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NATIVE AMERICAN HOUSING

Challenges Facing HUD's Indian Housing Program

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Messrs. Chairmen and Members of the Committees:

We are pleased to have this opportunity to discuss the Department of Housing and Urban Development's (HUD) Indian housing programs. The federal government has moved from giving no recognition at all to Indian housing needs; to funding them through Indian housing authorities along with public housing; to establishing in October 1997 a system of housing block grants for the sovereign tribes to provide them with additional opportunities for self-determination. Federal housing assistance is needed in tribal areas. The Urban Institute recently reported that 40 percent of Native Americans in tribal areas live in overcrowded or physically inadequate housing compared with 6 percent of the U.S. population.¹ Moreover, providing safe and decent housing at a reasonable cost in tribal areas is difficult because of the austere and remote nature of the setting.

Today, our testimony focuses on the (1) funding history and results of HUD's housing programs for Native Americans, (2) factors that complicate and make costly the development and maintenance of affordable housing for Native Americans, and (3) HUD's ability to detect mismanagement in Indian housing and the potential impact of the recently enacted Native American Housing Assistance and Self-Determination Act of 1996 on HUD's oversight of Indian housing. Our testimony is based on our draft report on HUD's Indian housing programs that we are preparing at the request of the Subcommittee on VA, HUD, and Independent Agencies, House Committee on Appropriations; our recent visits to several Indian housing authorities; and our discussions with officials at selected field offices of HUD's Office of Native American Programs.

In summary, we found the following:

- From fiscal year 1986 through fiscal year 1995, HUD provided \$4.3 billion (constant 1995 dollars) for housing and community development in tribal areas. Of this amount, HUD provided \$3.9 billion to approximately 189 Indian housing authorities to develop and maintain affordable housing and assist low-income renters. In this period, the authorities used the funds to construct over 24,000 single-family homes, operate and maintain existing housing, and encourage other development. Over the decade, HUD also has provided direct block grants totaling over \$428 million (constant 1995 dollars) to eligible tribes for community development and mortgage assistance.

¹Assessment of American Indian Housing Needs and Programs, Urban Institute, May 1996.

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- Many factors complicate and make costly the development and maintenance of affordable housing for Native Americans. These factors include the remoteness and limited human resources of many Indian housing authorities and the Indian communities they serve, land-use restrictions and the inhospitality of the land, the difficulty that contractors and Indian housing authorities have in complying with statutory requirements to give hiring preference to Indians, and the vandalism and neglect that make heavy demands on the scarce maintenance funds available to Indian housing authorities.
 - In December 1996, the Seattle Times reported 29 instances of possible mismanagement or misuse of federal funds by Indian housing authorities. For example, the Times reported that Indian housing authorities used federal funds to build luxury homes, covered the mismanagement of one federal grant with funds from another grant, and reprogrammed large federal grants without HUD's approval. HUD's IG found that most of these reports were accurate. Our work found that HUD does not effectively apply its system for alerting it to poorly performing Indian housing authorities. As a result, HUD may not be able to detect additional instances of mismanagement or misuse of funding. Furthermore, HUD's approach to overseeing Indian housing may change, depending on regulations now being developed to implement the new Indian housing legislation.

Background

The United States Housing Act of 1937 established the Public Housing Program to provide decent, safe, and sanitary housing for low-income families. For many years, this act was interpreted to exclude Native Americans living in or near tribal areas. In 1961, however, HUD and the Bureau of Indian Affairs (BIA) determined that Native Americans could legally participate in the rental assistance for low-income families authorized by the 1937 act and issued regulations to implement this determination. In 1988, the Indian Housing Act established a separate Indian housing program and prompted HUD to issue regulations specific to this program. With the recently enacted Native American Housing Assistance and Self-Determination Act of 1996 (whose regulations are scheduled to take effect on Oct. 1, 1997), the Congress completed the process of separating Indian housing from public housing.

According to the May 1996 report by the Urban Institute, the housing needs of Native Americans are growing. Their population rose sixfold over the past four decades to over 2 million in 1990, 60 percent of whom live in tribal areas or in the surrounding counties. And, compared to non-Indians, Native Americans are more family-oriented—37 percent of Native

American households are married couples with children versus 28 percent of non-Indian households. Compared to non-Indians, Native Americans have a higher unemployment rate (14 percent versus 6 percent), a smaller number of workers in “for-profit” firms per thousand people (255 versus 362), and a higher share of households with very low incomes (33 percent versus 24 percent). Moreover, Indian housing conditions are much worse than housing conditions in other areas of the country: 40 percent of Native Americans in tribal areas live in overcrowded or physically inadequate housing compared with 6 percent of the U.S. population.

Through its Native American Programs headquarters office and its six field offices, and with the help of approximately 189 Indian housing authorities, HUD administers the majority of the housing programs that benefit Native American families in or near tribal areas. Several significant differences exist, however, between HUD’s assistance to these families and to families (non-Indian and Indian) living in urban and other areas. First, HUD’s support for Native Americans derives, in part, from the nation’s recognition of special obligations to the Native American population and is reflected in treaties, legislation, and executive orders. Second, the federal government deals with recognized tribes directly in a sovereign-to-sovereign relationship, rather than through the general system of state and local government. This status allows tribes to establish their own system of laws and courts. Third, the Bureau of Indian Affairs often holds in trust a considerable amount of land for a tribe as a whole; thus, this land is not subdivided into many private holdings as occurs in the rest of the country.²

This trust arrangement has frustrated the development of private housing markets in tribal areas and has long been seen as a special justification for federal assistance in housing production.

HUD Provides Most Funding for Housing Assistance Through Indian Housing Authorities

Under current regulations, IHAs administer most of the low-income housing assistance that HUD provides to Native Americans. But HUD also provides some housing assistance directly to tribes and individuals. Funding provided through housing authorities is used to

- develop housing for eventual ownership by individual families through the Mutual Help Program under which families lease and then buy their homes by making payments to the IHA of approximately 15 percent of their

²BIA also provides a relatively small amount of funding, approximately \$20 million annually, through its Housing Improvement Program for constructing new affordable housing.

adjusted income and must cover their own routine operating and maintenance expenses;

- develop and maintain rental housing for low-income families through the Rental Housing Program which, like the public housing program, makes low-income rental housing available to families from an IHA at a cost of 30 percent of their adjusted income;
- modernize and rehabilitate established low-income housing through the public housing modernization program; and
- subsidize IHAs to defray operating expenses that rental income does not cover and provide rental vouchers for low-income families.

Funding available to tribes and individuals includes

- loan guarantees for home mortgages,
- block grants through the HOME program for tribes to develop affordable housing in tribal areas, and
- community development block grants to enhance infrastructure and other economic development activities.

As shown in table 1, over the past decade HUD provided a total of \$4.3 billion for these programs, which have produced or are expected to produce a total of 24,542 housing units.

Table 1: Results of Major Housing and Community Development Programs for Native Americans, Fiscal Years 1986-95, Constant 1995 Dollars in Millions

Program	Funding for FY 1986-1995	Significant results
Mutual Help Program	\$1,613	Completed 15,721 units
Rental Housing Program	831	Completed 8,821 units
Modernization of low-income housing	926	Rehabilitated housing units to meet HUD's standards and upgraded IHAs' management, financial, and accounting control systems
IHA operating subsidy	548	Subsidized IHAs' expenses for managing the 82,000 assisted units and provided funding for various management activities
Section 184 loan guarantee	3	Provided guarantees for 477 loans in 1995, the program's first year
HOME affordable housing block grant	54	Provided 59 grants to construct, rehabilitate, and acquire houses
Community Development Block Grant (CDBG)	371	Supported housing programs and homeownership assistance; the construction of community facilities, such as roads, water, and sewer facilities and community buildings; and economic development activities
Total	\$4,347	Completed 24,542 units

Providing Housing Assistance for Native Americans Is Challenging and Costly

HUD and IHAS encounter unique challenges and costly conditions in administering and providing housing programs for Native Americans. Because of the over 550 separate Indian nations, cultures, and traditions, not all of these conditions are equally prevalent throughout tribal areas, nor do they have a common impact on developing and maintaining housing. Among the challenges and conditions highlighted in our discussions with officials of HUD and several IHAS, as well as in the May 1996 study by the Urban Institute, are

- the remoteness and limited human resources of many IHAS and the Native American communities they serve;
- the lack of suitable land and the severity of the climate;
- the difficulty contractors and IHAS have in complying with statutory requirements to give hiring preference to Native Americans; and

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- the pressure that vandalism, tenants' neglect, and unpaid rent put on scarce maintenance funds.

Remote Reservations Limit Infrastructure and Availability of Human Resources

The extent and pattern of the lands held by Native Americans are very different today from what they were at the beginning of the 19th century. During that century, the land area over which Indians had sovereignty and which was available for creating reservations was often reduced to small pieces in isolated areas. The remoteness of some of these tribal areas has created significant problems for housing development. In contrast to metropolitan areas, where basic infrastructure systems (including sewers, landfills, electricity, water supply and treatment, and paved roads) are already in place, remote tribal areas may require a large capital investment to create these systems to support new housing.

The remoteness of many of the tribal areas also increases the cost of transporting the supplies, raises labor costs, and reduces the availability of supplies and of an "institutional infrastructure" of developers and governmental and private entities. For example, transporting a drilling rig over many miles and hours into the desert to a tribal area in California is far more costly than if the well had been needed in a less remote area. In addition, as the Urban Institute found in its study of Native American housing needs, private housing developers, contractors, and suppliers; governmental planners and building inspectors; private financial institutions; and nonprofit groups are all less available in remote tribal areas.

The limited human resources of many IHAS also contributes to the high cost of developing and maintaining housing. HUD's Deputy Assistant Secretary for Native American Programs told us that housing authorities that recruit their staff from a small tribal population often have difficulty finding qualified managers to administer multimillion-dollar housing grants. This problem is made worse when coupled with the statutory requirement to give Indians first consideration for such jobs. Because many Indian applicants have incomplete formal educations, they often need more time to become familiar with HUD's assisted housing program and regulations than applicants from the larger pool enjoyed by a public housing authority in an urban area, according to the Deputy Assistant Secretary.

The executive director at the Gila River Housing Authority in Sacaton, Arizona, echoed these views when he described his inability to hire skilled

and dependable tribal members. He pointed out that many skilled members have personal problems associated with drugs and alcohol, causing the housing authority to search outside the tribal area for much of its labor force. He also said that because members of the available semiskilled work force need a significant amount of training before they are employable, he cannot afford to hire them. Moreover, some of the tribe's laborers are drawn to cities away from the reservation, he said, because of the greater employment opportunities and higher wages there.

This lack of skilled human resources is costly. HUD officials told us that as a general rule in the construction industry, labor costs should not exceed 50 percent of the total cost, but in tribal areas labor costs can run as high as 65 percent because contractors generally have to bring in skilled workers and pay for lodging and commuting costs.

Land-Use Restrictions and the Inhospitability of the Land Complicate the Development and Maintenance of Low-Income Housing

In many tribal areas, observers see what appears to be a vast expanse of unused land. However, a lack of available land is, in fact, a constraint that many IHAS face as they develop low-income housing. Factors that limit the availability of land for housing include the trusts in which BIA holds the land that, until this year, limited leases to 25 years in many instances. Special environmental and other restrictions also exist. For example, in planning for development, IHAS and tribes avoid archaeological and traditional burial sites because cultural and religious beliefs preclude using these sites for housing. In many cases, sufficient tribal land exists for housing, but environmental restrictions prohibit the use of much of it for housing. The Urban Institute's survey of IHAS revealed that, overall, wetlands restrictions, water quality considerations, and contaminated soils add to the cost of housing in tribal areas.

In the Western desert, once low-income housing is developed, the severity of the climate can complicate maintenance. The effects of high salt and mineral content in the water and soil were evident at the Gila River Housing Authority, causing damage to water heaters and copper and cast iron pipes. The executive director told us that the average life of a hot water heater costing \$300 is about 6 months. To remedy the corrosion to plumbing, the IHA has begun placing plumbing in ceilings and converting to plastic piping. Also, the water's high mineral content damages the water circulation systems of large fans called "swamp coolers," used for summer cooling. The executive director told us that because of calcium buildup, the IHA must replace the coolers annually. He also explained that because

of the soil's high salt content, housing foundations and sewer systems also deteriorate more rapidly than in more benign environments.

Complying With Indian Hiring Preference and Davis-Bacon Act Requirements Increases Burden for IHAs

Certain statutes, including the Indian Self-Determination and Education Assistance Act and the Davis-Bacon Act,³ are intended to protect and provide opportunities for specific groups. However, IHA officials and HUD officials whom we contacted believe that these statutes can make developing housing in tribal areas more costly because they have the effect of raising the cost of labor over local wage rates or restricting the supply of labor.

The Indian Self-Determination and Education Assistance Act of 1975 requires IHAs to award contracts and subcontracts to Indian organizations and Indian-owned economic enterprises. IHA executive directors find that implementing the act's requirement is difficult and believe that the regulations add to contractors' time and costs to bid on work for IHAs. The officials said that factors that undermine the requirement include a lack of qualified Indian contractors in the area, the creation of fraudulent joint ventures that are not owned or managed by Indians, and the occasional need to use qualified firms outside the region that do not understand local conditions.

Under the Davis-Bacon Act, firms that contract with IHAs for housing development must pay wages that are no less than those prevailing in the local area. However, HUD officials told us that this requirement generally increases IHAs' costs of developing housing in tribal areas. The costs increase because the applicable Davis-Bacon wage rate is often based on wage surveys done by HUD of large unionized contractors based in larger metropolitan areas, and the rate is therefore about \$10.00 per hour higher than the rate prevailing in the local tribal area. Officials of the Chemehuevi IHA in Havasu Lake, California, told us that because of high Davis-Bacon wage rates, their cost to develop a single-family home ranges between \$85,000 and \$98,000. Using the prevailing rate of approximately \$6.50 to \$8.00 per hour, they estimate the development cost to be between \$65,000 and \$80,000.

³The Davis-Bacon Act provides that workers in certain trades involved in federal construction contracts be paid wages determined by the Secretary of Labor to be prevailing in the area of construction.

Neglect and Vandalism Draw on Maintenance Budgets That Are Shrinking Because of Unpaid Rent

If housing units are abused through neglect or vandalism and not regularly maintained, costly major repairs can be needed. These avoidable repairs put pressure on maintenance budgets that are shrinking because a high percentage of rents are unpaid in tribal areas. Moreover, maintaining assisted housing for Native Americans is an increasingly difficult challenge because of its age—44 percent of the units were built in the 1960s and 1970s.

For housing units in HUD's Rental Housing Program for Native Americans, the Urban Institute reported that 65 percent of the IHA officials responding to its telephone survey identified tenants' abuse and the vandalism of vacant homes as the factors contributing most to maintenance costs. For units under the Mutual Help Program (which are owned or leased by the residents), the Urban Institute reported that, according to IHA officials, residents' neglect to perform needed maintenance accounted for 30 percent of the poor physical conditions associated with this segment of the housing stock.

Our discussions with IHA officials reinforce these findings. The executive director at the Gila River Housing Authority told us that vandalism by juveniles was a major problem for him and that because the tribal area borders Phoenix, Arizona, it is more susceptible to gang activity and violence. Chemehuevi IHA officials pointed out that once a family that has neglected to perform expected maintenance moves out and the tribe turns the housing back to the IHA, the IHA often incurs a large and unexpected rehabilitation cost before it can lease the unit to another family.

The high level of unpaid rent among assisted Native American families has exacerbated the problem of accomplishing needed maintenance. Routine and preventive maintenance is an operating expense that an IHA pays for out of rental income and an operating subsidy that HUD provides to help defray expenses. However, according to HUD, appropriations for these subsidies have not been sufficient to cover all operating expenses not covered by rental income. Therefore, shortfalls in rental income generally mean fewer funds to spend on maintenance. In recent years, these shortfalls have been at high levels for both the Rental Housing and the Mutual Help programs. For example, the Urban Institute reported that at the end of 1993, 36 percent of all tenants in the rental program were delinquent in their rent payments. In contrast, the average delinquency rate in public housing is only 12 percent.

To counter shortfalls in rental income, some IHAS enforce strong eviction policies. Others, however, are either unwilling or unable to do so. The IHAS attributed the ineffectiveness of their policies to such factors as tribal court systems that do not support evictions, the conflict of such policies with tribal culture, and their own lack of forceful management. Regardless of the reason, these shortfalls coupled with insufficient operating subsidies likely will lead to deferred maintenance and higher costs for major repairs in the future.

HUD Does Not Apply Its Risk Assessment Program Effectively, and New Legislation May Require Changes in Oversight

In December 1996, the Seattle Times reported a series of articles describing the possible mismanagement and misuse of federal funds by Indian housing authorities. The articles covered 29 instances of questionable performance and in many cases suggested that more effective oversight by HUD could have precluded or mitigated the mismanagement at the housing authority. HUD's IG found that most of the Times reports were accurate, including reports of Indian housing authorities using federal funds to build luxury homes for families with incomes that exceeded the program's eligibility criterion and reprogramming significant federal funds from one purpose to another without HUD's approval. Although HUD has a system to identify poorly performing Indian housing authorities, our work showed that this system did not detect, for the most part, mismanagement by the authorities as reported in the Times. This lack of detection was because HUD's system focuses primarily on authorities assessed as having a high risk of mismanagement. Furthermore, HUD had not assessed those authorities named in the Times as "high risk." Not having an effective oversight tool could be problematic for HUD, depending on the regulations that are negotiated to implement new Indian housing legislation taking effect in October 1997.

HUD Relies on Risk Assessment Program to Identify Poorly Performing IHAs

HUD field office staff rely on their Risk Assessment and Determination of Resources (RADAR) system to identify "high risk" IHAs. These are the IHAs whose management demonstrates weaknesses that could lead to the misuse of federal funding. The RADAR system uses performance and environmental factors to assess an IHA's management risks and HUD field staff rely on it to determine where they will allocate their scarce monitoring resources, contract for intensive on-site technical assistance, and focus their training for HUD's Partners in Progress (PIP) program—a technical assistance program for IHAs with long-standing operating difficulties. HUD staff score Indian authorities on the basis of their funding

levels, management control and operating procedures, and compliance with regulations. These scores form the basis for HUD staff to assess the IHA's risk of mismanaging federal funds.

One of the most important factors that RADAR uses to identify poorly performing IHAS is on-site monitoring that provides information about an IHA's performance and verifies the accuracy of the data submitted by the IHA. At two of the HUD field offices we visited, however, restrictions on the on-site monitoring of IHAS have resulted in a lack of assurance about the conditions that existed at the IHAS. These field offices account for nearly half of all IHAS. In addition, the staff at the offices we visited believed that their knowledge of IHAS' operations was insufficient and that they do not know enough to accurately assess the IHAS with the RADAR system. Because of this overall lack of assessment in accordance with the RADAR system, and because HUD had not assessed most of the IHAS cited in the Seattle Times articles as high risk, HUD staff were not able to detect inappropriate activities if they occurred.

Impact of New Indian Housing Legislation on HUD's Oversight Is Unclear

In 1996, the Congress enacted legislation that will change significantly the way that Indian housing is funded and overseen. Under the Native American Housing and Self-Determination Act of 1996, HUD will begin in October 1997 to provide directly to Indian tribes, or their designated recipients, block grants to carry out affordable housing activities. To qualify for the grants, tribes must submit to HUD annual plans and 5-year plans that provide statements of the tribes' needs and resources available to address those needs. In addition, tribes must submit annual performance reports that describe the accomplishments of the prior year and describe how the tribe would change its program as a result of its experiences. HUD, in turn, is required to conduct a limited review of each Indian housing plan to ensure that the plan complies with the various criteria outlined in the act and review the performance reports to determine whether they are accurate.

Among the act's requirements are that tribes include in their housing plans descriptions of the housing needs of low-income families and of how the geographic distribution of assistance is consistent with the needs for various types of housing assistance. In addition, the plans are to include detailed descriptions of the affordable housing resources available in the tribes' jurisdictions and of how various government and private entities will coordinate these resources. For example, the plan is to describe how the tribe will coordinate its resources with those of tribal and state welfare

agencies to ensure that the residents of such housing will have access to assistance in obtaining employment and achieving self-sufficiency. These plans and the year-end performance report are significant undertakings and are meant to ensure that federal funds are used effectively to meet the needs of low-income families.

HUD is now engaged in a negotiated rulemaking with Indian tribes and their representatives to develop a structure under which both the tribes and HUD can comply with the new Indian housing law. Until these regulations are approved and implemented, it is unclear how HUD's oversight of Native American programs will change and whether HUD can effectively provide such oversight with its current systems and resources.

Messrs. Chairmen, this concludes our testimony. We would be pleased to answer questions that you or Members of the Committees may have at this time.

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