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United States Senate
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March 1, 2007

Honorable Kent Conrad
Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

Honorable Judd Gregg
Ranking Member
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Chairman Conrad and Ranking Member Gregg:

This letter responds to your request for the Senate Indian Affairs Committee's views and estimates on the President's Fiscal Year 2008 budget request for Indian programs. While we share the President's commitment to reducing the federal deficit and balancing the budget, we also see the significant challenges Indian Country faces in creating, obtaining and sustaining the basic elements of healthy communities: adequate health care, education, housing, law enforcement and public safety, and economic opportunity. Thus, we are concerned about the potential impact of the proposed reductions in funding for Indian programs. We urge that the budget resolution instead provide funding to promote the well-being of whole Native American communities, economically, educationally and socially.

In this letter, we will set forth the general background supporting the Committee's recommendations; key priorities and comments on issues before the Committee; and the Committee's funding

recommendations for specific programs.

We particularly wish to call to your Committee's attention to two legislative measures that the Indian Affairs Committee expects to consider during the 110th Congress. The first legislative measure is reauthorization of the Indian Health Care Improvement Act. Enacted in 1976, this statute established a comprehensive framework for the delivery of health care to Native Americans, including health services, health care facilities construction, training of health professionals, and access to health care for Indians under Social Security Act programs. The second legislative measure is providing a statutory settlement of the *Cobell v. Kempthorne* class action litigation brought on behalf of hundreds of thousands of individual trust account owners regarding the management of Indian trust funds. We ask that our Committee allocation under the budget resolution be sufficient to include both reauthorization of the Indian Health Care Improvement Act and settlement of *Cobell.*

I. General Background Supporting the Committee's Budget Recommendations

The U.S. Department of Interior identifies 561 federally-recognized tribes in the United States. For the 2000 Census, 4.3 million people identified themselves as American Indian or Alaska Native. Of this total, 2.4 million identified themselves as only American Indian or Alaska Native. The 2000 Census observed a 25% growth in the Indian population on reservations and a 21% growth off reservations. Between 1990 and 2000, the American Indian and Alaska Native population as a whole increased at a rate of 26%, compared with 13% for the total U.S. population. The Bureau of Indian Affairs (BIA) provides land trust, education and other services to 1.6 million enrolled members of federally recognized tribes, and the Indian Health Service (IHS) provides health care services to 1.9 million American Indians and Alaska Natives.

Generally, funding for Indian programs derives from the United States' trust obligation to Indian tribes. This unique political and

fiduciary relationship is grounded in the United States Constitution, treaties, federal statutes, and Supreme Court case law. The federal government's obligation also arises in part from cessions of millions of acres of land from Indian tribes to the United States in exchange for peace, protection of tribal sovereignty, reservations of tribal homelands, and promises to provide a variety of programs and services. While the federal policy toward Indians has shifted over time, sometimes radically, for the last thirty-plus years, both the Congress and Republican and Democratic Administrations have encouraged a policy of Indian self-determination, which encourages tribes to develop programs that best serve their members, lessen their dependence on the federal government, and ensure their participation in the nation's economy.

Native Americans, a group that includes American Indians, Alaska Natives, and Native Hawaiians, continue to confront tremendous challenges in obtaining basic services such as health care, housing, and education. Recent studies conclude that the federal policy of self-determination, under which tribal governments build and administer their own programs, is working to improve Indians' socioeconomic status. Every effort must be made to support and enhance tribal self-determination. Despite recent gains, tremendous disparities continue to exist on various socioeconomic indicators between Native Americans and the overall U.S. population, with Indians ranking well below the national average in measures of health, education, income, and welfare. Paucity of services and lack of opportunity continue to haunt Native peoples. Indicators of this disparity include the following:

The Poverty Rate Is Higher for American Indian and Alaska Natives Than for the United States Overall. The average annual poverty rate for American Indian and Alaska Natives between 1999 and 2001 was 24.5%. The average poverty rate nationally was 11.6%. Nearly one-quarter of Native Americans live in poverty.[1] Although income levels for reservation residents rose 33% between 1990 and 2000, according to

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[1] U.S. Census Bureau, "Poverty in the United States: 2001," *Current Population Reports*, September, 2002, p. 7.

The Harvard Project on American Indian Economic Development, per capita incomes for Indians living on the reservation is still less than one-half the national average.

Indians' Health Status Is Lower Than That of the Overall U.S. Population. Indians' and Alaska Natives' life expectancy is almost four years less than the overall U.S. population. On the Wind River Indian Reservation in Wyoming, the average age at death in 2006 was 49 years of age. Death rates from a variety of diseases are significantly higher than for the general population. For example, Indians have a 670% higher death rate from alcoholism, a 318% higher death rate from diabetes, and a 650% higher death rate from tuberculosis than the general population. American Indian and Alaska Native mortality rates for cervical cancer, motor vehicle crashes, unintentional injuries and homicide are also higher than the mortality rates for other Americans. The suicide rate for American Indians and Alaska Natives between the ages of 15 and 34 is three times the national average, with access to mental health services non-existent for many tribal youth.

Unemployment Is a Persistent Problem. The Bureau of Indian Affairs 2003 Indian Labor Force Report calculated that 49 percent of the total Indian labor force living on or near reservations was unemployed. This percentage ranges among tribes and among states. The Aroostook Band of Micmac Indians in Maine, for example, has an estimated 88% unemployment as a percent of the available labor force. The Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota, has an unemployment rate of 87% of the available labor force.

Violent Crime Committed Against Indians Is Twice the National Average. According to statistics gathered by the Bureau of Justice Statistics, violent crime committed against American Indians is twice the national average, and is more likely committed by a perpetrator who is not Native American. Among American Indians age 25 to 34, the rate of violent crime victimizations was more than 2½ times the rate for all persons the same age; and rates of violent victimization for both males and females were higher for American Indians than for all races. For

Native youth between the ages of 12 and 17, the rate of violence is 65% greater than the national rate for youth.

Housing for Indian Families Is Inadequate. According to 2002 statistics, 90,000 Indian families were homeless or underhoused. On tribal lands, 28% of Indian households were found to be overcrowded or to lack adequate plumbing and kitchen facilities, compared to 5.4% of national households. [2] When the physical structure, heat, and electrical equipment conditions are included, approximately 40% of reservation housing is characterized as inadequate, compared with 5.9% of the national households, and less then half of all reservation homes are connected to a public sewer system. One in five American Indians lives in overcrowded homes, and on some reservations, as many as 25 to 30 people live in a three-bedroom home.

II. Priority of Economic Development

Indian people face unique challenges which affect their ability to obtain basic services such as health care, law enforcement, housing and education. As described above, Indians experience lower health status, greater rates of homelessness and substandard housing and higher poverty and unemployment rates than the rest of the U.S. population. Indian tribes, as both governments and service providers, also experience impediments to developing robust economies which would enable them to provide these essential services to their communities, thereby eliminating these disparities.

The Committee recognizes that economic development is an indispensable cornerstone upon which to build more self-sufficient tribal governments and sustainable tribal economies to address the disparities in Indian Country. This view is bolstered by a recent report by the Government Accountability Office (GAO), *Poverty in America* (January 2007). In evaluating what economic research reveals about the

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[2] *Native America at the New Millennium*, Eric Henson and Johnathan B. Taylor, April, 2002, The Harvard Project on American Indian Economic Development.

relationship between poverty and economic growth, the GAO observed:

> Regardless of whether poverty is a cause or an effect, the conditions associated with poverty limit the ability of low-income individuals to develop the skills, abilities, knowledge, and habits necessary to fully participate in the labor force, in turn, leads to lower incomes.

(Id., p. 17.) The GAO also observed that there is a cause-and-effect relationship among poverty, income, health, and reduced crime, and that poverty "not only affects individuals but can also create larger challenges for economic growth....[H]igher rates of poverty can result in lower rates of growth." (Id. p. 19.)

Even though the GAO report does not address Indian Country specifically, its findings apply to the issues the Committee is working to resolve. The various components identified in the report affecting economic growth are among the programs in the President's budget request. The Committee recognizes that supporting their interrelationship is necessary to facilitate sustainable tribal economies and to improve the lives of Indian people.

In our FY 2007 "views and estimates" letter, the Committee opposed proposed decreases for the programs that provide the necessary infrastructure development, such as housing. Likewise, this year, to support healthy economies in Indian Country, the Committee urges that the FY 2008 budget resolution strengthen business development and the interrelated activities such as health, education, infrastructure, and criminal justice initiatives.

III. Six General Comments

The Committee wishes to offer general comments on six issues we hope the budget resolution will accommodate:

- passage of legislation to reauthorize and amend the Indian Health

Care Improvement Act;

- statutory settlement of the *Cobell v. Norton* litigation involving Indian trust funds management;
- the continued need for infrastructure development in Indian Country, including detention facilities, especially for juveniles, health facilities, schools, housing, and water and wastewater systems;
- additional funding for IHS Contract Health Services;
- annual adjustments to the Bureau of Indian Affairs for fixed costs and to the Indian Health Service for inflation, pay costs and population growth, in order to maintain the current level of services these agencies provide to Indian Country; and
- reauthorizations of Indian Country statutes that are currently pending in the Committee.

Each of these issues is discussed below.

A. Reauthorization of the Indian Health Care Improvement Act

The Committee requests that the budget resolution contain an allocation sufficient to cover or create a reserve fund for the costs of the changes we anticipate making to the Indian Health Care Improvement Act. Reauthorization of the Indian Health Care Improvement Act is one of the Committee's highest priorities for the 110th Congress. The reauthorization legislation will take a comprehensive approach to health care in Indian Country by addressing a very wide range of issues – health professions, health education and training, facilities construction, health services for all age groups, innovative models of health care delivery, reimbursement for services provided by third parties, organizational improvements to the Indian Health Service (IHS), and services to Indians residing in urban areas.

The Congressional Budget Office (CBO) on April 26, 2006, provided a cost estimate to S. 1057, the version of the Indian Health Care Improvement Act Amendments of 2005 as it was reported out of our Committee, which estimated that implementing the bill would increase direct spending by $162 million over FY 2007-2011, and $398 million over FY 2007-2016. S. 1057 was later revised, after being reported out by Indian Affairs, to include changes made at the recommendation of the Senate Finance Committee during the 109th Congress. The preliminary CBO estimate from September, 2006, of that amendment in the nature of a substitute to S. 1057 was $67 million over FY 2007-2011 for direct spending, and $163 million over FY 2007-2016.

B. Settlement of the *Cobell* Trust Funds Litigation

The Committee also requests that the budget resolution contain an allocation sufficient to cover or create a reserve fund for the cost of providing a statutory settlement of the *Cobell v. Kempthorne* litigation involving Indian trust funds management. The federal courts have found the federal government in breach of its fiduciary duties as trustee. However, the parties have yet to agree on a settlement amount for the lawsuit, and the Committee is still in the process of determining a reasonable amount for settlement. The plaintiffs have submitted a proposed settlement amount to the Committee and the Committee Chairman is awaiting a letter from the Administration that will include a counterproposal which is anticipated to be in the $7 to $8 billion range.

In anticipation of the Administration's letter, we request that the Budget Committee provide $8 billion under the budget resolution in order to accommodate the settlement.

While settlement of the *Cobell* lawsuit was a high priority in the 109th Congress, the Committee was unable to approve a bill before the session adjourned. The Chair and Vice Chair will continue to work toward a resolution that will settle the claims at issue in the litigation and related issues.

Resolution of the *Cobell* litigation is extremely important for the following reasons:

- The litigation has been pending for over ten years, and resolution within the court system will likely not occur in a timely manner.

- For the last several fiscal years, the Department of the Interior has annually requested over $100 million to perform activities related to the litigation, including an historical accounting in order to meet its legal obligations. However, it is not entirely clear whether a legally sufficient accounting can be accomplished or in what timeframe such an accounting will be completed. Congressional settlement of the litigation would eliminate the need to continue an historical accounting.

- Resolution of the *Cobell* litigation without congressional action will likely leave unresolved related claims, such as mismanagement of individual Indian trust funds and lands, potentially leading to additional lawsuits against the United States.

C. Development of Infrastructure in Indian Country

The need for infrastructure in Indian Country - whether for schools, health facilities, housing, detention facilities, especially for Indian juveniles, tribal justice systems, and water and sewer systems - is dire, as shown by the following statistics:

- the backlog for education construction and repair was estimated to be $942 million in 2004, with a maintenance backlog of over $500 million;
- one-third of the 184 BIA schools are in poor condition and in need of either replacement or significant repair;
- the IHS' current Health Care Facilities Construction priority list exceeds $1 billion, with maintenance and improvement on current

facilities reaching $482 million;

- there is a $400 million backlog of needed detention facilities;
- 40% of Indian housing is considered inadequate; and
- the need for sanitation facilities in Indian and Alaska Native communities is estimated by the IHS to be over $2.2 billion, with those projects considered economically feasible totaling $1 billion.

In our FY 2006 and FY 2007 "views and estimates" letters, this Committee urged that the BIA Education Construction and IHS Health Facilities Construction programs, in particular, be resumed at previous funding levels, despite both Departments' proposed "one-year moratorium" on construction. This Committee remains concerned that the Administration continues to propose reductions for programs that provide necessary infrastructure development in American Indian and Alaska Native communities. We urge that increased funding be provided in FY 2008 in order to provide safe and healthy environments in which Indian people may work, go to school, raise their families and celebrate their communities.

Infrastructure programs in various agencies or departments are discussed below under overall recommended FY 2008 levels for their respective agencies.

D. Increases for IHS Contract Health Services

We support the proposed increase to the Indian Health Services account of $49 million over the FY 2007 Continuing Resolution for Contract Health Services, which is roughly a 10% increase over last year, for an FY 2008 level of $569.5 million. The contract care program allows for the purchase of medical care and urgent health care services within IHS guidelines when health care and medical services are not available at IHS or tribal health facilities. However, there are many instances where care that is being sought is within IHS guidelines but is deferred, or denied. The Committee is aware of estimates of $301.2 million, based on

FY 2005 data, in Contract Health Services unmet need. We support the proposed $49 million for this program, and urge that an additional $51 million be provided in FY 2008 to address some of the unmet need in deferred and denied services.

E. Annual Adjustments for Mandatory Increases for BIA, IHS

The FY 2008 budget request for the Bureau of Indian Affairs includes full funding for fixed costs and related changes, such as pay increases and health insurance coverage, of $41.3 million. This Committee supports this requested increase. The Indian Health Service FY 2008 budget request includes, and this Committee also strongly supports, a significant increase totaling $273.8 million for pay costs, population growth, inflation, and staffing requirements at and operating costs for two new health facilities – so-called "built-in" increases – and to restore the FY 2007 base from the President's FY 2007 budget request to the level of the final Continuing Resolution. However, this increase does not restore the Urban Indian Health Program to the FY 2007 base, or adjust that program, discussed further, below, for pay costs, population growth and inflation, nor are there proposed adjustments to the Facilities account for pay costs, population growth and inflation. Thus, additional increases are necessary to IHS accounts to maintain the current level of services.

The Committee strongly supports requested increases for annual adjustments for mandatory increases for BIA and IHS, and urges that these increases be included in the budget resolution and in projected budgets for the "outyears" in order to maintain the current level of services. The desire to maintain the current level of services reflects tribally-determined budget priorities developed and presented through the tribal consultation processes with both the Department of Health and Human Services and the Department of the Interior in the annual budget formulation processes.

F. Other Major Statutory Reauthorizations Pending Committee Action

In addition to legislation which would amend and reauthorize the Indian Health Care Improvement Act to improve the delivery of health care services to Indian Country and settle the *Cobell* litigation, mentioned above, the Indian Affairs Committee is working to reauthorize several other statutes which will benefit Indian Country, including the following:

- Native American Housing and Self-Determination Act Reauthorization – The Committee requests that the budget resolution contain an allocation to cover the cost of the modifications we anticipate making as we reauthorize the Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA") this year. As noted above, there is a crisis in Indian housing which must be remedied. Nearly half of Native American homes are considered inadequate by all applicable standards, and less then half of all reservation homes are connected to a public sewer.

  The Native American Housing Assistance and Self-Determination Act provides a block grant program, administered by the Department of Housing and Urban Development, for tribal planning, administration and construction needs; includes a guaranteed loan program for tribes and individual Indian borrowers; and includes assistance for tribal housing authorities and Native Hawaiians. The Act is currently authorized at "such sums as may be necessary."

- Indian Child Protection and Family Violence Protection Act Reauthorization – This legislation would reauthorize and amend the Indian Child Protection and Family Violence Prevention Act of 1990 to further the Act's goals of reducing the incidence of child abuse, and improving the reporting and tracking of child abuse in Indian Country. The bill would assist with the submitting of information to Congress that is held by the Federal Bureau of

Investigations; authorize a study to identify impediments to the reduction of child abuse in Indian Country; and authorize the Indian Health Service to use telemedicine in connection with examinations of Indian children who have been subject to abuse. The Committee recently reported a reauthorization bill (S. 398) which we believe will be scored by the Congressional Budget Office at approximately $140 million over five years, and we request that this amount be reflected in the budget resolution.

- Special Diabetes Program for Indians Reauthorization – The Special Diabetes Program for Indians (SDPI) was established in 1997 as part of the Balanced Budget Act, and reauthorized under the Consolidated Appropriations Act of 2001. Most recently, Public Law 107-360 reauthorized the Program through FY 2008 at a level of $150 million per year. SDPI grants have been awarded by the Indian Health Service to 318 programs within the 12 IHS Areas in 35 states. SDPI funding has significantly increased levels of services for the prevention and treatment of diabetes among American Indians and Alaska Natives, who have a higher prevalence of diabetes than any other racial/ethnic group. The Indian Affairs Committee held an oversight hearing on diabetes in Indian Country on February 8, in anticipation of reauthorizing the program during the 110th Congress. We expect that the Committee will recommend that the Program be reauthorized at $200 million for FY 2009-2014.

IV. Committee Recommendations on Specific Programs

What follows are this Committee's recommendations on proposed increases or decreases to specific programs which serve Indian people in various federal agencies and departments.

A. Department of Justice

For the past several years, tribal leaders from across the country have been united in making public safety and justice a top priority, and

in urging that adequate funding be provided for law enforcement officers, strong judicial systems, and detention facilities construction and staffing.

The critical shortage of law enforcement resources and associated problems arising from these shortages is discussed in greater detail, below, in the BIA law enforcement section. However, it is important to note that Department of Justice programs are an essential part of the public safety and justice regime in Indian Country, and that changes proposed to these programs in FY 2008 will significantly affect the administration of justice in Indian communities.

Thus, the Committee is greatly concerned that the FY 2008 budget proposes to eliminate tribal-specific funding within the Department of Justice for public safety and justice programs. Instead, the FY 2008 budget request proposes to consolidate 70 Office of Justice Programs grant programs into four new discretionary grant programs for state, local and tribal governments. This consolidation will likely diminish law enforcement resources to Indian Country. In fact, over the past several years, Congress has stated its intent by providing specific bill language with funding amounts for various law enforcement programs serving Indian Country:

- the Tribal Courts Assistance Program, which supports the development, implementation, enhancement and continuing operation of tribal justice systems;

- the Indian Alcohol and Substance Abuse Demonstration Program, which is designed to reduce crimes associated with the distribution and abuse of alcohol and controlled substances in tribal communities by mobilizing these communities to implement or enhance innovative, collaborative efforts to address public safety issues related to alcohol and substance abuse;

- the Construction of Correctional Facilities in American Indian and Alaska Native Communities Discretionary Grant Program, for the

construction of jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction;

- the Tribal COPS Program, which includes hiring and training of new law enforcement officers, training of existing forces, purchasing of basic standard issue equipment, technology and vehicles; and

- the Tribal Youth Program, which provides grants to tribes to improve tribal juvenile justice systems and to develop and implement culturally-sensitive delinquency prevention programs, alcohol and substance abuse prevention programs, and interventions for tribal youth.

The Administration appears to be proposing to discontinue the specific support for tribal police services, courts, and juvenile and behavioral health programs, and instead to require that tribes compete with state and local governments for this funding. The Committee is not aware that the Department of Justice consulted with tribal governments on the proposals to require tribal law enforcement agencies to compete with state and local law enforcement agencies for funding and to consolidate 70 existing programs into four new initiatives.

The Committee instead recommends that tribal programs continue to be expressly and separately funding at amounts similar to the FY 2006 enacted levels, for:

- Tribal Courts Assistance Program, $8 million;
- Indian Alcohol and Substance Abuse Demonstration Program, $5 million;
- Tribal COPS, $33.2 million, the FY 2007 level; and
- Tribal Youth Program, $10 million.

With respect to construction of the Correctional Facilities in American Indian and Alaska Native Communities Discretionary Grant Program, the September, 2004, report of the U.S. Department of Interior Office of

Inspector General on Indian detention facilities noted that 79% of facilities fall below minimum staffing levels on a regular basis. The report also noted that poorly maintained facilities provide ample opportunity for escape; that Indian detention facilities experience unusually high rates of suicide; and that Indian Country jails have become dilapidated to the point of condemnation.

The Committee anticipates that this current need for detention facilities may be intensified by the increase of law enforcement officers provided by the BIA Safe Indian Communities Initiative, discussed below, which the Committee supports, and resulting arrests. Therefore, the Committee recommends that the Correctional Facilities in American Indian and Alaska Native Communities Discretionary Grant Program be funded at a minimum of $20 million in FY 2008.

B. Bureau of Indian Affairs

The Committee **supports** the following proposed funding increases for programs in the Bureau of Indian Affairs:

Law Enforcement:

The Committee has noted the violent crime statistics for Indian Country. In Indian Country, there are fewer officers patrolling greater areas of land than in other parts of the country, and tribal law enforcement is often the only law enforcement service available. Indian tribes have broad civil jurisdiction, as well as criminal jurisdiction for offenses committed by Indians on Indian land, and they rely on tribal judicial systems to maintain law and order.

The Committee has observed firsthand the critical shortage in resources and personnel on reservation lands. For example, on the Wind River Indian Reservation in Wyoming, there are only 7 law enforcement officers to patrol an area of nearly 2.2 million square acres and a community of nearly 14,000 people for the entire 24-hour/7-day period. In 2006, there were 461 juvenile arrests on the Reservation, but the only

juvenile detention facility available was the local county facility at a cost of $100.00 per day.

The shortage of resources has been made much worse by the methamphetamine epidemic within Indian country. This Committee has seen evidence that Indian reservations have been being targeted by methamphetamine dealers and this is unacceptable. With many Indian reservations larger than the size of some states, tribal first responders are critical to maintaining safe and healthy tribal communities.

It is with this in mind that the Committee notes that, in the area of law enforcement, the FY 2008 budget proposes the Safe Indian Communities initiative in response to escalating methamphetamine production and trafficking in Indian Country. Of the total $16 million requested, $11 million is requested for law enforcement staffing (25 BIA and 25 tribal officers), training, and equipment, and $5 million is requested for detention center staffing (approximately 50 BIA and 41 tribal detention officers).

Indian Energy: As in FY 2007, the FY 2008 budget again proposes $2 million for implementation of Indian energy resource development as outlined in the Energy Policy Act of 2005. Of the total amount, $1.4 million is for grants to tribes, and $600,000 is for BIA oversight, including approval of tribal energy resource agreements and technical assistance.

A diversified economy, especially energy and non-gaming economic development, will boost other tribal services and improve the quality of life in Indian communities, which is a goal envisioned by Congress in the Energy Policy Act. The Committee supports funding for oversight and implementation of the new Indian energy provisions in Title V of the Energy Policy Act. The Department will need sufficient resources to implement these new provisions and to review and approve tribal energy resource agreements under the Act and its regulations.

Indian Education: For the Improving Indian Education Initiative, the FY

2008 budget request proposes increases of

- $5.3 million for education program enhancements,
- $4.3 million for student transportation,
- $3.6 million for education program management, and
- $1.9 million for the Native American Student Information System.

The Committee supports this Initiative, which accommodates the needs of Indian children in meeting the No Child Left Behind Act requirements in academic achievement and attendance. In addition, the program enhancements will assist Bureau-funded schools in achieving the Adequate Yearly Progress requirements under the No Child Left Behind Act. It will also support long-range planning and development in Bureau-funded schools through such activities as principal/teacher development and career education for high schools students. While we support this new initiative, we do not believe it should be funded at the expense of other current BIA programs.

Indian Guaranteed Loan Program Account: Despite recent commercial successes in business development, energy ventures, and other opportunities, many tribes still suffer a severe lack of jobs and high unemployment. It is well-documented that Native entrepreneurs and communities lack access to capital for both home mortgages and commercial purposes. The Indian Loan Guaranty Program helps Indians gain access to capital by guaranteeing and insuring loans from the private sector to promote economic development for tribes, individual Indians and Alaska Natives. The Indian Loan Guaranty Program is one of the most successful federal economic development programs in providing Native communities access to private sector capital.

The President's FY 2008 budget proposes to maintain funding the Indian Loan Guaranty Program at $6.3 million. This funding expects to leverage private sector financing for approximately 75 Indian-owned businesses located in Native communities. High priorities are construction of buildings, recreational attractions and resort facilities. This program has generated jobs employment opportunities from the

resulting growth and expansion of reservation economies. Although these funds will guarantee outstanding loan authority of up to $85 million, this funding is inadequate for the demand for private sector investment.

The Committee notes that this effective program has not kept up with inflation and has been level funded since FY 2004. The Committee believes that this program has clearly demonstrated its ability to promote economic development and job creation on reservations and urges that FY 2008 funding for this program to be increased over the budget request to a level that would account for inflation since 2004. The Committee feels that the additional guarantee authority would sharply increase the number of economic development projects on reservation lands and spur further private sector investment in Indian Country.

The Committee **opposes** the following BIA program decreases, and urges that these programs be funded at least at current levels:

Johnson-O'Malley Grants: The FY 2008 budget request assumed the Administration's FY 2007 proposals as the base budget. In the Administration's FY 2007 request, the Johnson O'Malley (JOM) Education Assistance supplemental educational grants program to Native American students ages 3 to grade 12 was eliminated ($16.4 million decrease). However, both the House and Senate FY 2007 Interior appropriations bills restored the program.

The Johnson O'Malley program provides supplemental educational grants to tribes with students attending public schools. This program provides assistance to Indian tribes and public schools for basic educational needs of Indian children, such as school supplies, nominal clothing subsidies, transportation, and afterschool programs that provide tutoring and counseling, which have been unavailable under the No Child Left Behind Act. The program administrators at the local schools may also serve as liaisons between the Indian parents or students and school administrators, to boost students' chances for success. The funds

are used by tribes to pay for things such as eyeglasses for students; school supplies; scholastic testing fees; and Native youth leadership programs. BIA says that the funding is duplicative of other grants offered by the Department of Education, but the Committee has seen no evidence of this.

The Administration's $16.4 million decrease for FY 2007 did not include JOM funding in other parts of the BIA budget. The FY 2008 budget request proposes a further reduction of $7.7 million for JOM in those other parts of the BIA budget (within the Consolidated Tribal Government and Self-Governance Programs). The Committee recommends restoration of funding of the entire total of $24.1 million for this culturally-relevant program for Indian students.

Housing Improvement Program: The FY 2008 budget proposes to eliminate the Housing Improvement Program (HIP). The overall $23.4 million decrease is made up of a $19 million reduction for the main HIP program; a $300,000 reduction in the housing oversight program; and $4.2 million reduction for the HIP program serving Self-Governance tribes.

The budget justification states that this proposed elimination is due to the program serving a limited number of tribes and eligibility overlapping between the Housing Improvement Program and the Department of Housing and Urban Development's Native American Housing Assistance and Self-Determination Act program. However, BIA has not identified which eligibility criteria overlaps or duplicates these programs. Likewise, the Committee has not been informed that leveraging funding for the two programs overlaps or duplicates the programs, particularly when the HIP funding may assist homes which may not have been provided housing assistance under the NAHASDA program.

The Committee does not support this proposed program elimination, because the HIP Program serves the neediest individual Indians who are not able to meet tribal standards for HUD housing

programs. HIP provides funding for Indians who need housing repairs and renovations of existing homes, construction of a modest replacement home, or construction of a modest home for an Indian family who does not own a home, but who has ownership in or a lease interest on land suitable for housing. We recommend that HIP be continued at the current level of $23.4 million in FY 2008.

Education Construction: Within the total of $139.8 million requested for Education Construction, the proposed budget for FY 2008 includes $14.8 million for Replacement School Construction, a $21.7 million reduction from the FY 2007 Continuing Resolution. This amount will allow funding for two replacement schools. Between 2002 and 2007, 33 replacement schools have been funded, of which 11 have been completed, and another 11 will be completed in 2007 and 2008. The budget also proposes $22.6 million for Replacement Facilities Construction, a decrease of $4.3 million.

Given BIA's inventory of nearly 4,500 education buildings, which, on average, are 60 years old, compared with 40 years old for public schools serving the general population, the Committee cannot support the proposed reductions to the Education Construction account. Even with the increase of funding for school construction in recent years, there remain over 60 Bureau-funded schools which are still in poor condition, yet these may be the only buildings available for educating the children. The Committee recommends that funding for Education Construction be increased $26 million over the budget request, to maintain the program at the same funding level provided in FY 2007.

United Tribes Technical College (UTTC) and Navajo Technical College: The Committee is disturbed that, as the Administration proposed in the FY 2006 and FY 2007 budget requests, no funding is requested in FY 2008 for the United Tribes Technical College (UTTC) and the Navajo Technical College (formerly called Crownpoint Institute of Technology). UTTC and NTC have demonstrated high levels of success in educating Indian students. The Committee urges that funding of $4.5 million be provided for UTTC, and $2.5 million for Navajo Technical College.

Tribal Colleges and Universities: Tribal colleges and universities provide a wide array of educational degrees and programs and are located in Indian communities, thereby providing greater access to higher learning for Indian students. Of the 26 schools, all of them provide Associate degrees and several offer Bachelor's and Master's degrees in such disciplines as Business Management. In FY 2008, the BIA projects that the tribal colleges will provide educational opportunities to over 25,000 individual students.

The Haskell Indian Nations University, through the Bureau of Indian Education, is a four-year institution which offers Associate degrees and Bachelor's degrees in Elementary Education and Business Administration, among others. Haskell provides unique opportunities which Indian Country can capitalize on through elementary education degrees designed to "grow your own" teachers for Bureau-funded schools, which in turn increases the potential for compliance with the No Child Left Behind Act, and provides an educated Indian workforce. In addition, through the Business Administration track, Haskell also contributes to the economic well-being of Indian tribes by preparing students to take leadership and management roles.

The Southwestern Indian Polytechnic Institute provides Associate degrees transferable to other universities in education and business. The SIPI also prepares skilled and trained individuals through certificate programs.

The need for tribal economic development, health care and other leadership professionals suggests that tribal colleges should be funded at levels sufficient to overcome the barriers associated with the remote locations of these schools, such as recruitment, retention and distance learning, and the advanced requirements of competitiveness in the global economy. Moreover, the Committee anticipates that the additional economic development initiatives being advanced this year will place these institutions of higher learning in greater demand by Indian students and tribal leaders and communities.

Therefore, the Committee recommends that the Tribally-Controlled Colleges be funded at $74 million, which is $20 million over the proposed request. Likewise, the Committee recommends that Haskell be funded at $15 million, which is a $5 million increase over the budget request. We further recommend that SIPI be funded at $9 million, which is an increase of less than $3 million over the proposed request.

C. Office of Special Trustee

The Committee has the following recommendation to make with respect to the FY 2008 budget request for the Office of Special Trustee.

Indian Land Consolidation Program: The FY 2008 budget proposes to reduce funding for the Indian Land Consolidation Program, which works to reduce land fractionation by consolidating highly fractionated parcels of Indian-owned trust lands within the boundaries of reservations and restoring them to tribal ownership. The purchase of fractionated interests, which is an important part of the Department's trust reform efforts, not only restores lands to tribal ownership, but also reduces record-keeping and otherwise unavoidable expenses required in administering tens of thousands of small fractional interests in land. The purchase of these interests also reduces the number of individual estates subject to probate by the Department of Interior.

The FY 2008 budget request proposes to reduce this program by $24 million, to only $10 million. The Administration said that land fractionation was a priority for them last year during *Cobell* settlement discussions, and, in fact, had requested $59.4 million. The Committee recommends that the Indian Land Consolidation Program be continued at the FY 2006 enacted level of $34.5 million.

D. Indian Health Service

The Committee is pleased that the FY 2008 budget request includes significant increases for the Indian Health Service. The FY 2008 budget proposes an increase of $273.8 million for IHS and tribal pay

costs, inflation, population growth, and staffing and operating costs at two new health facilities. Of this total, $126 million is requested to restore the FY 2007 base from the level of the President's FY 2007 request to the level of the FY 2007 Continuing Resolution. We support these requested increases that will allow IHS and the tribes to maintain current services.

However, as noted above, the requested increase does not restore the Urban Indian Health Program to the FY 2007 base, or adjust that program, discussed further, below, for pay costs, population growth and inflation, nor are there proposed adjustments to the Facilities account for pay costs, population growth and inflation. Thus, additional increases over the budget request are necessary to IHS accounts to maintain the current level of services.

Urban Indian Health Program: The Urban Indian Health Program funds Urban Indian Health Organizations that provide health services to eligible Indians in urban centers. The IHS is directed to fund these organizations based upon the documented and unmet needs of the urban American Indians and Alaska Natives communities they serve. The 2000 census indicated that as much as 66% of the American Indian and Alaska Native population lives in urban areas. The 34 urban Indian organizations serve 430,000 eligible Indian users at 41 sites throughout the U.S., and provide health services such as dental, pharmaceutical, vision, alcohol or mental health treatment, suicide prevention and family wellness.

Despite this statutory directive to operate the Urban Indian Health Program, the FY 2008 budget proposes to eliminate the program, as the Administration also proposed in the FY 2007 budget request. The FY 2006 enacted and FY 2007 CR levels for this program were both $32.7 million. The Committee recommends that FY 2008 funding be provided at the FY 2006 enacted level adjusted for inflation, or $36 million.

Health Care Facilities Construction: The budget authority for Health

Care Facilities Construction funds the construction of health facilities, including the initial equipment, that provide direct health care services for the American Indians and Alaska Natives.

The FY 2008 budget request for Health Care Facilities Construction is decreased by $24 million from the FY 2007 Continuing Resolution level. The budget request proposes funding of $12.7 million to continue construction of only one project. No additional planning or construction funds are requested for the remaining projects on the IHS 5-Year Priority Construction List or other unmet needs, despite a continuing backlog of critically-needed health care facilities.

Given the tremendous need for health care facilities, the Committee is troubled that the Administration continues to limit its budget requests for construction, despite the "one-year pause" in FY 2006. We recommend that additional funding to maintain the Health Care Facilities Construction program at the FY 2007 level be provided in FY 2008 not only for the one project included in the budget request (Barrow, AK), but also to advance other projects in various stages of early construction.

E. Department of Housing and Urban Development

NAHASDA Block Grant Program: The Native American Housing Assistance and Self-Determination Act (NAHASDA), enacted in 1996, is the primary statutory authority under which the federal government carries out its responsibility to provide housing to American Indian and Alaska Natives. NAHASDA reorganized the system of federal housing assistance to Native Americans by eliminating several separate programs and replacing them with a single block grant. NAHASDA provides block grants to Indian tribes or their tribally designated housing entities (TDHEs) on a formula basis for affordable housing activities, including the purchase, modernization, or construction of housing units, as well as rental and homeowner assistance. The Act will be considered for reauthorization this year.

The Committee is concerned about the gradual erosion of funding for the NAHASDA block grant program over the past several years. The block grant program was funded at $654 million in FY 2004, $622 million in FY 2005, and $624 million in FY 2006. The Committee appreciates that the FY 2007 Continuing Resolution funded the block grant program at $628 million and the FY 2008 proposed amount requested is $627 million. However, with the rate of inflation and because of the proposed elimination of the Housing Improvement Program in the BIA, the FY 2008 requested level will result in fewer homes being built for an Indian population that is growing and is in need of safe, decent and affordable housing.

The housing needs of tribal communities are acute. Approximately 90,000 Indian and Alaska Native families are homeless or inadequately housed; nearly 15% of homes in tribal areas are overcrowded, compared to 5.7% of homes of the general U.S. population, according to the 2000 Census; and it is estimated that nearly 200,000 housing units are immediately needed to provide adequate housing in tribal areas.

Indian tribes have utilized their limited NAHASDA Block Grant Program funds in innovative ways, and have been successful in addressing the urgent housing needs in Indian country, proving that investment in this program shows returns. Housing is one of the three basic needs and we are not meeting this need in Indian country with current funding levels. Given these statistics, we recommend that programs under the Act be funded in FY 2008 at $657 million, $30 million over the budget request, which would take in to account appropriate adjustments for inflation.

NAHASDA Technical Assistance and Training: Technical assistance and training have been key components of making the Native American Housing Assistance and Self-Determination Act (NAHASDA) as successful as it has been over the past decade. Congress recognized the need for such activities and cost efficiencies in NAHASDA by authorizing funding "for assistance for a national organization representing Native American housing interests for providing training and technical

assistance" (25 U.S.C. 4212). The major provider of technical assistance and training to the Native American community is the National American Indian Housing Council (NAIHC), a 32-year-old consortium of more than 460 tribes and Alaska Native villages that provides assistance to tribal housing authorities and tribally-designated housing entities. Training and technical assistance are effective tools in maintaining compliance with NAHASDA's exacting statutory or regulatory requirements, with results such as enabling tribal housing authorities to stay audit-free. NAIHC has also addressed new issues facing the tribally-designated housing entities, such as identification and remediation of methamphetamine use in tribal housing. Approximately 5,000 tribal housing staff participated in NAIHC trainings in FY 2005 and 2006.

In FY 2005, the NAIHC received $4.6 million in the Indian Housing Block Grant to provide technical assistance and training; that amount was reduced to $2 million in FY 2006 and $1 million in FY2007. The FY 2008 budget proposes to eliminate federal support for these much-needed activities. The Committee supports continued funding for the Council to provide technical assistance and training at $4 million in FY 2008.

Indian Community Development Block Grant: The Indian Community Development Block Grant (ICDBG) program within the Community Development Block Grant is a competitive grant program that funds direct grants for use in developing viable Indian and Alaska Native communities, including housing and economic opportunities for low and moderate income persons. Indian and Alaska Native tribal governments traditionally receive one-percent of CDBG funds. However, given the role this program plays in building critical economic development infrastructure in Indian Country, we recommend that the program be increased by $20 million from the recommended level of $57 million in FY 2008 to $77 million.

E. Department of Education

The Committee notes that FY 2008 funding for Indian education programs at the Department of Education maintains current levels, is proposed for slight decreases or in some cases, is proposed for elimination. These programs fund such activities and services as public school programs for Indian children; supplemental education programs for Native Hawaiian and Alaska Native children; operation and improvement of tribally-controlled post-secondary vocational and technical institutions; and improvement and expansion of tribal college capacity and the capacity of Alaska Native and Native Hawaiian serving post-secondary institutions.

Approximately 33% of the American Indian and Alaska Native population is under the age of 18. According to the Department of Education, Indian students are below the national average on national math, reading, and science assessments and lag behind most other races in these subject areas. Many of the schools educating Indian children are not meeting adequate yearly progress (AYP), as required by the No Child Left Behind Act. Only 30% of BIA and tribal schools meet AYP, compared with 70% for the states. Indian students also have higher rates of absenteeism, suspension, and expulsion than their non-Indian peers. 11.4% of American Indian and Alaska Native students received special education services in 2002.

As the Administration has acknowledged, most American Indian and Alaska Native students attend schools in small towns and rural areas. These schools face increased challenges in meeting the requirements of the No Child Left Behind Act, ranging from the difficulties of recruiting and retaining highly qualified teachers to work in rural areas, to higher transportation costs to cover gasoline and vehicle maintenance and repair.

Unfortunately, the proposed FY 2008 funding levels do not consider the growing American Indian and Alaska Native population, the cost of inflation or other factors unique to the education of Indian

students. Because of this, the proposed FY 2008 funding levels for Indian education programs are disappointing.

Title VII, No Child Left Behind: We request a modest increase of 5% (or $9.3 million over the FY 2007 Continuing Resolution level) for Title VII, Native Education. No Child Left Behind Title VII provides critical support for culturally-based educational approaches for Native students, and has produced many success stories in bridging the achievement gap for these students.

Tribal Colleges: We ask that the Department of Education budget for Tribal Colleges be increased from $23.5 million to $32 million in FY 2008 to fund basic development and construction grants. Tribal Colleges and Universities serve some of the most impoverished areas of the country, yet are the most poorly funded post-secondary institutions. These young institutions have dramatically increased access to higher education for American Indians, but are in great need of additional funds for infrastructure, facilities, faculty, curriculum development and student services. As noted above, these tribal colleges serve a useful purpose by bringing higher educational opportunities to remote Indian communities, by preparing Indian students for future leadership roles, and by supporting tribal economic endeavors. This recommended increase in FY 2008 will help to bridge the gap that tribal economies experience and to prepare them for advanced competitiveness.

In addition, the Committee disagrees with the proposed eliminations of various Department of Education programs serving Native Americans, and urges their restoration:

Education for Native Hawaiians: This program funds supplemental education programs for Native Hawaiian children, such as family-based education, special education, gifted and talented education, higher education, curriculum development, teacher training and recruitment, and community-based learning. This program was previously funded at $33.9 million.

Alaska Native Equity Education: This program funds supplemental education programs for Alaska Native children, including educational planning, curriculum development, teacher training, teacher recruitment, student enrichment, and home-based instruction for pre-school children. This program was also previously funded at $33.9 million.

Strengthening Alaska Native- and Native Hawaiian-Serving Institutions: This program funds post-secondary programs for Alaska Native- and Native Hawaiian-Serving Institutions to improve and expand their capacity to serve students. This program was funded at nearly $12 million in FY 2006 and FY 2007.

F. Environmental Protection Agency

Clean Water State Revolving Fund: The EPA State and Tribal Assistance Grants program is made up of two components: infrastructure assistance under the Clean Water State Revolving Fund (CWSRF) and categorical grants. The Committee is concerned that the proposed FY 2008 level funding is inadequate for the CWSRF. The CWSRF helps both tribes and states meet their significant infrastructure needs by funding the construction of wastewater treatment facilities and other water projects, including non-point source, storm water, and sewer overflow. The total funding proposed for tribes and states in FY 2008 is $687.5 million – identical to the FY 2007 funding with no adjustments for inflation. The level of need for Indian tribes alone is greater than the total proposed. The Indian Health Service estimated in FY 2006 that Indian Country would require more than $684 million to correct inadequate and non-compliant wastewater systems or to construct systems where none currently exist. Yet tribes only receive 1.5% of CWSRF appropriations, which would be $1.085 million of the proposed amount. Level funding for this program should be maintained, adjusted for inflation.

Water for Alaska Native Villages: The State and Tribal Assistance Grants program's infrastructure assistance program component provides for construction of wastewater and drinking water facilities to address

serious sanitation problems. The EPA estimates that more than 20,000 homes in Alaska Native villages lack basic sanitation facilities. The Indian Health Service estimated in FY 2006 that it would cost more than $340 million to address the worst deficiencies in Alaska villages, which have inadequate or non-compliant wastewater treatment systems and lack safe water supply and sewage disposal systems. The Committee is concerned that the $15.5 million proposed for FY 2008 is inadequate to address the worst sanitation problems confronting Alaska villages, although that level of funding is higher than that provided by the FY 2007 Continuing Resolution.

G. Department of Agriculture

Rural Development: The Committee notes that the President's FY 2008 budget proposes (1) to reduce funding for rural development programs – particularly rural utilities, (2) to replace rural development grant funds with increasing loan funds, and (3) to replace direct loan funding with federally-guaranteed loan funds. Each of these policy decisions would negatively impact Indian Country where grants are necessary for infrastructure development and lending is often impracticable for rural tribal governments.

The Committee recommends that the Budget Committee restore rural development programs to the FY 2006 funding levels and reject the proposals in the budget request to replace grant funds with loan funds, particularly the Rural Business-Cooperative Service's Rural Economic Development Program and Renewable Energy Section. We also ask the Committee to restore funding for the Rural Business Service's Enterprise Grant and Rural Business Opportunity Grant programs, which tribes are eligible to receive to further tribal development.

For FY 2008, the budget request proposes a reorganization of the Rural Community Advancement Program (RCAP), currently one program funding rural community, housing and utilities programs. While this Committee does not have an opinion on the President's proposed reorganization plan, we are concerned that the proposed funding for

Indian and Native American water and waste water programs under a proposed Rural Utilities Service is insufficient. Of particular concern is the proposed elimination of the Rural Native Alaska Water Systems grant and loan funding, which funds water and waste disposal loans and grants for the development of safe water systems for rural and Native villages in Alaska. The Committee opposes this program elimination, and recommends that this program be funded in FY 2008 at the FY 2006 enacted level of $25 million.

H. Department of Health and Human Services

Head Start: The Head Start program provides a viable source of educational and social integration and development for Indian children from birth to 5 years of age and engages the parents in such curriculum and programmatic development. Historically, the Indian Head Start programs have received a 2.9% set-aside in the total funding for Head Start. However, the population growth and costs of inflation support a 4% set-aside for Indian Head Start programs, which is also reflected in S. 556, the *Head Start for School Readiness Act,* reported out by the Health, Education, Labor and Pensions Committee on February 12, 2007.

Administration for Native Americans: We recommend that the FY 2008 budget for the Administration for Native Americans, in the Department of Health and Human Services, be increased by $10 million to a total of $54 million to support Native language immersion and restoration programs, as authorized by the Esther Martinez Native American Languages Preservation Act of 2006. Research shows that Native American children who participate in immersion programs perform better than their Native peers who do not. We believe this program is a sound educational investment.

The Committee on Indian Affairs appreciates the opportunity to give our views on the FY 2008 budget request, and looks forward to continuing to work with you to ensure that programs that serve

American Indians and Alaska Natives are adequately funded.

Sincerely,

Byron L. Dorgan
Chairman

Craig Thomas
Vice Chairman