

**STATEMENT OF ORLANDO J. CABRERA**  
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**U.S. Department of Housing and Urban Development**



**Before the**  
**Committee on Indian Affairs**  
**United States Senate**

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## INTRODUCTION

Mr. Chairman, Mr. Vice Chairman, and Members of the Committee, thank you for inviting me to provide comments on HUD's Indian housing and community development programs.

My name is Orlando Cabrera, and I am Assistant Secretary for the Office of Public and Indian Housing. I am responsible for the management, operation and oversight of HUD's Native American programs. These programs are available to 561 federally-recognized Indian tribes. We serve these tribes directly or through their tribally designated housing entities (TDHE), by providing grants and loan guarantees designed to support affordable housing, community and economic development activities. Our partners are diverse; they are located on Indian reservations, in Alaska Native Villages, and in other traditional Indian areas. We also work with Native Hawaiians on the Hawaiian Home Lands.

It is a pleasure to appear before you again and I would like to express my appreciation for your continuing efforts to improve the housing conditions of American Indian and Alaska Natives. From HUD's perspective, much progress is being made. Tribes are taking advantage of new opportunities to improve the housing conditions of the Native American families residing on Indian reservations, on trust or restricted Indian lands and in Alaska Native Villages. This momentum needs to be sustained as we continue to work together toward creating a better living environment for them.

## OVERVIEW

At the outset, let me reaffirm the Department of Housing and Urban Development's support for the government-to-government relationship with federally-recognized Indian tribes. HUD is committed to honoring this fundamental principle in our work with American Indians and Alaska Natives.

I'd like to share with you my perspective on how I'd like to help tribal communities succeed. My background is in housing so I would like to focus most on the tools of my profession; those tools used to leverage funding from multiple sources. Today there are more tools available than ever before. Tribes should look to federal resources such as the Native American Housing Assistance and Self-Determination Act's (NAHASDA) Indian Housing Block Grant and Title VI programs, but they also need to pursue opportunities such as the low-income housing tax credits. There are other federal and state programs that they may qualify for but are not using now. In order to better utilize all resources, they need to explore partnerships with the private sector-the most overlooked resource.

All these new efforts involve some risk, but without risk, fewer families are assisted.

We've engaged in marketing and outreach activities designed to make tribes and TDHEs more familiar with our programs, particularly those with federal guarantees to lower the risks that have traditionally made the private sector shy away from partnering with tribes. We are also examining a bond financing initiative that has worked well for public housing authorities to see

if it can do the same for tribes. We can also assist with advice on how to leverage private-sector capital to create more housing on reservations. As we move forward, we are aware of, and will work within the government-to-government relationship that exists between this Department and the federally recognized Indian tribes we serve.

In my presentation today, I will also cover the following topics:

1. A description of HUD's Native American programs.
2. Barriers and challenges to housing and community development in Indian Country, and HUD's accomplishments in response to them.
3. Current issues, including consultation and negotiated rulemaking.
4. Census issues, including the use of 2000 Census data in the Indian Housing Block Grant program.
5. HUD's response to the Inspector General's 2001 report on the implementation of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

## **PROGRAMS SYNOPSIS**

I would now like to give you a brief description of our programs.

### **INDIAN HOUSING BLOCK GRANT (IHBG) PROGRAM**

The Native American Housing Assistance and Self-Determination Act of 1996, as amended, or NAHASDA, provides formula-based housing block grant assistance to Indian tribes or their tribally designated housing entities. To qualify for a grant, the tribe must submit, for HUD's review for compliance, both a one-year and a five-year Indian Housing Plan containing a mission statement, goals and objectives, and an activities plan by which the recipient will provide affordable housing during the grant period. At the end of each grant year, an Annual Performance Report must be submitted describing how the grantee met its stated objectives. The program began in FY 1998. Prior to NAHASDA, Indian housing authorities received funds under the authority of the United States Housing Act of 1937, as amended (1937 Act).

**Funding Distribution:** Need-based formula funding allocations under the Indian Housing Block Grant (IHBG) program are predicated on two factors; need and Formula Current Assisted Stock (FCAS), which means the number of dwelling units that are currently owned or operated by the grant recipient that were developed under an Annual Contributions Contract authorized by the 1937 Act. FCAS also includes Section 8 units that continue to be operated after contract expiration in a manner similar to the Section 8 program.

**Applicant Eligibility:** Eligible tribes include federally recognized Indian tribes and the five state-recognized Indian tribes formerly eligible under the 1937 Act.

**Legal Authority:** Titles I through V of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (Public Law 104-330; 110 Stat. 40; 25 U.S.C. 4101 et seq.)

**Regulations:** 24 CFR part 1000

**TITLE VI TRIBAL HOUSING ACTIVITIES LOAN GUARANTEE FUND**

**(Title VI)**

**(Federal Guarantees for Financing for Tribal Housing Activities)**

This program authorizes HUD, through the Office of Native American Programs, to guarantee obligations issued by tribes or their tribally designated housing entities (TDHE) to finance the eligible affordable housing activities enumerated in Section 202 of NAHASDA and other housing-related community development activities consistent with the purposes of NAHASDA. No guarantee will be approved if the total outstanding obligations exceed five times the amount of the grant for the issuer, taking into consideration the amount needed to maintain and protect the viability of housing developed or operated pursuant to the 1937 Act.

The program requires issuers to pledge current and future IHBG appropriations toward the repayment of the guaranteed obligations. The full faith and credit of the U.S. is pledged to the payment of all guarantees.

HUD may not guarantee obligations exceeding \$400 million for each of Fiscal Years 1997-2007 with a cumulative cap of \$2 billion for the eleven-year period. Once 50 percent of the authority has been committed in any year, HUD may limit the amount of guarantees any one tribe may receive in any fiscal year to \$50 million or request an increase in the statutory dollar limitations. HUD may enter into commitments to guarantee loans for any fiscal year only to the extent that funds have been appropriated.

**Funding Distribution:** Eligible applicants apply for loans directly to lenders, and the Federal guarantee is issued after the loan is approved.

**Applicant Eligibility:** Grant recipients under the IHBG program authorized by NAHASDA.

**Legal Authority:** Title VI of Native American Housing Assistance and Self-Determination Act of 1996 (Public Law 104-330; 25 U.S.C. 4101 et seq.).

**Regulations:** 24 CFR part 1000, subpart E.

**SECTION 184 INDIAN HOUSING LOAN GUARANTEE FUND (Section 184)**

Section 184 of the Housing and Community Development Act of 1992 established a loan guarantee program for Indian families, Indian tribes, Indian housing authorities (IHA), and tribally designated housing entities (TDHE). The purpose of the program is to provide access to private mortgage financing for Indian families, TDHEs/IHAs, and Indian tribes that could not otherwise acquire housing financing because of the unique legal status of Indian lands. The loans guaranteed under the program are used to construct, acquire, refinance, or rehabilitate single-family housing located on trust land or land located in an Indian or Alaska Native area.

This guarantee authority is freestanding and has its own guarantee fund. HUD may enter into commitments to guarantee loans for any fiscal year only to the extent amounts have been provided in appropriations acts.

**Funding Distribution:** Eligible applicants apply for loans directly to lenders, and the federal guarantee is issued after the loan is approved.

**Applicant Eligibility:** Indian families, TDHEs/IHAs, and Indian tribes.

**Legal Authority:** Section 184 of the Housing and Community Development Act of 1992, as amended (Public Law 102-550; 106 Stat. 3739; 12 U.S.C. 1715z-13a)

**Regulations:** 24 CFR part 1005

### **INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT (ICDBG) PROGRAM**

The ICDBG program provides federal aid for Indian tribes and Alaska Native Villages to develop viable Native American communities. Competitive grants are awarded to eligible Indian tribes and Alaska Native Villages to improve the housing stock, provide community facilities, make infrastructure improvements, fund micro-enterprises, and expand job opportunities. Eligible activities include housing rehabilitation, acquisition of land for housing, and assistance for homeownership opportunities for low- and moderate-income persons, construction of single- or multi-use facilities, streets and public facilities, and economic development projects-- especially those sponsored by nonprofit tribal organizations or local development corporations. Funds may not be used for constructing or improving government facilities, for new housing construction (unless carried out by an eligible nonprofit organization), for general government or income expenses, for operating or maintenance expenses, for political activities, or to purchase equipment.

**Funding Distribution:** Under Section 106 of the Housing and Community Development Act of 1974, one percent of the Title I Community Development Block Grant appropriation, excluding amounts appropriated for use under Section 107, is allocated for grants to Indian tribes. Area Offices of Native American Programs distribute the funds to eligible Indian tribes and Alaska Native Villages on a competitive basis, according to selection criteria set forth in a regulation and an annual Notice of Funding Availability.

**Applicant Eligibility:** Federally recognized Indian tribes or tribal organizations applying on behalf of such a tribe.

**Legal Authority:** Title I of the Housing and Community Development Act of 1974, as amended (Public Law 93-383; 88 Stat. 633; 42 U.S.C. 5301 et seq.)

**Regulations:** 24 CFR part 1003

## **NATIVE HAWAIIAN HOUSING BLOCK GRANT PROGRAM (NHHBG)**

This program is patterned after the Indian Housing Block Grant program, but contains changes to address the housing needs and circumstances of Native Hawaiians. The NHHBG program authorizes HUD to make grants to the State of Hawaii's Department of Hawaiian Home Lands (DHHL) to carry out affordable housing activities for Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands. The DHHL must submit for HUD review a one-year and a five-year housing plan containing the goals, mission, and methodology by which DHHL will accomplish its objectives during the grant period. At the end of each grant year, an Annual Performance Report must be submitted describing how the grantee met its stated objectives.

The five categories of eligible activities for providing affordable housing (or related housing services) are:

- Development of additional affordable housing;
- Housing-related services for affordable housing;
- Management services for affordable housing;
- Safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime; and
- Housing activities under model programs designed to carry out the purposes of the Act, if specifically approved by HUD as appropriate.

**Funding Distribution:** Although the NHHBG program makes reference to a formula distribution, at present there is only one eligible grantee, the DHHL.

**Applicant Eligibility:** Department of Hawaiian Home Lands.

**Legal Authority:** Title VIII of NAHASDA, as added by Section 513 of the American Homeownership and Economic Opportunity Act of 2000 (Public Law 106-569); and Section 203 of the Omnibus Indian Advancement Act (Public Law 106-568; 42 U.S.C. 4221).

**Regulations:** 24 CFR part 1006

## **SECTION 184A NATIVE HAWAIIAN HOUSING LOAN GUARANTEE FUND (Section 184A)**

This program is generally patterned after the Section 184 Indian Housing Loan Guarantee program but contains changes to address the housing needs and circumstances of Native Hawaiians. The purpose of the loan guarantee program is to provide access to sources of private mortgage financing to Native Hawaiian families who could not otherwise acquire housing financing because of the unique legal status of the Hawaiian Home Lands, or as a result of a lack of access to private financial markets. Eligible borrowers include Native Hawaiian families who are eligible to reside on Hawaiian Home Lands, the DHHL, the Office of Hawaiian Affairs, or private nonprofit organizations experienced in the planning and development of affordable

housing for Native Hawaiians. Loans are to be used to construct, acquire, or rehabilitate eligible housing located on the Hawaiian Home Lands.

This guarantee authority is freestanding and has its own guarantee fund. HUD may enter into commitments to guarantee loans for any fiscal year only to the extent amounts have been provided in appropriations acts.

**Funding Distribution:** Eligible applicants apply for loans directly to lenders, and the federal guarantee is issued after the loan is approved.

**Applicant Eligibility:** Native Hawaiian families, the DHHL, the Office of Hawaiian Affairs, and private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians.

**Legal Authority:** Section 184A of the Housing and Community Development Act of 1992, as added by Section 514 of the American Homeownership and Economic Opportunity Act of 2000 (Public Law 106-569); and Section 204 of the Omnibus Indian Advancement Act (Public Law 106-568; 12 U.S.C. 1715z-13b).

**Regulations:** 24 CFR part 1007

## **BARRIERS, CHALLENGES AND ACCOMPLISHMENTS**

As we prepared for this hearing, we focused on matters and issues that might be of interest to the Committee. There are many factors that can negatively influence housing, community development, and economic development within Indian Country. Grinding poverty, the lack of existing infrastructure that cities and suburban areas inevitably possess and others often take for granted, the processes involved in encumbering trust lands for housing purposes, the long geographic distances to and from transportation centers and markets, and a myriad of other reasons all combine to create the barriers and challenges that make it difficult for the Native American families who live in Indian Country to have better lives.

We cannot and will not ignore these realities; we deal with them every day. But we will allow others to tell those stories, and not focus on a recitation of how difficult things can be. Instead, we'd like to emphasize how we're working with tribes and their tribally designated housing entities to make things better.

For various reasons, housing development on reservations has been viewed by many as a "social program," and not as an engine for economic development. But as we know, one of the leading economic indicators for measuring the Nation's economy is housing. We need to advance our collaboration with tribes, other federal agencies, and the private sector to clearly establish housing development as a key component, a building block, in the creation of sustainable economies on Indian reservations. Over many years we have concentrated on the development and management of HUD-assisted housing, and we firmly believe that we now need to develop the capacity to expand beyond that. Through the leveraging of federal financial

resources with private capital, we can create greater opportunities for housing, new businesses and jobs ... all contributing to the creation of sustainable economies.

The key building blocks that will establish the foundation for developing more sustainable economies are:

- creating stronger institutions
- investing in human capital
- strengthening legal frameworks
- leveraging sources of capital
- fostering economic diversity

When I think about these issues the word “collaboration” comes to mind. NAHASDA’s Indian Housing Block Grant (IHBG) funding continues to be the largest source of housing capital on trust land today. However, reliance on IHBG alone to house tribal members without including leverage is counter-productive to a community. We need to continue exploring new ways to combine HUD resources with those of other federal agencies, such as USDA’s Rural Development, the Departments of Energy and Commerce, as well as with State housing finance agency programs, such as low-income housing tax credits, HUD HOME funds, New Markets tax credits, Homeownership Vouchers, and private-sector financing through the GSEs --Fannie Mae, Ginnie Mae, and the Federal Home Loan Banks.

We have sought these partnerships to improve financing opportunities for individuals and tribes, and to make housing a key contributor to developing sustainable reservation economies.

## **HUD and the BIA**

### Memorandum of Understanding (MOU)

In September of 2004, in a combined effort to increase the homeownership rate in Indian Country, address affordable housing needs and promote mortgage financing, PIH’s Assistant Secretary, the Bureau of Indian Affairs (BIA) Assistant Secretary, and the Department of Agriculture’s Rural Development Acting Under Secretary signed an MOU to work together, and with tribes and their TDHEs, to provide housing development and related housing assistance to all sectors of the Indian communities, including those at the lowest income level. A major aim of the MOU was to obtain a commitment from the BIA to expedite the production of Title Status Reports, a necessary document for the mortgaging of trust or restricted Indian lands.

On the one-year anniversary of the signing of the MOU, the BIA issued an internal, streamlined TSR processing memorandum. The MOU introduced a title endorsement that eliminates the need for a second certified TSR in a mortgage transaction that takes place in Indian Country. HUD’s Office of Native American Programs has been working with area, state and regional BIA realty officers to refine the process to ensure that all lending requirements under the new policy are being met. Local BIA staff are receptive to recommendations by HUD and lenders on how to simplify their procedures, but challenges remain on implementation and the time it takes for BIA approval.

This initiative has produced a draft procedure to streamline the TSR process and two tribal demonstration projects are in the final planning phase.

Despite these advances, the TSR process is not where we wish it to be. In an effort to reach our common goals, Interior Deputy Associate Secretary Cason and I will be meeting tomorrow in order to determine if there is more we can do together.

### Land Assignment Law

In a collaborative effort with tribes to enhance the housing market on reservations, the Office of Native American Programs and the BIA have worked with the Mashantucket Pequot tribe to establish a tribal assignment law. Through the use of a tribal land assignment law, the tribe will be able to issue a land assignment to a tribal member that is not subject to the 50-year statutory limitation on encumbrances. Interior's Solicitor's Office has approved the process and issued an opinion that individual assignments governed by tribal land assignment law do not require BIA approval or recordation. This process will make it possible for tribal members to transfer and/or assign their property interest to their heirs under tribal law. The tribe must create a title plant and recordation process as well as develop assignment laws before obtaining BIA authorization to proceed. ONAP will issue program guidance on the use of land assignments for the Section 184 program in the coming months.

### **Section 184 Accomplishments**

Homeownership and the ability to build equity in one's home is an important component in the development of strong tribal communities for generations to come. Creating homeownership opportunities continues to rank at the top of this Administration's priorities for the American people, and nowhere is this more important than in the Native American community.

We have some positive news to share with you on the Section 184 Indian Housing Loan Guarantee Program. Section 184 activity for the past fiscal year shows that tribes and TDHEs are taking advantage of this program on behalf of eligible families. This is important because moving families into their own homes frees up some subsidized housing units for lower-income families, as well as creating economic opportunities for entire communities.

In FY 2005, we increased the number of loan guarantees from 619 to 634, while dollar volume jumped from \$62.3 to \$76.8 million in mortgage guarantees respectively. During the first nine months of FY 2006, ONAP's Office of Loan Guarantee approved 897 loans obligating \$137.2 million. Loan guarantees through June 26, 2006, totaled 834, for \$124.2 million. In total, we have completed more than 3,406 Section 184 loan guarantees, representing over \$391.9 million in homeownership investments. The escalating rate of loan obligations (estimated to reach \$180-200 million in this fiscal year) confirms that the Section 184 program is bringing homeownership to more and more tribal members.

We've also worked to expand the Section 184 program to allow tribes to assist their members who want to become homeowners, but who live outside the reservation boundaries. In September of 2004, HUD issued a notice to make this happen. The Seminole Tribe of Florida was the first tribe in the nation to utilize this new policy; they can now assist their tribal members to obtain mortgage guarantees through the entire state of Florida.

Twenty-five more tribes have followed the Seminole's lead and they too can now designate a wider region as their "Indian area"—meaning they can go beyond reservation borders to assist their members. For example, Native American borrowers have accessed the HUD Section 184 in expanded Indian areas within California, Wisconsin, Washington, Colorado, and Arizona. This will provide greater opportunities for banks and other lenders to make mortgage loans to Native Americans. Under the new guidelines, a tribe can submit to HUD documentation that shows a historical connection to an area, or other information that would justify providing tribal members or other Indians that reside in that area with access to the Section 184 program. A tribal ordinance, resolution, certification, or other documentation can be used to memorialize official tribal action. Requests should be submitted to HUD's Office of Native American Programs. We will review the documentation and make a determination within 30 days of a submission.

In addition to the “expanded service area,” the Office of Native American Programs has made a number of enhancements to the Section 184 loan guarantee program. These enhancements will make it easier for tribes and individual borrowers to access mortgage financing. Among the key changes is a new refinancing policy for Mutual Help Homeownership Opportunity Program conveyance transactions and cash-out refinancing for tribally-owned housing built with NAHASDA or tribal dollars.

These are positive changes that will help ensure the Section 184 program continues to play a vital role in the Department's homeownership efforts in the coming years. We encourage all tribes to work with us as we strive to increase the number of Native American families who will realize the dream of owning their own home.

## **Title VI Accomplishments**

Although it has been in existence since NAHASDA became law, the Title VI Tribal Housing Activities Loan Guarantee Fund continues to be underutilized. Those tribes and tribally designated housing entities with no significant audit findings can borrow up to five times their annual Indian Housing Block Grant allocation and use their future IHBG funds as collateral to back up the loan. HUD provides a 95 percent guarantee to a lender in the event of a default through the Title VI program.

Many tribal and Indian housing leaders tell me about how difficult it is to involve the private sector in on-reservation housing activities. In many cases they lack a financial relationship with local banks. A federal guarantee makes the deals more stable and attractive to private sector banks. The flexible nature of this program makes it possible to finance any NAHASDA-eligible housing or housing-related activity over a period of up to 20 years. Title VI

has also proven to be a cost-effective source of gap financing during the early stages of a development project.

During the first nine months of FY 2006, seven loans totaling \$5.3 million have been guaranteed; four firm commitments worth \$4.9 million have been issued, with closings pending; and seven preliminary letters of acceptance, totaling approximately \$14.3 million, have been issued on active projects. Since the first loan closed in FY 2000, \$94.8 million in Title VI financing has been leveraged with funding from other sources to produce 1,566 housing units, with a total investment in excess of \$135 million. We ask tribes to think about how they can jump-start and enhance their housing programs by the infusion of additional funding obtained through the Title VI program.

### **Native Hawaiian Program Accomplishments**

#### **Native Hawaiian Housing Block Grant (NHHBG) Program**

The Department of Hawaiian Home Lands (DHHL) has been an active partner; there are numerous affordable housing activities in process at more than 14 sites. Let me give you three examples. Waiakea 6, a project of 40 single-family homes, will be constructed on a 21-acre site near Hilo. \$2 million of FY 2002 NHHBG funds were used for site and infrastructure improvements, while an additional \$1.3 million in FY 2002 NHHBG funds is being used to provide technical assistance and low-interest loans for 13 self-help homebuyers in this project. The Lalamilo project is using \$2 million of FY 2003 NHHBG funds to leverage \$7 million for site and infrastructure improvements for this project's initial phase of 36 single-family homes on the island of Hawaii. Additional FY 2004 NHHBG funds are obligated for other construction activities at this location. On the island of Oahu, \$44.4 million in FY 2003 NHHBG funds is being used toward the \$21 million infrastructure cost for 326 homes that will be built in the Kaupea project.

#### **Section 184A Native Hawaiian Housing Loan Guarantee Program**

The Department of Hawaiian Home Lands (DHHL), a State agency, is our primary program partner. Among their other activities, they are responsible for the allocation of leasehold interests on the Hawaiian Home Lands. In August of 2005, the DHHL closed its first Section 184A transaction, a \$1.7 million institutional loan that resulted in the availability of 11 single-family homes for Native Hawaiian families.

In May of 2006, a Section 184A loan agreement was executed between HUD and DHHL to make the 184A guaranteed loan available to individual Native Hawaiian borrowers. HUD is working diligently on processing guidelines that will facilitate full implementation of the Section 184A program. We anticipate that as DHHL develops more housing units, the 184A loan will provide homebuyers with an attractive alternative to the limited financing options available on the Hawaiian Home Lands.

### **HUD Training and Technical Assistance**

Training and Technical Assistance remains a critical component of all our Native American programs. The IHBG's Training and Technical Assistance set-aside provided the initial training and technical assistance to most grantees, enabling them to function effectively under NAHASDA, and we continue to provide that assistance. Functional and programmatic training topics, such as "NAHASDA Essentials," "Financial Management," "Environmental Review," "Procurement," and many others are provided around the country on an on-going basis. Specialized training on such diverse topics as "Gang Violence," "Establishing Boys & Girls Clubs," and "Preventing Mold and Moisture," is also available. Training and outreach is conducted for the Section 184 and Title VI Loan Guarantee programs as well. The ICDBG program has a training course that has made an impact on the quality of applications received for this competitive program, and we are in the process of establishing training for the Native Hawaiian programs.

On-site technical assistance is made available to IHBG grantees at their request. Technical assistance through other means, such as the DVD providing instruction to housing staff and residents on mold prevention, is produced and distributed to tribes and housing entities, as well as to other interested parties. Workshops have also been developed to examine such specific topics as the possibilities of developing "green" housing that is both affordable and energy efficient.

### **CURRENT ISSUES**

We would now like to discuss a number of issues that we believe are of interest to the Committee, including the consultations recently completed on the Indian Housing Plan, Annual Performance Report and Annual Status and Evaluation Report, along with information on our progress toward completing the formula allocation negotiated rulemaking, and our plans for the next one.

Last year we also held our National Indian Housing Summit, which was preceded by eight regional housing summits and consultation sessions throughout Indian Country, where we asked tribal and TDHE officials and other interested parties to give us their priorities on how to make the programs we manage work better.

Finally, the Committee has asked us to comment on decennial census data and related issues, and on a HUD Inspector General Report on the implementation of NAHASDA that was issued in 2001.

### **CONSULTATION ON INDIAN HOUSING PLAN, ANNUAL PERFORMANCE REPORT AND ANNUAL STATUS AND EVALUATION REPORT**

Following eight consultation sessions throughout the country to discuss and collect information and recommendations for modifications to the key planning and reporting documents for ONAP's Native American programs --- the Indian Housing Plan, the Annual Performance Report, and the Annual Status and Evaluation Report --- a workgroup was formed.

The workgroup is made up of 12 tribal housing professionals, two each from every ONAP region. ONAP field and headquarters staff also participate in the workgroup.

The workgroup met for the first time on June 15, 2005, at the National American Indian Housing Council's Annual Convention. Subsequently, the workgroup met frequently by conference calls to review the accumulated recommendations and develop revised draft forms. The workgroup also met in Tacoma, Washington on August 30-31, 2005, and presented their recommended revised forms at ONAP's National Housing Summit on September 20-22, 2005, in Reno, Nevada. The workgroup answered questions and documented recommendations from those attending the presentation. Using feedback from this presentation, the workgroup is finalizing the draft forms and they will soon begin the clearance and approval process.

### **FORMULA ALLOCATION NEGOTIATED RULEMAKING**

In January of 2006, we held our final Formula Allocation Negotiated Rulemaking Committee meeting. The formula, which was created under NAHASDA and fleshed out in its implementing regulations, required revisiting and updating. After extended deliberations, the Committee brought forward over 20 proposals, and reached consensus on about half. It was an arduous and challenging process to, and I commend all Committee members, tribal leaders and members of the public for their contributions and dedication to the process.

On February 25, 2005, HUD published a proposed rule for public comment in the *Federal Register*. During the public comment period, a total of 49 comments were received. We then reconvened the Committee for a final meeting to discuss the public comments received on the proposed rule. The meeting provided the opportunity for the Committee to consider changes to the proposed rule based on the public comments. After this meeting concluded, a drafting work group was established to finalize the preamble to the final regulation implementing the Committee's changes. Once the drafting work group completes this task, the Department will publish the final rule.

### **NEXT NEGOTIATED RULEMAKING**

Let me also state for the record that HUD is committed to holding the next negotiated rulemaking as expeditiously as staffing and resources will allow. On February 22, 2005, we published a Notice in the *Federal Register* announcing HUD's intent to establish such a Committee, outlining the scope of what the Committee would cover, and requesting nominations to this Negotiated Rulemaking Committee. On March 29, 2006, we published the list of the Committee members selected. We anticipate that the new Negotiated Rulemaking Committee will convene its first meeting sometime during the last quarter of calendar year 2006.

### **REGIONAL HOUSING SUMMITS AND THE NATIONAL HOUSING SUMMIT**

As I mentioned earlier, in 2004 we held six regional housing summits throughout Indian Country. We know that many, if not most of the issues related to affordable housing are local issues that can best be solved locally in the spirit of self-determination. We were there to support the efforts of tribes and housing entities and to ensure that the appropriate stakeholders:

financial institutions, lenders, bank regulators, federal agencies and tribal leaders were represented at the summits. Overall, we had quite enthusiastic audiences and good attendance, with over 800 participants. Through open discussions and collaboration, each summit produced strategies and actions for:

- Accessing more capital through leveraging;
- Strategic economic and community planning;
- TDHE capacity building; and
- Housing development.

The results of all six summits and a final report are available on ONAP's Code Talk webpage. The National Housing Summit, which was designed to build upon the issues raised and lessons learned at the regional summits, was held last September in Reno, Nevada. I would like to thank the over 800 participants for making the summit a success. The details of the summit are also available on our CODETALK website; please visit it for additional information.

## **CENSUS AND DATA ISSUES**

### **HUD's Decision to Use Multi-Race Census Data in the IHBG Formula**

Many tribes have questioned why the Department chose to use "multi-race" Census data to allocate Indian Housing Block Grant funds under the Need component of the formula.

In order to put this issue into perspective, it is important to understand the underlying policy that supports the IHBG formula. The two main components of the formula are "Formula Current Assisted Stock (FCAS)" and "Need." "Current Assisted Stock (CAS)" are those units developed under an Annual Contributions Contract between an Indian Housing Authority and HUD, with funds appropriated pursuant to the United States Housing Act of 1937 (1937 Act). FCAS are CAS units plus all units in the development pipeline as of the effective date of NAHASDA. The amount of funding for each FCAS unit is calculated by determining the operating subsidy and modernization allocation for each tribe that owns or operates 1937 Act housing units. The 1937 Act provided all funds for Indian housing development and modernization from 1962 until 1998. The reason for using this data is to provide funding to keep all dwelling units developed during those decades in good condition, so they remain viable as housing for Native American families. FCAS for all tribes is summed nationally, as that portion of the formula is a required priority. FCAS is then subtracted from the total funds appropriated under the IHBG formula and the remaining amount is what is left for distribution under the Need component of the formula. FCAS nationally accounts for approximately 46 percent of the total annual IHBG formula.

The Need component of the IHBG formula is calculated using seven weighted factors, all of which are based on the Native American families living in the Indian tribe's Formula Area: those who pay more than 50 percent of their income for housing; households overcrowded, or without kitchens or plumbing, housing shortage, households with incomes between 30–50 percent of median income; households between 50-80 percent of median; and number of AIAN persons. All this information comes from Census-derived data.

It is important to remember that all Census data from respondents is “self-reported.” When 2000 Census data became available, the Department carefully considered which measure of the number of American Indian/Alaska Native (AIAN) persons should be used to compute the IHBG allocation. In 1990, the Census only permitted respondents to identify themselves as members of a single race. However, the 2000 Census allowed respondents to identify themselves in multiple racial categories.

An AIAN person who checks the block for “American Indian or Alaska Native” is asked to print the name of the enrolled or principal tribe. This does not preclude that person from indicating that they also identify themselves with another race. In addition, because they can list the principal tribe, it does not mean that they are enrolled members of that tribe. The 1990 Census data, the 2000 “AIAN alone” Census data, and the 2000 “AIAN alone and in combination with other racial groups” Census data all rely on self-identification.

NAHASDA requires that IHBG funds be distributed to Indian tribes for affordable housing activities that serve Indian families. The term “Indian” (which includes an Alaska Native) is defined at Section 4(9) of NAHASDA, and specifically refers to a person who is a member of an Indian tribe. Section 4(12) of NAHASDA defines “Indian Tribe” to be any federally recognized tribe and a small subset of state recognized tribes with certain characteristics. Section 302(b) of NAHASDA requires that the IHBG allocation formula be based on factors that reflect the housing needs of the Indian tribes and the Indian areas of the tribes. NAHASDA does not prescribe how such factors are to be derived, characterized, or defined, as long as they can be measured objectively.

There has been much discussion throughout Indian Country about the 2000 Census and how it is being used to calculate the Need component in the IHBG formula. Many tribes have taken firm positions on this issue. The increase in the number of people who self-identify as AIAN -- regardless of whether they are AIAN alone or AIAN in combination with other racial groups -- is used for very limited purposes in the IHBG formula. The fact that there are now approximately 4.1 million AIAN persons has no direct effect on the IHBG formula calculations unless those persons are in an Indian tribe’s Formula Area, as defined in NAHASDA. As a practical matter, this means that all the AIAN persons in Chicago, Los Angeles, New York City, Albuquerque and Gallup, New Mexico, and in Winslow, Arizona are not counted for IHBG formula purposes.

This is an important point, so let me reiterate it. These AIAN persons are not counted for IHBG formula purposes. They would only be counted if they reside in a tribe’s IHBG Formula Area. These IHBG Formula Areas were originally determined using the regulations developed by the initial negotiated rulemaking committee that met in 1997-1998 to develop the NAHASDA regulations.

The Formula Area for an Indian tribe is the geographic area over which an Indian tribe could exercise court jurisdiction or is providing substantial housing services and, where applicable, the Indian tribe or tribally designated housing entity has agreed to provide housing services pursuant to a Memorandum of Agreement with the governing entity or entities

(including Indian tribes) of the area, including but not limited to: a reservation, trust land, Alaska Native Village Statistical Area, Alaska Native Claims Settlement Act Corporation Service Area, Department of the Interior Near-Reservation Service Area, former Indian Reservation Areas in Oklahoma as defined by the Census as Tribal Jurisdictional Statistical Areas, Congressionally Mandated Service Areas, and State legislatively defined Tribal Areas as defined by the Census as Tribal Designated Statistical Areas.

For additional areas beyond those identified, the Indian tribe must submit the area that it wishes to include in its Formula Area and what previous and planned investment it has made in the area. Also, it is important to note that in some cases, the population data for an Indian tribe within its Formula Area is greater than its tribal enrollment. In general, for those cases, to maintain fairness for all Indian tribes, the population data will not be allowed to exceed twice an Indian tribe's enrolled population. An Indian tribe may receive an allocation based on more than twice its total enrollment if it can show that it is providing housing assistance to substantially more non-member Indians and Alaska Natives who are members of another Federally-recognized Indian tribe than it is to its own members.

HUD is not aware of any tribe that has a 100 percent tribal blood quantum requirement for membership; many tribal members are of mixed race. As a matter of policy, the Department would not deny any person the ability to report his or her heritage. If the racial category "AIAN only" were used, a significant number of tribal members who currently are eligible would become ineligible to participate in HUD's Native American programs.

Therefore, the Department determined that the 2000 Census category "AIAN alone and in combination with other racial groups" constitutes the best available data to accomplish the statutory purposes of the IHBG program. HUD concluded that it is the most inclusive definition of AIAN persons and ensures that no such persons are excluded.

Some tribes contend that the Department did not follow its Government-to-Government Tribal Consultation Policy when it implemented the decision to use "AIAN alone and in combination with other racial groups."

The 2000 Census data related to "AIAN alone" and "AIAN in combination with other racial groups" first became available to HUD in September of 2003. We made a policy decision to use it to calculate the FY 2004 IHBG Formula estimates that were issued on September 5, 2003. On September 22-25, 2003, we brought this issue to the Formula Allocation Negotiated Rulemaking Committee. They could not reach consensus to change this policy, nor could they reach consensus to support it. It is important to note that the original Negotiated Rulemaking Committee that met from 1997 to 1998 decided on the use of Census data as the most comprehensive data set, and the Formula Allocation Negotiated Rulemaking Committee could not agree to use any other data set.

The Department followed its Government-to-Government Tribal Consultation Policy by seeking guidance on this issue from the NAHASDA Formula Allocation Negotiated Rulemaking Committee charged with reviewing and possibly revising the IHBG regulations. A variety of alternatives were considered, including averaging "AIAN alone" with "AIAN in combination

with other racial groups.” The Committee did not reach consensus on any alternative. However, it is significant that the Committee did not recommend a change to current policy. The discussions with the Negotiated Rulemaking Committee were an important factor in the decision to retain what the Department believes to be the best available methodology. HUD also believes the use of “AIAN alone and in combination with other racial groups” respects the Congressional Findings of NAHASDA by honoring the government-to-government relationship that enables each tribe to establish its own membership criteria.

In the FY 2006 HUD Appropriations Act, we were directed to calculate the Need portion of the IHBG formula using both single-race and multi-race data, and to award each grant recipient the higher of the two amounts. HUD has followed this directive and we will continue to do what Congress requires on this issue.

### **HUD INSPECTOR GENERAL REPORT ON IMPLEMENTATION OF NAHASDA**

The Committee also asked the Department to comment on a 2001 HUD Office of Inspector General Report entitled “Nationwide Audit of Implementation of the Native American Housing Assistance and Self-Determination Act of 1996” (2001-SE-107-0002, issued August 2, 2001) (hereinafter IG Report).

The IG Report found that NAHASDA grant recipients have generally implemented their Indian Housing Plans successfully, and that they possessed the administrative capacity to carry out their proposed affordable housing activities. According to the IG Report, some tribes and TDHEs were over- or under-funded because HUD did not audit every grantee’s formula Current Assisted Stock (FCAS) computations to determine if tribal reporting on the Formula Response Form was accurate.

Each year, a Formula Response Form that provides information on the data to be used to calculate the IHBG formula is sent to every recipient. Recipients are required to review this data and provide corrections to the formula data by September 15<sup>th</sup> of each year. Remote and periodic on-site monitoring occurs to verify that the data and tribal responses are accurate. Based on the data that is submitted, the Department determines if the tribe has been funded properly. If the tribe has been over-funded, repayments are required. In addition, the Department reviews the status of each Mutual Help project to determine if conveyance should have occurred and if the units should be removed from the formula. Staff also monitors the unit count for each recipient as part of the Department’s on-site review. In this way, the Department is taking steps to ensure that the allocations are fair and accurate.

Another finding asserted that some grantees were not in compliance with federal fair housing requirements, and requested that HUD seek clarification on this issue with its Office of General Counsel. We have done so, and in a legal opinion entitled “Limiting Housing to Indian Families or Tribal Members,” issued on June 4, 2001, the Deputy General Counsel for Housing Finance and Operations outlined when and how federal fair housing laws apply when IHBG funds are combined or leveraged with other funds. That legal opinion was incorporated into a PIH Notice issued on June 21, 2005.

The IG Report also states that tribes and TDHEs need to be better educated on NAHASDA's requirements, such as the eligible affordable housing activities, which policies and procedures are required, and accounting for program income. The Department responded to this finding by implementing a series of training sessions designed to educate grantees on all aspects of the IHBG program, including compliance with the Single Audit Act and Generally Accepted Accounting Principles, which was also covered in the IG Report. In addition, written guidance bulletins and notices were developed on several topics related to NAHASDA to assist tribes and their TDHEs.

The IG Report contained nine findings with 19 recommendations. All findings were discussed with the IG, management decisions were reached, and all findings were closed. With an additional five years of program operations to draw from, the Department is pleased with the progress made by the majority of housing entities in implementing NAHASDA. The Office of Native American Programs continues a regular schedule of monitoring visits, adjusting its priorities to meet varying needs and requests.

#### CONCLUSION

This concludes my prepared remarks. I would be happy to answer any questions you may have.