. NCAI looks forward to working with the Committee to ensure recommendations coming out of the Committee's hearings process take into account the housing needs of Indian Country.

The 1996 enactment of the Native American Housing Assistance and Self-Determination Act (NAHASDA) was rightly seen as a significant event in the history of Indian housing. NAHASDA consolidated a number of existing programs into the Indian Housing Block Grant (IHBG). This system drew lessons from the success of other self-determination and self-governance programs. These programs in diverse areas – from health to natural resources to economic development – had demonstrated the positive impact of empowering tribes to more effectively develop, implement, and manage strategies to meet the specific needs of their community. The history of NAHASDA has shown the positive impact of empowering tribes to develop strategies that meet the needs of their communities.

NAHASDA has transformed how Indian housing programs recognize tribes' authority to make their own business decisions and this 2013 reauthorization addresses the majority of the housing programs that serve Indian Country. Tribes have made strides in addressing housing and infrastructure conditions in Indian Country through developing and managing their own programs and in many cases leveraging NAHASDA dollars with tribal dollars. This flexibility is even more important given the changed economic environment since 1996, and the various policy developments that hold significant potential to enhance housing development in Indian Country. NCAI has worked with tribal governments and the National American Indian Housing Council to find solutions that strengthen and improve housing infrastructure in Indian Country.

NCAI's comments regarding S.1352, The Native American Housing Assistance and Self-Determination Reauthorization Act of 2013 are outlined below. The first section addresses provisions in the bill itself, the second section identifies additional areas of opportunity for the Committee's consideration.

SECTION I: ANALYSIS OF S. 1352

Title I- Block Grants and Grant Requirements

- **Section 101. Treatment of Program Income and Labor Standards**

NCAI supports this important provision as it strengthens tribal self-determination and enables tribes to respond most effectively to local economic conditions.

This language provides clarification that NAHASDA recipients satisfy federal labor requirements when applying tribal adopted prevailing wage rates to fund NAHASDA projects. The use of prevailing wages instead of macro-wages is a critical distinction to ensure tribes have the flexibility to maximize job creation at the local level. For example, a Montana tribe who received American Recovery and Reinvestment Act funding applied their tribal adopted prevailing wages so they could maximize employment for tribal members. The tribe was able to offer numerous quality jobs for tribal members – in a reservation facing significant challenges with unemployment – paying between \$16 to \$18 per hour. Average wages in the nearest city at that time (macro wages) stood between \$20 to \$22 per hour. If the tribe was compelled to apply macro wage standards the result would have been less jobs to address the unemployment crisis in that community. This provision enhances NAHASDA's purpose to strengthen tribal self-determination by acknowledging tribes are best positioned to develop strategies to meet the needs of their communities.

- **Section 102. Environmental review**

NCAI strongly supports the amendments contained in Section 102 as it promises to expedite housing projects, improve efficiencies, and eliminate wasteful duplicative environmental reviews

One of the innovations of NAHASDA was to allow tribes to exercise environmental review requirements that would otherwise be carried out by HUD. For those tribes that have the capacity in-house to conduct environmental review, it is both an exercise of the tribe's sovereignty and administratively more efficient to have such reviews carried out by the tribe. Under the NAHASDA regulations, where a tribe does assume environmental review responsibilities, it must do so in accordance with the applicable HUD environmental review regulations at 24 CFR parts 50 and 58. Many tribes and TDHEs have built their capacity to carry out environmental reviews consistent with the HUD-mandated process.

However, because many housing projects in Indian Country involving funding and/or review by various federal agencies, in a number of cases there are additional, overlapping, and redundant environmental review requirements imposed by federal agencies including the Bureau of Indian Affairs, Indian Health Service (IHS), and/or Department of Agriculture (USDA). The Bureau of Indian Affairs in exercising their authority to review and approve residential leases on trust lands may require environmental review. Further, when tribes or TDHEs leverage their NAHASDA funds by using grant funds from other federal agencies (such as the IHS or USDA – Rural Development), that agency's environmental review requirements will also apply. Thus, tribes and TDHEs in such circumstances will be required to undertake three different environmental reviews – all of which are intended to meet the same federal statutory requirements under the National Environmental Policy Act – because each federal agency has its own guidelines and procedures. The resulting administrative and legal costs in doing so take funds away from constructing houses and causes unnecessarily delays for critical housing

projects. This section will save time for the tribes developing housing projects and will save both federal and tribal resources. It is a critical change to ensure efficient development of tribal housing projects.

Title IV- Other Housing Assistance for Native Americans

- **Section 401. Demonstration of rental assistance for homeless or at-risk Indian Veterans**

NCAI has concerns about section 401 because the intent of NAHASDA is to enable tribes to exercise self-determination and the proposed demonstration program carves out dollars for a specific purpose instead of empowering tribes to implement programs to meet the unique needs of their communities. While NCAI understands the intent of Section 401 to include Native veterans in Indian housing programs, NAHASDA already enables tribes and tribal housing authorities to provide housing services to Native American veterans including rental and homeownership services.

NCAI sees significant potential in the separate pilot program proposed by the Senate Appropriations Committee. S. 1243, the Fiscal 2014 Transportation-HUD Appropriations Act includes a “Pilot for Homeless Native Americans.” There is a joint HUD-Veterans Affairs Supportive Housing Program (HUD-VASH), which is intended to end veteran homelessness because current programs rules presented barriers to Native veterans accessing rental vouchers if they lived on tribal lands and are homeless or at-risk of homelessness. The Senate Appropriations Committee provides a set-aside of \$3 million for HUD-VASH to design a pilot program to provide housing and supportive services to veterans who are homeless or at risk and who live on tribal lands.

The Appropriations Committee has instructed HUD Office of Native American Program to work with the Public Indian Housing Voucher Office to find an effective way to apply HUD-VASH model on tribal lands; and to work with U.S. Department of Veterans Affairs (VA) on referrals to the programs and to make sure services are provided to participating Veterans. NCAI supports this pilot program to address Native American Veterans homelessness because it would be better suited and equip for HUD, VA, and HUD Office Veterans Affairs to address this issue by using funding from HUD-Veterans Affairs Supportive Housing Program, which has already demonstrated success in decreasing Veterans homelessness by 17 percent since 2009.

- **Section 404. Preference for projects in Indian areas**

NCAI strongly supports the amendments contained in section 404. This provision is a top priority of NCAI's tribal tax working group and is supported by NCAI and our partners. The amendments to the Low Income Housing Credit ensure access to a critical leveraging tool to develop housing on tribal lands. Some tribes have faced barriers in accessing the tax credit due to misunderstanding by state governments in allocating their credits. NCAI fully supports this provision because it appropriately inserts projects located in “Indian areas,” as defined in Section 4 of NAHASDA, within the selected projects given preference under a “qualified allocation plan.”

SECTION II: ENSURING THE SUCCESS OF NAHASDA

In addition to our position on the provisions outlined above, NCAI urges the Committee to consider the following areas of emphasis that will ensure the success of NAHASDA. Emphasis on these areas will ensure that NAHASDA reaches its full potential to advance economic opportunity and strengthen self-determination.

- **Section 184 Indian Home Loan Guarantee Program**

Section 184 of the Housing and Community Development Act of 1992 began to address one of the fundamental challenges faced by Indian housing—the lack of private mortgage financing. The program provided an assured federal payment of 100% of an outstanding mortgage balance if a borrower defaulted on his/her loan. The program authorizes the BIA and HUD to approve borrowers and land leases in order to guarantee loans from private lenders to Native American families, tribes, and housing authorities. The home and the leasehold interest in the home site are mortgaged and are subject to liquidation in case of foreclosure, although eligible tribal members, the tribe, or the relevant Indian Housing Authority are first offered a chance to assume the leasehold interest and continue payments. In order to participate in HUD mortgage guarantee programs, HUD must review the tribe's legal ordinances which include: leasing, mortgage lending, eviction and foreclosure as well as the code enforcement process through the tribal courts system or another court of competent jurisdiction (designated by the tribe).

Using Section 184, Indian tribes or tribal members can purchase an existing home; obtain single-close construction loans for stick-built or manufactured homes on a permanent foundation; obtain rehabilitation loans; or obtain both a purchase and rehabilitation loan. In 2004, HUD expanded the Section 184 program to allow tribes to petition the agency for the right to extend their service area or “Indian Area” to include Native-owned homes off-reservation. These off-reservation units exist in areas where a particular tribe traditionally resided or where significant members now live. As a result, certain tribes can now apply the Section 184 program to all of their members residing within a particular state instead of just within their reservation's borders.

The Section 184 program is one of the most successful homeownership programs for Indian Country and is a model for other homeownership programs. Since the program was established, there have been almost 22,000 Section 184 transactions totaling \$3.5 billion in loans that serve Native borrowers. According to the most recent figures from HUD, these loans include 2,656 transactions on tribal trust lands totaling \$290 million; 526 transactions on allotted land totaling \$73.6 million; and 18,760 transactions on fee simple land totaling \$3.15 billion. Based on these numbers, tribal trust and allotted land transactions make up only 14.5 percent of Section 184 transactions. NCAI continues to be concerned that a significant proportion of Section 184 loans are not on tribal trust or individual trust lands, contrary to the original intent of Section 184 to increase homeownership on tribal lands. NCAI urges the Committee to consider the following challenges to increasing Section 184 loans on tribal trust lands:

1. Financial Investors and Institution:

Especially given the tightening of mortgage markets and challenges faced by the financial sector in general since the financial crisis, it is imperative that Congress address the limited access to capital on tribal lands. The most recent available data note that 86 percent of Native communities lack access to a single financial institution. This absence presents significant

challenges to attracting investors and securing home mortgages in Indian Country. This challenge has long-term implications for the overall economic health of tribes given that the final report of the President's Council on Financial Capability noted that the lack of well designed and accessible financial products and services challenges the capacity to enhance financial capabilities. ;

2. Financial Capabilities:

NCAI strongly advocates for tribes to enact comprehensive programs and policies that promote increased financial capability for tribes and for Native peoples – and for Congress to assure that the resources to do this are included in the NAHASDA reauthorization. Increased financial capability is a foundation for building permanent assets to strengthen their communities' economies. Housing programs offer a critical opportunity to include programs and policies that directly address individual's ability to become financially literate and make more informed financial decisions for themselves and their families.

3. Leasing Regulations

As outlined below, the July 2012 passage of the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act presents a critical opportunity for HUD to expand housing development utilizing expedited leasing processes. This effort will require close coordination with the Bureau of Indian Affairs and consultation with tribes to ensure effective implementation. NCAI believes that streamlined leasing will increase Section 184 loans on reservation, and enable potential tribal homeowners to successfully meet requirements used by financial lenders to process and complete home mortgage loan applications.

- **Expanding Lending and Housing Development through the HEARTH ACT**

The HEARTH Act presents the opportunity for tribes to lease restricted lands for residential housing, and will spur homeownership on tribal lands for middle class tribal communities. The new law is focused on Indian housing, and authorizes surface leasing of tribal lands without approval from the Secretary of the Interior. Instead, tribal leases can be approved by the tribe under tribal leasing regulations. The new law will enable tribes to move more quickly on leasing and economic development, while maintaining the Secretary's trust responsibility to oversee trust lands. The BIA has already approved several tribal leasing codes, but much more work is needed to implement the law and ensure that all tribes are able to take advantage of its opportunities.

First, tribal leasing codes under the HEARTH Act must be developed and made consistent with the BIA's recently updated leasing regulations, 25 C.F.R. 162. The BIA has also published a National Policy Memorandum containing a list of criteria that should be considered. Key requirements include leasing code development and an environmental review process. Many tribes will need technical assistance and staffing not only in developing codes, but also in the review and approval processes. As the NAHASDA legislation moves forward, we would encourage the Committee to authorize the use of NAHASDA funds for this purpose.

- **Ensure integrated planning is an eligible activity under NAHASDA**

Tribes may already use NAHASDA funds for the basics of planning for housing, including related infrastructure like water, power and sewage. However, NCAI encourages the Committee to make

more planning resources available to integrate housing planning with all other planning for economic development and jobs, education, transportation, agriculture and food, and the development of communities with health active lifestyles.

In Indian Country, there is a growing emphasis on planning for economic development and jobs and recognition of the importance of business agglomeration. Industries tend to cluster in certain regions, and it is important for tribes to plan and build businesses and jobs that complement their existing strengths.

Tribal industries tend to cluster in certain areas such as:

- Gaming/Hotel/Recreation/Entertainment
- Agriculture, Oil & Gas, Timber
- Commercial Real Estate
- Government Contracting – 638 and 8(a)
- Retail – Indian owned and taxed businesses
- Housing
- Roads
- Health Care
- Education
- Law Enforcement
- Native Arts & Crafts

All of these industries create jobs and create a demand for local housing. By the same token, there is a need for job creation for the Native people who live in Indian housing. Greater integration of housing and economic development planning is needed.

In addition, as tribal communities grow, it is essential to look at economic and environmental realities in order to make critical decisions about our future. That means tribal planning must address issues such as climate change, peak oil and food insecurity. Food and energy consume huge portions of tribal economies and must be considered in relation to tribal self-determination. The new millennium is a time when we are facing the joint challenges of an industrial food system and a centralized energy system, both based on fossil fuels, and both of which are damaging the health of our peoples and the Earth at an alarming rate. Tribal communities have long supplied the raw materials for nuclear and coal plants, huge dam projects, and oil and gas development. These resources have been exploited to power far-off cities and towns, while many tribes remain deficient in sources of heat or electricity.

Tribal communities also laid the groundwork for agriculture on this continent. Yet today, tribes produce less and less of their own food and instead rely upon imported foods. This is not a sustainable way to ensure the stability of our tribal communities, our environments and our cultures. NAHASDA should support more planning for the linkages of housing, jobs and lifestyles and support tribal efforts to create sustainable energy and food economies for this millennium and for the generations yet to come. Planning supports the creation of local economies, using the resources available to each Indigenous community.

- **Ensure ongoing data collection and analysis that supports tribal housing**

As the Committee is well aware, tribes and tribal housing entities face significant challenges in accessing current and reliable data to develop the most effective housing strategies to meet the needs of their

people. This challenge is certainly partially the responsibility of HUD – the most recent Native American Housing Needs Study was completed in 1999 – but the problem also extends to other agencies. The three most prominent examples are:

1. the American Community Survey poses significant data quality challenges at the local level with the concerns identified by rural and remote communities being even greater in Indian Country;
2. the 2001 Native American Lending Study, conducted by the Department of the Treasury's CDFI Fund, provides critical data about access to capital and is yet to be updated, 12 years since its publication; and,
3. the Bureau of Labor Statistics (BLS) essentially excludes data from Indian reservations in the monthly labor force reports, and there is a wide discrepancy between DOI labor force reports and those presented by BLS.

NCAI urges the Committee to explicitly include regular data collection and analysis in the 2013 NAHASDA reauthorization. As noted above, there are challenges of timely data collection, but there are also some challenges that could be addressed simply through more effective interagency coordination. It is also clear that there are several data reports required by HUD that are not analyzed or provided to tribes to assist in developing the best housing strategies.

One solution that NCAI has proposed to address this challenge would be to provide a clearinghouse to provide tribes and tribal housing entities with access to pertinent data collected by the federal government. As the President has noted in his “open government” strategies, access to data can enable more effective policy development. Similar to the information collected and provided through the Recovery.gov clearinghouse, HUD could partner with other agencies to provide tribes and tribal housing entities with access to data that can support effective policy making. This initiative could also map existing data requirements and ensure data reports that are required of tribes to ensure the requirements are useful to tribes and the federal government in developing housing policies.

CONCLUSION

NCAI thanks the Committee for its commitment to the important goals of tribal self-determination through flexible and effective housing policy. We look forward to working with the Committee throughout the reauthorization of NAHASDA to ensure the reauthorization takes the steps necessary to enable tribes to improve the housing condition for their tribal communities and effectively respond to the changed economic environment.