



# NATIONAL CONGRESS OF AMERICAN INDIANS

## U.S. Senate Committee on Banking, Housing, and Urban Affairs Subcommittee on Housing, Transportation and Community Development Housing for Native Americans: Review of Federal Programs, Barriers, and Opportunities

### Written Testimony of Dante Desiderio National Congress of American Indians May 27, 2021

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On behalf of the National Congress of American Indians (NCAI), thank you for holding this hearing to address housing needs in Indian Country. I am Dante Desiderio, I am a member of the Sappony Tribe, and I serve as the Chief Executive Officer of NCAI.

Founded in 1944, NCAI is the oldest and largest representative organization comprised of Tribal Nations and their citizens. Tribal leaders created NCAI in response to federal policies that threatened to terminate Tribal Nations. Since then, NCAI has fought to preserve the treaty and sovereign rights of tribal governments, advance the government-to-government relationship, and remove structural impediments to tribal self-determination.

Central to these goals is ensuring that the federal government provides resources to improve housing opportunities for Tribal Nations and their citizens.<sup>1</sup> Tribal Nations across the country maintain and develop housing infrastructure that serves to improve their citizens' health outcomes, sustain their regional economies and workforces, and address our growing population.

Despite this role, for decades, the federal government has recognized that its trust and treaty responsibility to Tribal Nations to provide adequate housing has been chronically underfunded.<sup>2</sup> As a result, tribal communities see overcrowded homes at a rate of 16 percent, roughly eight times the national average.<sup>3</sup> Additionally, over 70 percent of existing housing stock in tribal communities requires upgrades and repairs, many of them extensive.<sup>4</sup>

<sup>1</sup> 25 U.S.C. § 4101(5) (acknowledging, inter alia, that “providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping tribes and their members to improve their housing conditions and socioeconomic status [.]”)

<sup>2</sup> *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*, U.S. Commission on Civil Rights (2003) <https://www.yumpu.com/en/document/read/32869468/a-quiet-crisis-federal-funding-and-unmet-needs-in-indian-country>; and *Broken Promises: Continued Federal Funding Shortfall for Native Americans*, U.S. Commission on Civil Rights (2018) (“Broken Promises Report”), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

<sup>3</sup> U.S. Department of Housing and Urban Development (HUD), *Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, (2017), <https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>

<sup>4</sup> HUD, *Fiscal Year 2017 Congressional Justifications*, 11-12, (2016), [https://www.hud.gov/sites/documents/FY\\_2017\\_CJS\\_COMBINED.PDF](https://www.hud.gov/sites/documents/FY_2017_CJS_COMBINED.PDF).

These disparities increased the vulnerability of American Indians and Alaska Natives (AI/ANs) to the coronavirus (COVID-19) pandemic and resulted in our communities having at times the highest COVID-19 infection, hospitalization, and death rates per capita in the United States.<sup>5</sup>

Today's hearing on the challenges and barriers to accessing affordable housing in Indian Country comes at a time when Tribal Nations across the country can attest with experience that access to cost-effective housing for Indian Country is lacking. NCAI's testimony will first identify the current state of housing in Indian Country, then identify some impediments and barriers facing Tribal Nations and Tribally Designated Housing Entities (TDHEs) when attempting to build and finance homes. Finally, while identifying barriers is helpful in understanding challenges, it does not always offer a pathway forward for creating policy solutions. Therefore, our testimony will also draw attention to programs that are working for Indian Country and offer recommendations that will allow for the construction and financing of homes on tribal lands.

### **The State of Housing in Indian Country**

Historically, Tribal Nations have faced a pervasive housing crisis caused by underinvestment by the federal government that has left tribal citizens living in substandard and cost-burdensome conditions. In 2017, The U.S. Department of Housing and Urban Development (HUD) reported that "the lack of housing and infrastructure in Indian Country is severe and widespread, and far exceeds the funding currently provided to tribes."<sup>6</sup> HUD also reported that 70 percent of existing housing stock in tribal communities is in need of upgrades and repairs, many of them extensive.<sup>7</sup> The 2017 report also found that it would take approximately 33,000 new housing units to alleviate overcrowding and an additional 35,000 housing units to replace existing units in grave condition.<sup>8</sup> To meet the total need of approximately 68,000 housing units (new and replacement), factoring in the average development cost of a three-bedroom home, the total cost is in excess of \$33 billion.<sup>9</sup>

The lack of affordable housing is also a problem in Indian Country, with 37.5 percent of Native households spending more than 30 percent of their income on housing expenses, an amount considered to be a cost burden.<sup>10</sup> This lack of affordable housing contributes to homelessness and overcrowding. Those living in tribal areas often report instances of "hidden" homelessness, making the issue of homelessness less conspicuous in Indian Country than in non-tribal areas. The Urban Institute in 2017 found that approximately 99.8 percent of tribal housing officials surveyed reported

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<sup>5</sup> Centers for Disease Control and Prevention, Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

<sup>6</sup> U.S. Commission on Civil Rights, *Broken Promises: Continued Federal Funding Shortfall for Native Americans*, 137, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

<sup>7</sup> HUD, *Fiscal Year 2017 Congressional Justifications*, 11-12, (2016), [https://www.hud.gov/sites/documents/FY\\_2017\\_CJS\\_COMBINED.PDF](https://www.hud.gov/sites/documents/FY_2017_CJS_COMBINED.PDF).

<sup>8</sup> HUD, *Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, (2017), <https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>

<sup>9</sup> National congress of American Indians, *Tribal Infrastructure: Investing in Indian Country for a Stronger America*, An initial report by NCAI to the Administration and Congress, 2017, p. 11, [https://www.ncai.org/attachments/PolicyPaper\\_RslnCGsUDiatRYTpXKwThNYoACnjDoBOrdDIBSRcheKxwJZDC\\_x\\_NCAI-InfrastructureReport-FINAL.pdf](https://www.ncai.org/attachments/PolicyPaper_RslnCGsUDiatRYTpXKwThNYoACnjDoBOrdDIBSRcheKxwJZDC_x_NCAI-InfrastructureReport-FINAL.pdf)

<sup>10</sup> Ibid.

that “doubling up” (i.e., taking in family and friends who would otherwise have nowhere else to go) was a problem in their tribal areas. Additionally, 88 percent of housing officials surveyed said traditional homelessness (i.e., sleeping on the street, in an emergency shelter, or someplace not meant for human habitation) was an issue in their tribal communities.<sup>11</sup> Designated homeless services are also less common in tribal areas. Although homelessness affects nearly all tribal areas, only half of the tribal areas visited for Urban Institute surveyed had a shelter within their tribal area boundaries.<sup>12</sup> Additionally, tribal communities experience overcrowded homes at a rate of 16 percent, roughly eight times the national average.<sup>13</sup> HUD research also shows that such overcrowding has a negative effect on family health and contributes to the ongoing problems of domestic violence and poor school performance in Indian Country.<sup>14</sup>

## **Challenges and Barriers to Accessing Affordable Housing**

### **Lending on Indian Trust Land and Burdensome Permitting Processes**

AI/ANs on tribal lands or in remote areas face significant barriers to homeownership. These barriers include AI/ANs having some of the highest rates of unemployment and poverty, lacking access to credit services, and lacking education about what it takes to become a homeowner. In 2019, the Federal Deposit Insurance Corporation (FDIC) found that 16.3 percent of AI/AN households were unbanked, compared to only 5.4 percent of the general population.<sup>15</sup> Banks and credit institutions are less likely to have branches in tribal areas, which is due in part to the jurisdictional complexity of lending on tribal lands. A 2016 Native Nations Institute study found that Indian Country faces “high interest rates on loans, the inability to use trust land as collateral on loans, and a general unwillingness on the part of financial institutions to lend to reservation-based applicants.”<sup>16</sup> Economic and social constraints like lower borrower incomes and limited or blemished credit histories broadly impede the expansion of mortgage credit to underserved populations.<sup>17</sup>

The unique status of trust lands being inalienable makes it difficult for private lenders to obtain security interests in individual plots and most private lenders are uneducated on what practices they can employ to lend to AI/ANs residing on tribal lands.<sup>18</sup> This makes lenders reluctant to lend to either individual AI/ANs, Tribal Nations, and TDHEs interested in developing housing. Further

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<sup>11</sup> Urban Institute, *Urban Wire: Homelessness in Indian Country is a Hidden, but Critical, Problem*, (2017), <https://urban.is/2gPtVcJ>

<sup>12</sup> Ibid.

<sup>13</sup> HUD, *Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, (2017), <https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>

<sup>14</sup> HUD, *Fiscal Year 2017 Congressional Justifications*, 11-4, [https://www.hud.gov/sites/documents/FY\\_2017\\_CJS\\_COMBINED.PDF](https://www.hud.gov/sites/documents/FY_2017_CJS_COMBINED.PDF)

<sup>15</sup> Federal Deposit Insurance Corporation, *How American Banks: Household Use of Banking and Financial Services*, 2019 FDIC Survey, <https://www.fdic.gov/analysis/household-survey/2019report.pdf>.

<sup>16</sup> Native Nations Institute. 2016. *Access to Capital and Credit in Native Communities (digital version)*. Tucson, AZ: Native Nations Institute. [https://nni.arizona.edu/application/files/8914/6386/8578/Accessing\\_Capital\\_and\\_Credit\\_in\\_Native\\_Communities.pdf](https://nni.arizona.edu/application/files/8914/6386/8578/Accessing_Capital_and_Credit_in_Native_Communities.pdf)

<sup>17</sup> HUD, *Mortgage Lending on Indian Land: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, p. vii, (2017), <https://www.huduser.gov/portal/sites/default/files/pdf/NAHSG-Lending.pdf>

<sup>18</sup> U.S. Department of Agriculture (USDA), *Lending on Native American Land: A Guide for Rural Development Staff*, (2006), <http://www.ruralhome.org/storage/documents/nativeamerguideforusda.pdf>

exacerbating the issue, the Bureau of Indian Affairs must review all trust land leases and provide verification of land ownership via a title status report. This verification has historically taken several weeks, months, or even years to complete.<sup>19</sup> In 1977, Congress designed the Community Reinvestment Act (CRA) to combat some of these issues for low and moderate income areas. Unfortunately, under the current iteration of the CRA, banks can fulfill those requirements without having to serve AI/AN communities, leaving lending institutions with little to no incentive to invest in Indian Country.

### **Lack of Access to Housing Tax Credits**

Multifamily housing properties in Indian Areas are few and far between and typically require housing subsidies. These housing projects depend on tax credit equity and housing grants because debt financing for affordable housing is limited in Indian Areas.<sup>20</sup> The Low Income Housing Tax Credit (LIHTC) program is one of the primary resources for developing affordable rental housing nationwide, yet LIHTCs are substantially underused in Indian Areas.

Currently, LIHTC allocations are only provided to state governments who in turn can provide allocations to Tribal Nations, but often do not. Development and operation of affordable housing is more difficult because the poverty rate and unemployment rate among tribal citizens is more than twice the rest of the nation. Most properties cannot support debt financing because of their tenants' low incomes. Indian reservations are located in 70 of the 386 persistent poverty counties, meaning they have been in poverty for generations, at least partially due to underlying structures of disadvantage.<sup>21</sup> LIHTCs remain the primary mechanism for affordable housing development in the U.S. and should be a resource that Indian Country benefits from.<sup>22</sup>

### **Chronic Underfunding for Adequate Housing**

While the federal government maintains a unique trust responsibility to Tribal Nations and their citizens, there is insufficient support for housing on tribal lands. One of the key issues is funding stagnation. As inflation grows, the funding amounts rarely do. The Indian Housing Block Grant (IHBG) program is an example of a key program to support housing needs; however, it is formula-based and has maintained the same level of funding for the past 20 years. As a result, this critical program has failed to keep pace with inflation, leaving many Tribal Nations out in the cold.<sup>23</sup>

The flat-funding of federal housing programs for Tribal Nations, combined with inflation in construction costs over time, has resulted in a sharp decrease in the number of affordable housing units developed in Indian Country in recent years.<sup>24</sup> In 2016, the Acting Deputy Assistant Secretary at HUD stated that “one of the greatest impediments to developing affordable housing in Indian

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<sup>19</sup> Ibid.

<sup>20</sup> “Indian Area” as defined by 24 CFR § 1000.302.

<sup>21</sup> U.S. Department of Agriculture (USDA), *Lending on Native American Land: A Guide for Rural Development Staff*, (2006), <http://www.ruralhome.org/storage/documents/nativeamerguideforusda.pdf>

<sup>22</sup> Housing Assistance Council, *Low Income Housing Tax Credits in Indian Country*, (2019), [https://www.ncai.org/policy-research-center/initiatives/LIHTC\\_in\\_Indian\\_Country.pdf](https://www.ncai.org/policy-research-center/initiatives/LIHTC_in_Indian_Country.pdf)

<sup>23</sup> U.S. Commission on Civil Rights, *Broken Promises: Continued Federal Funding Shortfall for Native Americans*, 142, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

<sup>24</sup> Ibid.

Country is the flat funding of the IHBG for most of the program’s history.”<sup>25</sup> This decrease in the number of affordable housing units is negatively mirrored by the growing AI/AN population and their housing needs.

In addition to funding shortfalls, the location of many tribal communities increases the material and labor costs of home construction and imposes additional housing development costs.<sup>26</sup> Building materials must often be brought into tribal communities from miles away over substandard roads or even by air, and the availability of “qualified and affordable contractors” is limited.<sup>27</sup> For many remote areas with extreme weather conditions, construction seasons are very short, leading to increased costs for already overburdened home buyers.

### **Solutions and Suggested Congressional Action**

The barriers presented throughout this testimony underscore the need for robust funding increases through flexible programs that allow Tribal Nations to address the diverse and extensive housing infrastructure and financing needs of their communities. Despite mounting challenges, Tribal Nations are now exercising their right of self-determination to design and implement their own housing and other community development infrastructure programs. In order to support tribal sovereignty and increase access to housing for AI/ANs, NCAI recommends the following congressional actions:

#### **Reauthorize NAHASDA and Increase Funding for IHBG Formula Grants**

The Native American Housing Assistance and Self-Determination Act (NAHASDA), first enacted in 1996, authorized Tribal Nations to self-determine their housing programs. NAHASDA gave flexibility for Tribal Nations to develop, construct, and maintain housing for their members, transforming how federal housing programs addressed housing needs in tribal communities. Additionally, NAHASDA consolidated existing housing funds into a single block grant, IHBG, resulting in tens of thousands of additional housing units being constructed, as well as increased tribal capacity to address related infrastructure and economic development challenges. IHBG is a formula-based grant that provides certainty and security for long-term housing and community development.

NAHASDA also authorizes two important home loan programs, the Title VI Loan Guarantee program (Title VI) and the Section 184 Loan Guarantee Program (Section 184). Title VI was created to assist tribes, Alaska Native Villages, and TDHEs with financing affordable housing and provides federal guarantees for private market financing of housing development in Indian Country.<sup>28</sup> Section 184 provides a 100 percent guarantee to private lenders in cases of home loan default. Tribal Nations have successfully participated in this program with an extremely low default rate.<sup>29</sup> Using Section 184, Tribal Nations and tribal citizens can purchase an existing home, obtain single-close construction

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<sup>25</sup> Randall R. Akers, then Acting Deputy Assistant Secretary at HUD, *Testimony*, Briefing Transcript, pp. 166–67.

<sup>26</sup> U.S. Commission on Civil Rights, *Broken Promises: Continued Federal Funding Shortfall for Native Americans*, 142, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>

<sup>27</sup> *ibid*

<sup>28</sup> Department of Housing and Urban Development, Title VI Loan Guarantee Program Fact Sheet for Lenders, (2021), [https://www.hud.gov/sites/documents/TITLEVI\\_FACT\\_SHEET\\_LENDERS.PDF](https://www.hud.gov/sites/documents/TITLEVI_FACT_SHEET_LENDERS.PDF)

<sup>29</sup> Department of Housing and Urban Development, HUD, Mortgage Lending on Indian Land: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs, p. 31, (2017), <https://www.huduser.gov/portal/sites/default/files/pdf/NAHSG-Lending.pdf>

loans for stick-built or manufactured homes on a permanent foundation, obtain rehabilitation loans, or obtain both a purchase and rehabilitation loan.

In the 116th Congress, Senator John Hoeven introduced S. 4090, the NAHASDA Reauthorization Act. This legislation marks the first bipartisan reauthorization bill in the Senate since NAHASDA expired in 2013. S. 4090 proposed to reauthorize NAHASDA programs through 2031, create an Assistant Secretary for Indian Housing at HUD, and update several key provisions including, but not limited to: streamlining environmental review requirements; allowing tribal housing programs to access IHS sanitation funding; and tribal eligibility for HUD Housing Counseling and Homelessness Assistance grants. NCAI strongly urges Congress to reintroduce and pass legislation that reauthorizes NAHASDA through 2031 and provide increased funding appropriations for IHBG formula grants of at least \$1 billion to help address the ongoing housing crisis in Indian Country.

### **Modernize The Community Reinvestment Act to Increase Lending in Indian Country**

Congress should support finalizing the implementation of the Office of the Comptroller of Currency (OCC), Federal Reserve Board, and the FDIC's most recent CRA proposed rules, *Modernization of Community Reinvestment Act Regulations*.<sup>30</sup> These rules will address Indian Country's lending issues by providing banks with CRA credit for serving tribal communities even when Indian Country falls outside their CRA assessment areas and creating CRA scoring incentives for banks that choose to do business in Indian Country. Congress should also urge the Federal Reserve, FDIC, and OCC to increase education of lending in Indian Country for regulators and lenders, and to increase ongoing communication between credit institutions and Tribal Nations and their business enterprises.

### **Increase Access to the Low Income Housing Tax Credit Program and Provide a Proportionate Rate for Tribal Governments**

Given the enormous needs for housing, NCAI strongly supports the expansion of LIHTCs for Tribal Nations to ensure that the needs of their citizens are met. Tribal Nations have been disproportionately left out of this program and seek increased deployment in Indian Country and inclusion in the program's allocation criteria. In April 2021, Senators Cantwell, Wyden, Young, and Portman introduced the Affordable Housing Credit Improvement Act of 2021, which expands the definition of Difficult Development Areas to include Indian Areas as defined in NAHASDA. NCAI urges Congress to pass similar legislation and include a proportionate allocation of funds specifically for tribal governments. Providing a proportionate allocation of funds to tribal governments will ensure these critical resources reach the populations that require this support most.

### **Permanently Reauthorize the Tribal HUD-VASH Program**

Native veterans have a long history of distinguished service to this country. Per capita, they serve at a higher rate in the Armed Forces than any other group of Americans and have served in all the nation's wars since the Revolutionary War. Native veterans even served in several wars before they were even recognized as U.S. citizens. Despite this esteemed service, homelessness is a concern for our Native veterans. To combat this issue, Congress created the HUD-Veterans Affairs Supportive Housing (HUD-VASH) program. The program has been a nationwide success because it combines

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<sup>30</sup> Office of the Comptroller of the Currency, Treasury; Community Reinvestment Act Regulations; 85 Fed. Reg. 34734 (June 5, 2020), <https://www.occ.gov/news-issuances/federal-register/2020/85fr34734.pdf>

rental assistance, case management, and clinical services for at-risk and homeless veterans. Unfortunately, this program is not fully available to Native veterans living on tribal lands.

In the 116th Congress, Senator Jon Tester introduced S.257, the Tribal HUD-VASH Act of 2019. S. 257 would codify and make permanent the Tribal HUD-VASH program within the larger HUD-VASH program and ensure adequate funding for the program. In addition, the bill would make all Tribal Nations and their tribal housing programs eligible for the HUD-VASH program, which to date has remained limited to the original 26 recipients. The bill would also call on the Indian Health Service to assist the program as requested by HUD or the Department of Veterans Affairs (VA).

NCAI has a standing resolution supporting this legislation, Resolution #ECWS-14-001, “Support for Indian Veterans Housing Rental Assistance Demonstration Program in the Native American Housing and Self-Determination Act Reauthorization.” Accordingly, NCAI urges Congress to pass similar legislation early in the 117th Congress.

### **Create a \$50 million tribal set-aside from the Rural Development 502 Direct Loan Program to establish a National Relending Program for Indian Country**

U.S. Department of Agriculture (USDA) Rural Development (RD) has limited staff resources to provide Single Family Housing Direct Loans on tribal land. In FY 2020, of the 5,821 direct loans made nationally by USDA RD, just 110 were issued to AI/AN borrowers, and only seven of those were for homes on tribal lands.

In 2018, a 502 Direct Loan relending pilot program was announced, providing \$2 million to two Native Community Development Financial Institutions (CDFIs) to relend to eligible Native families in North and South Dakota. The demonstration program was highly successful, deploying 17 loans mortgage loans in less than a year on two South Dakota Indian reservations, Cheyenne River Indian Reservation and Pine Ridge Indian Reservation, nearly twice the amount deployed in the previous decade, with an additional pipeline of demand from 29 families for \$3.6 million in mortgage financing on those two reservations alone.

This pilot program has been successful, in part, due to Native CDFIs’ experience operating on tribal lands. Support for Native CDFIs is essential to solving low rates of lending and homeownership on tribal lands. They provide extensive financial and homebuyer education to help their clients become self-sufficient private homeowners. The proposed expanded relending pilot program would increase the flow of mortgage capital to Indian Country by allowing Native CDFIs to be eligible borrowers under the 502 Direct Loan Program and enable them to relend to eligible families for the construction, acquisition, and rehabilitation of affordable housing. NCAI strongly urges Congress to pass legislation authorizing the national expansion of this relending program and creating a \$50 million set aside within the 502 Direct Loan program.

### **Conclusion**

On behalf of NCAI, I again thank you for the opportunity to submit testimony and for holding this hearing. Reauthorizing NAHASDA, increasing funding for IHBG formula grants, improving tribal access to the Low-Income Housing Tax Credit Program while providing a proportional rate for tribal governments as compared to state governments, modernizing the Community Reinvestment Act to increase lending in Indian Country, and reauthorizing critical legislation like the Tribal

HUD-VASH program will improve housing conditions in Indian Country. If Congress does not act, our existing housing stock in tribal communities will continue to deteriorate. Our Tribal Nations and their citizens will continue to have less than favorable health outcomes, struggling economies, and be in a worse position than other citizens when the next major disaster arrives. NCAI looks forward to working with this subcommittee and the full committee to ensure access to affordable housing in Indian Country and would be happy to connect further on these issues.