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**TESTIMONY BEFORE THE
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY
UNITED STATES HOUSE OF REPRESENTATIVES
“REAUTHORIZATION OF THE NATIVE AMERICAN HOUSING
ASSISTANCE AND SELF-DETERMINATION ACT”**

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[NOTE: This testimony is provided as prepared. Testimony delivered by Ms. Yazzie to the Committee may differ in some respects and cannot reflect responses to questions from Members of the Committee.]

Thank you Madam Chairwoman for this tremendous opportunity to testify before the Subcommittee on Housing and Community Opportunity. I applaud you, Chairman Frank, Ranking Members Bachus and Biggert and all the Members of this Committee for their attention to housing issues, particularly the issues affecting Indian Country. This Committee's focus on housing is inspiring and much appreciated. I would also like to say "ya 'at 'teeh" to Congressman Pearce whose district includes a significant portion of the Navajo Nation.

I would like to begin this testimony by greeting you in the traditional Navajo manner. For the Navajo people, a greeting is very important. It tells about not only who you are as a person, but where you come from, your family and your clan. It gives perspective so that the person who is listening knows where the speaker is coming from, both literally and figuratively.

As Chief Executive Officer of the Navajo Housing Authority, I am charged with operating the largest Tribal Housing organization in the country. I am lucky to have the support of a tremendous staff, both in our headquarters in Window Rock, and throughout the Navajo Nation. I am also blessed by the support of a strong Board and tribal government, including President Shirley and his staff and the Navajo Nation Council.

I realize that many of you have not had the opportunity to visit our beautiful country, so let me take a moment to give you perspective on Navajo and our challenges. The Navajo Nation spreads across three states: Arizona, New Mexico and Utah. The Nation covers nearly 27,000 square miles, making it larger than the state of West Virginia and nine other states and more than two and a half times as large as Chairman Frank's home state of Massachusetts.

There are roughly a quarter of a million members of our tribe, 200,000 of whom reside on or near the reservation. The Navajo Housing Authority manages 8,000 units of housing (approximately 7,000 rental units and 1,000 homeownership and lease-to-own units) and is the largest developer of housing in this vast area.

As is all too often the case in Indian Country, we suffer from chronic unemployment, insufficient infrastructure, a lack of available housing and the associated challenges, including poor health and substance abuse, particularly among our youth.

The Navajo Housing Authority has made great strides in improving the lives of tribal members and in the last decade has done even better thanks to the Native American Housing Assistance and Self-Determination Act (NAHASDA), about which we are testifying today.

The law is not without its challenges and for the past decade tribes have worked with HUD to implement the law in the most effective and efficient manner possible. We have had our disagreements, both amongst ourselves and with HUD and other federal agencies, but those are to be expected. I have worked for the federal government, both

the Bureau of Indian Affairs and the Department of Housing and Urban Development. I have also worked as Deputy Director of Arizona's state housing department. Disagreements between those running local housing agencies and those overseeing the operation of a national program are to be expected, but I am glad to say our relationship with HUD is overwhelmingly one of cooperation, not conflict.

The Navajo Housing Authority is grateful for the support of our local Regional Director for the Office of Native American Programs, Raphael Mecham, as well as Deputy Assistant Secretary Rodger Boyd and Assistant Secretary Orlando Cabrera. We do not always agree, but they have been responsive and, when possible, quite accommodating. In the five months I have been chief executive of NHA we have faced many challenges, some of which continue as we address structural and programmatic issues within our own organization. HUD, rather than being combative or accusatory, has worked with the housing authority and our Board to address these issues and I am glad to say we are well on our way to their final resolution.

Census Data

By far the most contentious issue facing Indian housing in the last few years has been the use of various forms of Census data to determine funding allocations. NHA has been heavily involved in this discussion because we believe this is not simply a financial debate; it is fundamental to NAHASDA and to all Indian programs. Simply put, tribal housing must remain for tribal members and tribal members should be counted when determining funding allocations.

NAHASDA is not a racial housing program. Indian programs are not created and supported by this Congress to benefit a race. Indian programs, NAHASDA included, exist because of the unique relationship between the Federal government and Indian tribes. Treaties, statutes and Supreme Court decisions have all demonstrated, clarified and supported this notion.

Individuals benefit from these programs because they are members of a tribe, not because of their ethnicity. Nevertheless, when the original negotiated rulemaking committee met to draft regulations, Census data was chosen because while the Census Bureau is often criticized for its undercounting in Native communities, it was considered a relatively unbiased source of data to help quantify the need for housing in tribal service areas. The data used was from the 1990 Census, in which individuals chose one race.

In the collection of data for the 2000 Census, individuals now had the option of selecting one or more races by which to identify themselves. This so-called multi-race Census data was chosen for use in the NAHASDA formula not by a committee representing the interests of Indian Country or because of the desires of Tribes; it was chosen by one official at HUD whom we know now was being actively lobbied by former lobbyist and admitted felon Jack Abramoff. The decision benefited Abramoff's client, but set off a firestorm of controversy in Indian Country, shifting federal funds away from the majority of tribes, particularly those in traditional rural tribal areas to a minority of tribes.

This single HUD official, having already made his decision and announced it to tribal representatives, released a list showing which tribes benefited from the multi-race data. He then announced that if all tribes present at the meeting -- even those would he had just pointed out would gain financially by his decision -- agreed unanimously to reverse his decision, he would do so. Needless to say, the minority of tribes who benefited financially from his decision vetoed the will of the majority. This was a mockery of tribal consultation.

Frankly, the time has come to replace Census data as a means by which to measure housing need for tribal members. NAHASDA is a tribal program, not an ethnic program, and counting those who identify themselves as Indian regardless of whether they are tribal members is wrong and dangerous. If we are distributing funds to tribal members, we should count tribal members. We should not count those people who think they might have had ancestors who were Indians.

After much internal controversy, the National American Indian Housing Council has declined to take a position. Considering the other challenges NAIHC faces, we feel this is a good decision. NHA is a member and strong supporter of NAIHC.

We also understand why this issue was left out of the discussion draft. The controversy could jeopardize the passage of this important legislation. As Assistant Secretary Cabrera has said, opportunities under NAHASDA are the "golden eggs" that can lead to so much more success in Indian Country and our first goal must be to make sure the goose lives. But because this issue is so important, I feel I must express in no uncertain terms that we support the use of tribal enrollment data, not Census data, to determine need under NAHASDA. Until terms of verifiable enrollment data can be agreed upon by federal government and tribal representatives, NHA urges a return to the use of single-race Census data because, while imperfect, it is the better approximation of tribal enrollment numbers.

Appropriations

While appropriations are not in the jurisdiction of this Committee, as I am testifying before Members of Congress I would be remiss if I did not comment on Appropriations. NAHASDA is a good law, but the funding for NAHASDA is too low for the real promise of this law to be realized. A disproportionate share of NAHASDA funds go to support existing housing stock, leaving little room for the innovation and new opportunities envisioned by the members of this Committee and Tribal leaders who crafted this legislation a decade ago.

Furthermore, we hope Congress will consider the re-introduction of funds for Indian housing training and technical assistance. NAIHC's programs have provided much-needed assistance to tribes and tribal housing professionals. Effective training is vital to the long-term success of any program, whether in Indian Country or anywhere else.

Proposed NAHASDA Amendments

We would like to thank Chairman Frank, Chairwoman Waters and Congressman Kildee for making their staff available to us to provide input on the proposed legislation. Likewise, we have met with the staff of the minority and had excellent conversations about the nature of this bill and legislation in general. I would like to highlight a few key provisions.

I am particularly pleased with the inclusion of the Self-Determined Housing Activities program. NAHASDA's findings and purposes establish that self-determination and self-governance are to be the hallmarks of the law:

Federal assistance to meet these responsibilities should be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in [the Indian Self-Determination and Educational Assistance Act].

The Self-Determined Housing Activities program goes a long way to making true self-determination possible. We are excited by the prospect and look forward to implementing this provision at Navajo. However, we hope the Committee will consider broadening the language to allow the support of activities that require some expenditure of funds on infrastructure. In Indian Country in general, and Navajo in particular, housing cannot be built without infrastructure. Existing water and waste water facilities are hopelessly overburdened and in many areas of our land do not exist at all. At Navajo and other tribes, units of housing sit vacant because they have no electricity or lack water and sewer hook ups. In Indian country, lack of infrastructure is an affordable housing problem.

The exclusion of developer fees from consideration as program income in low-income housing tax credit projects is welcomed. The developer fees from tax credit projects are the result of risks taken by a tribe and are for developers would constitute a form of profit. We should reward tribes who undertake these activities themselves. Anything this committee, or your colleagues at the Ways and Means Committee, can do to encourage tribes to use the tax credit program is welcome. I have been involved in a tax credit project in support of Indian housing, the Apache Dawn project in Arizona. Tax credits are a small but growing portion of total housing development in Indian Country, but one that must be supported.

Other provisions in the bill, including the eligibility of essential Indian families in housing and the inclusion of police officers, will go far to strengthening our communities. Likewise, the de minimis exemption from procurement rules when a NAHASDA recipient is spending less than \$5,000 will alleviate administrative burdens. The savings one might find through a competitive bid process for such small amounts is far outweighed by the amount of time and effort that must be put in to solicit and review the bids. Saving \$100 on supplies is not worth it if it took 30 staff hours to accomplish that,

time that could be better spent elsewhere and if accounted for would actually be shown to cost more money than the supposed “savings.”

We recognize the goal of the provision concerning certification of tenant income, but I am afraid we may be addressing a problem that is not actually present in the current statute. Certifying tenant income can be a challenge and draws on staff resources, especially as in our case when we have thousands of families. But the current statute is silent on the manner in which recertification is done so the requirement that we only certify for fixed-income residents every three years actually adds to the statutory burden, although in practice it would be less. We would prefer not to deal with this matter through a statutory amendment.

Title VI

One provision not present in the bill, but that we have discussed with staff, is a proposed amendment broadening the scope of the Title VI Loan Guarantee program. Title VI is underutilized for two basic reasons. First, there has been a lack of effective education about the program. We are pleased to see that the draft bill addresses that by including a requirement that HUD provide training on the use of Title VI guarantees and we support the provision. Second, the activities allowed under the current Title VI program are so limited that most activities, no matter how beneficial to local tribal communities, cannot generate enough income to cover debt service on the guaranteed loan.

Title VI is based on the very successful Section 108 program, which allows recipients of Community Development Block Grant dollars to borrow or issue bonded debt for up to five times their annual formula allocation to support the functions otherwise allowed under CDBG. Tribal governments are statutorily prohibited from utilizing the Section 108 program because tribes compete for one national set-aside, known as ICDBG. Without a formula allocation under CDBG, tribes will never be able to access this vital program.

Amending Title VI to include the eligible activities allowed under Section 108 would allow tribes to access the benefits of a program long used by urban communities. This would have the effect of increasing investment in economic development and infrastructure in communities desperately in need of such investment without increasing federal appropriations. Making this definitional change would also increase utilization of Title VI, the credit subsidy for which often goes unused.

We are not proposing any change in the eligible activities for the block grant. This would simply allow tribes to use funds from outside sources -- banks or bond investors -- to support desperately needed development in Indian Country. The only way funds meant for housing could go to economic development is if the borrowing, which HUD itself must individually approve, results in a claim against the U.S. government. In the history of the Section 108 program we are unaware of any time in which HUD has withheld CDBG grant funds. Defaults in Section 108 are rare and in each instance have been

covered by the Treasury. This would be a question best posed to the Government Accountability Office and we would welcome a chance to discuss this further.

The potential benefit of pumping hundreds of millions of dollars into economic development and infrastructure without an increase in appropriations far outweighs the hypothetical possibility that HUD might choose to withhold funds from a few tribes because of poor oversight on their part. Effective education and diligent oversight can prevent this.

We would like to work with the Committee to see if this proposal, even in the form of a demonstration, could be included in this bill.

Conclusion

Again, I would like to thank the Committee for this opportunity and applaud you for your efforts so far. I recognize there is much work to be done before this legislation becomes law, but I look forward to continuing this important work to see that these amendments do become law and NAHASDA is strengthened.