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United States Senate

COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

March 13, 2009

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

RE: FY 2010 Funding for Native American Programs

Dear Chairman Conrad and Ranking Member Gregg:

As Chairman and Vice Chairman of the Committee on Indian Affairs, we thank you for this opportunity to express the Committee's views. This letter sets forth the Committee's funding priorities for tribal programs in the FY 2010 Budget Resolution, and general background supporting these recommendations. We appreciate your consideration of this views and estimates letter as the Budget Committee develops the Fiscal Year 2010 Budget Resolution.

The Committee recommends the following increases in budget authority for four priority areas: (1) at least $600 million in increased authority for Indian health care services and construction within the Indian Health Service budget over the FY 2009 enacted level; (2) at least $100 million in increased authority for tribal public safety and justice programs and construction within the Interior and Justice Department budgets over the FY 2009 enacted levels; (3) at least $90 million in increased authority for tribal economic development programs within the Interior and Energy Department budgets over the FY 2009 enacted levels; and (4) initial funding of $400 million in authority within the Treasury Department's budget for the Emergency Fund for Indian Safety and Health.

The Committee is sensitive to the fact that our Nation is in the midst of an economic crisis. The national unemployment rate recently rose above 8%, the housing industry remains a nationwide concern, and the investment sector has experienced steep declines. As will be detailed below, the economic conditions that our nation has been recently experiencing are both longstanding and magnified when it comes to our Native American communities.

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The United States owes a unique legal obligation and trust responsibility to 562 federally recognized Indian Tribes based on treaties, federal laws, and Supreme Court decisions. We recommend that the FY 2010 Budget Resolution include funding levels that will permit the Federal government to meet these solemn obligations.

The Indian Affairs Committee's oversight of conditions and issues facing tribal communities has revealed significant challenges. Many Tribes face inadequate access to health care, law enforcement services, economic opportunity, education, and housing, all key elements of healthy communities. Tribal infrastructure needs are significant and too often present both a threat to public health and safety and a barrier to tribal economic development.

This letter sets forth the general background supporting these recommendations as well as FY 2010 funding recommendations for specific programs.

I. General Justifications for the Committee's Budget Recommendations

As noted above, the United States has unique legal obligations to Indian Tribes that are grounded in the United States Constitution, treaties, federal statutes, and Supreme Court decisions. These obligations arise in part from cessions of hundreds of millions of acres of tribal homelands to the United States in exchange for promises to maintain public safety, protect tribal sovereignty, and provide a variety of programs and services.

Funding for tribal programs is primarily administered by agencies within the Department of the Interior (DOI) and the Indian Health Service (IHS). The DOI manages tribal lands and natural resources, public safety, education, and other services to enrolled members of federally recognized tribes. The IHS provides health care services to American Indians and Alaska Natives.

In addition to the unique legal and treaty obligations, the United States has long maintained a government-to-government relationship with Indian Tribes. This relationship guides the process and substance of the interactions between the federal government and its agencies and the nation's 562 federally recognized Indian Tribes. As a result, a number of federal agencies provide funding to Tribes because of their status as governments. Just as federal programs supplement State and local government efforts, many federal agencies work with Tribes to support tribal government services and programs.

The United States' federal policy on Indian affairs shifted course several times between the formation of the Union and approximately 1970. In 1970, the Administration signaled the formal repudiation of the policy that had sought to terminate the status of Tribes as governments, to a new policy supporting Indian self-determination. That policy has remained consistent for almost 40 years. Indian self-determination seeks to strengthen tribal governments and tribal economic self-sufficiency. A number of studies conclude that the self-determination policy is working to improve the socioeconomic status of American Indians and Alaska Natives.

However, despite recent gains, tremendous disparities continue to exist in a variety of socioeconomic indicators between Indian people and the overall U.S. population, with Indians

ranking well below the national average in measures of health care, education, income, public safety, and welfare. Below are some additional details on these indicators:

Poverty Rates. The average annual poverty rate for American Indians and Alaska Natives between 1999 and 2001 was 24.5%, compared to the national average poverty rate of 11.6%.[1] Although income levels for reservation residents rose 33% between 1990 and 2000, per capita income for Indians living on the reservation is still less than one-half the national average. The Bureau of Indian Affairs (BIA) 2005 Labor Force Report notes that even of those Indians who are employed, 29% work and live below the poverty guidelines.

Reservation Unemployment. The BIA 2005 Indian Labor Force Report calculated that 49% of the total Indian labor force living on or near reservations was unemployed. Tribes with the highest unemployment rates are located in the Great Plains and Rocky Mountain Regions, with an average reservation unemployment rate of 77% and 67% respectively. These regions encompass the States of Montana, Nebraska, North Dakota, South Dakota and Wyoming.

II. Specific Committee Recommendations for Committee Priorities

As noted above, the Committee recommends budget allocation increases for Indian health care, tribal public safety and justice, programs that enhance economic development within tribal communities, and the Emergency Fund for Indian Safety and Health. Below are additional justifications that support these priority areas, and a discussion of several programs that deserve significant increases.

STRENGTHENING INDIAN HEALTH CARE

American Indian and Alaska Native life expectancy is almost six years less than that of the overall U.S. population. Death rates for Natives 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. Native mortality rates for cervical cancer, motor vehicle crashes, unintentional injuries and homicide are also higher than other Americans. In addition, the suicide rate for Native youth is three times the national average, with access to mental health services non-existent for many tribal youth.

The Committee on Indian Affairs has held a number of hearings examining the state of health care in Indian Country in the 110th and early in the 111th Congresses. These hearings confirm the above statistics, and reveal the following trends: the rationing of health care in Indian Country as a result of substantial unmet funding needs, estimated to exceed $19 billion; stagnant funding levels that do not keep up with the medical rate of inflation; and a need for improved services, particularly for the Contract Health Service program, dental and behavioral health services, facilities, and recruitment and retention.

Past budget requests have allocated increases for IHS and tribal pay costs, inflation, population growth, and staffing and operating costs due to the construction and maintenance of

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

health facilities. The Committee is aware that the Indian Health Service plans to use a portion of the funding increase for Contract Health Services (CHS) funding.

The President's general budget request includes more than $4 billion for Indian health programs, although, it is not clear whether this amount includes a projection of third-party reimbursements.[2] Nevertheless, in light of the chronic underfunding of Indian health care programs within the IHS, the **Committee recommends at least a $600 million increase in budget authority in FY 2010 for Indian health care construction and programs over the FY 2009 enacted level of $3.58 billion.** The programs discussed below are critical to improving the delivery of health care to Native Americans, and should receive significant increases in FY 2010:

Indian Health Care Improvement Fund (Fund). Congress established this Fund in the *Indian Health Care Improvement Act* to eliminate deficiencies in the health status and resources of Indian tribes, to eliminate backlogs in health care services, and to meet health needs in an efficient and equitable manner. An allocation to this Fund would enable IHS and tribal sites that are funded at less than 40% of need to expand services and address funding disparities.

The FY 2008 enacted level was $118.1 million and the FY2009 Omnibus Act added another $1.22 million, for a total of $119.23 million, for the Fund. The IHS indicated that the FY2008 enacted level constituted 62% of what was needed to raise these sites to 40% of the need.[3] Consequently, the Committee recommends funding this item at $135 million.

Dental Health. The Committee on Indian Affairs has received testimony regarding the dramatic lack of dental services, compounded by a lack of adequate nutritional or dietary services and a shortage of dentists with vacancy rates of 24% for IHS dentists. All of these factors severely impact the overall public health of the Indian population—especially children. On some Indian reservations, there may be a complete lack of dental services.

According to the IHS, the IHS and tribal dental providers were able to provide care for, on average, approximately only 25% of those who needed care at the FY2008 enacted level of $133.6 million. The FY 2009 enacted level of $142 million is a welcome increase, but is not sufficient to address the estimated 75% of Indian patients who do not receive dental care.

Mental Health Program. The health disparities in Indian Country are especially evident with regard to mental health issues. For example, in 2002-2005 Native Americans were more likely to have had an alcohol or illicit drug use disorder in the past year than any other racial group. Native Americans have a rate of suicide 70% higher than the general population. Additionally Native American women are over 2 times more likely to be sexual assaulted. The mental health program at IHS provides clinical and prevention mental health services to Indian Country. IHS Areas have outpatient services, crisis triage, case management, prevention programming and outreach services to address a range of mental and behavioral health issues.

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[2] The President's FY 2010 budget will build upon resources provided in the American Recovery and Reinvestment Act (ARRA), Public Law 111-5 (Feb. 17, 2009), which provided $500 million for Indian Health Service information technology upgrades ($85 million), and for health facilities construction ($415 million).

[3] The Fund calculation does not include the facilities needs or related services. If they were included, there may be a more dramatic deficiency in the level of need.

Mental health, alcoholism and substance abuse services account for approximately one-third of health care needs in Indian Country. The FY 2009 enacted level for the IHS Mental Health Program is $67.7 million.

Alcohol and Substance Abuse Program. The Alcohol and Substance Abuse Program provides preventative and treatment services at both community centers and clinic levels, and incorporates holistic and culturally-appropriate approaches. This program directly addresses the scourge of substance abuse on Native communities. The FY 2009 enacted level for the IHS Alcohol and Substance Abuse Program is $183.8 million.

Indian Health Professions. Several programs were established to attract and retain health professionals to IHS and tribal facilities, for example, by assisting with school expenses through scholarships or qualified loan repayments in exchange primarily for minimum service obligations at IHS or tribal sites. The Committee notes that as of January 2007, the IHS physician vacancy rate was approximately 17%, nursing vacancy rate was 18%, and, as noted above, the dental vacancy rate was 24%. The IHS indicated that the scholarship and loan repayment programs assist with meeting the staffing needs of hard to fill locations, but, at current funding levels, cannot provide enough health care professionals to reduce vacancy rates. Congress rejected proposed cuts to this program for FY 2009, and the current enacted level is approximately $37 million.

Contract Health Services. The Contract Health Services (CHS) program allows for the purchase of medical care and urgent health care services within IHS guidelines from private sector health care providers for IHS beneficiaries when health care and medical services are not available at IHS or tribal health facilities. These services include hospital care, physician services, outpatient care, laboratory, dental, radiology, pharmacy, and transportation services. However, there are many instances where care that is being sought is within IHS guidelines but is deferred, or denied. In addition, the IHS is replacing the hospitals in its system with outpatient care facilities which results in more patients relying upon the CHS program for after-hours, emergency room, and hospital-based care. The FY 2009 enacted level for CHS is $634.5 million. However, the unmet need for CHS is estimated to exceed $1 billion and growing.

Urban Indian Health Program. The Urban Indian Health Program funds Urban Indian Health Organizations that provide health services to eligible Indians in urban centers. Providing health care services to urban Indians has been a part of federal policy for nearly 40 years, and stems from the 1950's federal policy of Relocation, where the government encouraged individual Indians to move off of Indian lands to several cities throughout the United States. Congress specifically authorized urban Indian health programs as part of the Indian health care system in the original *Indian Health Care Improvement Act of 1976*. That statute recognized that the federal government's obligation for health care extends to these Indians.

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 approximately 150,000 eligible Indians at 41 sites throughout the U.S., providing a variety of health care services, such as dental, pharmaceutical, vision, alcohol or mental health treatment, suicide prevention and family wellness, and other services.

Urban Indian health programs provide health services in a cost effective manner. Without access to these services, many urban Indians would not seek care or would delay seeking proper medical attention until their health problems become emergencies. Providing culturally-relevant care and serving as a gathering place for Indians from diverse tribal backgrounds who are away from their reservation communities are unique roles played by the urban Indian health organizations, and are not available from Community Health 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. However, the last needs assessment for urban Indian health was conducted in 1981 found that only 22% of need was being met for urban Indians. The FY 2009 enacted level for Urban Indian Health is $36.2 million.

Health Care Facilities Construction. The facilities program includes health care and sanitation facilities construction, maintenance and improvement, facilities and environmental health support, and equipment. Inadequate health care facilities limit the delivery of care to Indians and affect the IHS and tribal health care workforce.

The FY2009 enacted level for Indian health facilities is $390.1 million, and as noted earlier, the American Recovery and Reinvestment Act (ARRA) provided $415 million in funding for several health facility accounts. However, despite this infusion of funding, the unmet need for health facilities is estimated to be approximately $3.5 billion. Some projects have been in line on the waiting list for decades.

IMPROVING PUBLIC SAFETY ON INDIAN LANDS

The United States has distinct legal obligations to provide public safety in Indian Country. Sections 1152 and 1153 of Title 18 of the United States Code acknowledge the responsibility of the United States to investigate and prosecute most crimes committed on Indian lands. Federal officials are also responsible for enforcing a number of other federal criminal laws that are unique to Indian lands, ranging from the sale or possession of intoxicants in Indian Country, to the destruction of Indian property, theft or embezzlement of funds from an Indian Tribe, and others.

In the 110th Congress, the Indian Affairs Committee held eight hearings to examine violent crime in Indian Country. The hearings revealed a severe and longstanding public safety crisis on many Indian reservations. The primary causes for the crime problem are twofold: (1) a divided system of justice that limits local tribal control to combat reservation crime, and forces dependence on federal officials to investigate and prosecute crime in federal court rooms that are often hundreds of miles from the reservations; and (2) an across the board historical lack of funding for federal and tribal justice systems responsible for Indian Country crimes.

Funding for investigators and prosecutors at the federal level, and for tribal justice programs at the local level has steadily decreased between fiscal years 2002 and 2008.[4] Between

[4] The enacted totals for the core DOJ tribal programs (jails, COPS, courts, and youth) were cut from a high in FY 2002 of $90.7 million to $42 million in fiscal years 2006 and 2007. The tribal COPS and jails programs saw the

2004 and 2007, United States attorneys declined to prosecute 62% of reservation criminal cases, including 73% of adult rapes, and 72% of child sexual assaults. In addition, the Federal Bureau of Investigations had a 27% decrease in Indian Country criminal investigations from 2001 to 2006. When the United States declines to prosecute a reservation crime, the individual defendant is most often either subject to prosecution in tribal court (which is limited to no more than one year imprisonment) or they will be set free. Additional unmet needs for tribal police and corrections officers, judicial personnel, court and detention facilities, and juvenile justice programs have existed for decades.

As a result of the lack of funding, rates for violent crime, domestic abuse, and sexual assault on Indian reservations remain significantly higher than the national average. A February 8, 2008 report, released by the Centers for Disease Control (CDC), found that American Indian and Alaska Native women experience the highest rates of domestic violence in the United States. The survey found that two in five Native women (39%) will suffer intimate partner violence in their lifetime, compared with one in four (25%) women overall. The CDC survey is consistent with an April 2007 Amnesty International report which found that more than one in three Native women will be raped or sexually assaulted in their lifetimes.

To address these disparities, the Committee recommends an increase of at least at least $100 million in authority within the Interior and Justice Department budgets over the FY 2009 enacted levels. The increased authority should target the following programs that are proven to help combat violent crime on Indian lands:

Department of Justice – Tribal Programs

Indian Jails Construction Program. A major contributing factor to reservation crime is the insufficient jail bed space to house adult and juvenile offenders. According to the Bureau of Justice Statistics, inmate levels in tribal jails exceed 120 percent of capacity. In 2008, the Committee received the Interior Department *Shubnum Report* entitled "Master Plan for Justice Services in Indian Country" ("Master Plan"), which estimated that $8.4 billion is needed to bring tribal and BIA detention centers up to current standards and relieve overcrowding.[5] The lack of space has forced tribal court judges to release lower level offenders back into the community. The DOJ Bureau of Justice Assistance Indian Jails program provides competitive grant funding to Indian Tribes for the construction of justice facilities on tribal lands. The FY 2009 enacted level for this program is $10 million.

Tribal Community Oriented Policing Services (COPS) Program. The Committee has received testimony that federal agents have seized drug organization business documents citing the lack of tribal law enforcement resources as a reason for targeting reservation communities.[6] While the violent crime rate in Indian Country is more than double the national average, only

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most dramatic cuts. Both programs were funded at $35 million in FY 2002. Tribal jails program was funded at only $2 million in FY 2004, and the tribal COPS program was funded at only $15 million in FY 2006.

[5] The ARRA provided $225 million to help begin to address the multi-billion dollar unmet need in tribal and BIA jails.

[6] Testimony of Matthew Mead, U.S. Attorney Wyoming, before the Senate Committee on Indian Affairs (April 5, 2006).

approximately 2,500 federal and tribal law enforcement officers patrol more than 56 million acres of Indian lands. In some cases, no more than two officers are on the job at any one time to patrol reservations encompassing more than one or two million acres. Too few distress calls are answered, and in most cases victims are forced to wait hours and even days. To address this disparity, the Tribal COPS program provides funding to tribal governments to hire and train new and existing law enforcement officers, and to purchase equipment, technology and vehicles to support tribal justice systems. The FY 2009 enacted level for Tribal COPS is $20 million.

Tribal Courts Assistance Program. As noted above, the federal declination rate for reservation crimes is more than 60%. When a criminal case involving an Indian defendant is declined at the federal level, the tribal court represents a victim's last chance to obtain justice. In point of fact, tribal courts represent a critical "on the ground" component of the criminal justice system in Indian Country, especially in respect to the most common recurring crimes and juvenile offenses. Nevertheless, most tribal court systems are severely underfunded. Many tribal courts systems lack computers, essential tracking systems and essential judicial personnel such as public defenders and child court advocates. The Tribal Courts Assistance Program (TCAP) provides competitive grants to Tribes to develop, implement, enhance and improve the operation of tribal judicial systems. The FY 2009 enacted level for the TCAP program is $9 million.

Tribal Youth Program. The growing population of young Indian people on Indian lands coupled with low graduation rates and high rates of poverty, adult alcohol and substance abuse, and increasing reservation gang presence poses significant challenges to tribal justice systems. The DOJ Tribal Youth Program provides competitive grants to Tribes to improve tribal juvenile justice systems, reduce Indian youth recidivism, and prevent juvenile delinquency. The FY 2009 enacted level for this program is $25 million.

Indian Alcohol and Substance Abuse Program. This DOJ program provides competitive grants to Tribes to combat and implement strategies that will reduce and control crime associated with the distribution and abuse of alcohol and controlled substances on Indian lands. The FY 2009 enacted level for this program is $6 million.

Grants to Reduce Violence Against Native Women. In order to address the epidemic of violence against Indian women, the Violence Against Women Reauthorization Act of 2005 included provisions to fund research and tracking systems to enhance the ability of tribal governments and tribal law enforcement agencies to respond to violence against Indian women on tribal lands. Congress funded both of these programs at $1 million in FY 2009.

Bureau of Indian Affairs – Office of Justice Services

Criminal Investigations and Police Services. The 2006 BIA Gap Analysis estimated that it would require $560 million to hire, train and equip the more than 1,800 additional BIA and tribal police officers needed to adequately police Indian lands. The BIA Criminal Investigations program provides funding to hire and train sorely needed BIA and tribal police officers and criminal investigators to address this gap. The FY 2009 enacted level for police hiring and training is $163.1 million.

BIA Public Safety Facilities Improvements and Repair. The BIA Public Safety facilities program replaces and renovates tribal and Bureau-owned jails to correct critical health and safety deficiencies. The FY 2009 enacted level for this program is $39.4 million.

Tribal Justice Support (Tribal Courts). Tribal courts represent the last chance at justice for major crimes where the U.S. Attorney declines to prosecute a case. Often, tribal courts are the only opportunity address misdemeanor reservation crimes, as federal courts are backlogged with major offenses. The Tribal Justice Support Program funds 288 Tribal Courts and BIA Courts of Indian Offenses, including the salaries and related administrative costs of judges, prosecutors, public defenders, court clerks, probation officers, juvenile officers, and other court support staff. Recruiting and retaining qualified judicial personnel and prosecutors has been a problem for Tribes and the BIA. The FY 2009 enacted level for this program is $14.5 million.

STRENGTHENING TRIBAL ECONOMIES

Sustainable economic development is the source of health and vitality for tribal communities. Despite recent improvements on some reservations, most tribal economies continue to suffer from a lack of revenues and high unemployment. As noted above, Indian Country unemployment is 49%, and on some reservations exceeds 80%. Typically, the poorest counties in the United States include Indian reservations.

Tribal governments also face challenges to stimulating growth in their communities that are not experienced by other governments. In particular, tribal governments are limited in options to generate government revenue through taxation, because tribal lands are generally held in trust. Tribal taxation authority has been further complicated by Federal court decisions and Internal Revenue Service opinions. Consequently, Federal programs assisting tribal governments to diversify their economies and build needed infrastructure are vital.

The lack of access to capital and financial institutions in Indian Country is well-documented. Tribes, Indian-owned businesses, and individuals have historically lacked access to capital for both home mortgages and commercial purposes. Banks seeking to reach out to Native American communities encounter geographic, educational, and legal barriers to providing traditional deposit and lending services in Indian Country. The resulting lack of financial education harms both Indian Country residents and tribal community economic development.

Energy development on Indian lands is also a significant opportunity to help develop tribal economies. The Committee recommends that additional funding in FY 2010 to continue advances made in Indian energy programs by the *Indian Energy Development and Self-Determination Act*, Title V, of the *Energy Policy Act of 2005*. Title V authorized financial, technical, and environmental reforms to be carried out by the Department of Interior and Energy. In particular, Title V established Indian energy offices within the Departments of Interior and Energy. These offices provided, for the first time, centralized programs and support for Indian energy development. Title V also authorized investments in tribal capacity and energy projects to develop energy resources on tribal lands.

To address these disparities, the Committee recommends an increase of $50 million in budget authority for tribal justice programs within the Department of Justice budget for FY 2010 over the FY 2009 enacted level, and an increase of $50 million for tribal public safety and justice programs within the Interior Department budget for FY 2010 over the FY 2009 enacted level.

To help address reservation poverty and unemployment rates on Indian lands, and to increase economic development in Indian communities, the Committee recommends an increase of at least $90 million in authority within the Interior and Energy Department budgets over the FY 2009 enacted levels. The following programs should be targeted for these requested increases:

Interior Department

The Department of the Interior's Title V office, the Office of Indian Energy and Economic Development (OIEED), is charged with assisting Tribes in developing technical and governing capacity to engage in energy development. The Office also has specific responsibility for implementing the center piece of Title V – a new land management regime which promotes greater tribal control and oversight of energy activities through Tribal Energy Resources Agreements (TERA). Once in place, a Tribal Energy Resources Agreement allows a Tribe to negotiate and execute leases, lease renewals, and other business agreements without specific review and approval of the Secretary of Interior. The Office works with Tribes to develop and obtain approval for Tribal Energy Resources Agreements.

The Office of Indian Energy and Economic Development has also taken steps to support Tribes that do not develop Tribal Energy Resource Agreements. These Tribes may have less experience in energy development or limited energy resources. OIEED provides these Tribes with energy assessments and capacity building programs so that they can take an energy idea and developed it into a negotiated energy business agreement.

OIEED is also establishing a pilot Indian Energy Development Office within a local Bureau of Indian Affairs Agency Office. This office is being established within an Agency Office with high energy activity and a need for an "energy manager" to track all the leasing, permitting, and payments associated with energy development on Indian reservations. With additional funding, Indian Energy Development Offices could be established at other Agency or Regional Offices with high levels of Indian energy activity. Providing additional Indian Energy Development Offices would streamline energy development on Indian lands to bring more domestic Indian energy into the market. Despite the significant work that the OIEED has completed over the past several years, no funding has been granted under Section 503 of Title V.

Interior Department – Indian Guaranteed Loan Program

As noted above, Tribes and tribal businesses lack access to capital. One program that has worked to provide much needed access is the Interior Department's Indian Guaranteed Loan Program. This program helps provide access to capital by guaranteeing and insuring loans and surety bonds to promote reservation economic development. The program supports the development of Indian-owned businesses, which in turn creates reservation jobs. High priorities

projects are manufacturing, construction, and energy development.

The Program currently leverages appropriated dollars at a 13 to 1 ratio. This program has generated jobs and employment opportunities from the resulting growth and expansion of reservation economies. The default rate under this program is less than 1.5% annually, far outperforming other federally guaranteed loan programs.

The Program has been underutilized in recent years. In FY 2008, more than a dozen traditional and renewable energy projects were not funded because of the Office's limited budget. In addition, this effective program has historically not kept up with inflation.

The Committee believes that this program has clearly demonstrated its ability to promote economic development and job creation on reservations. The Committee believes that 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 FY 2009 enacted level for this program was $8.2 million.

Interior Department – Indian Land Consolidation

The phenomenon of Indian land "fractionation," or fractional ownership of individual Indian lands, is the product of a Federal experiment in Indian policy, commenced in the late 19th Century, known as allotment—the forced dispersion of tribally owned land into thousands of small parcels, transferred to and held in trust for an individual Indians. The law required that ownership of these land parcels pass by intestate succession to all heirs of the original alottee, with each heir acquiring an undivided interest in the parcel. Over the years, the ownership of many of these allotted parcels has become increasingly subdivided. In some cases, an allotment is owned by more than 1,000 individuals, and parcels owned by several hundred individuals are not at all uncommon. These tracts of highly fractionated land are, as a practical matter, nearly useless for most economic development purposes.

The Indian Land Consolidation Program reduces land fractionation by consolidating highly fractionated parcels of Indian lands and restoring them to tribal ownership. Land consolidation improves administration and management of federal lands, reduces administrative costs to track fractionated land interests, and permits the land to be utilized to meet tribal government infrastructure or economic development goals.

Congress did not provide funding for this important program in FY 2009.

Department of Energy

The Department of Energy's (DOE) Title V office, the Office of Indian Energy Policy and Programs (OIEPP), is authorized to promote energy development, reduce energy costs, strengthen energy infrastructure, and enhance electrical power and service to Indian tribes. Congress provided $1.5 million in FY 2009 for the Office of Indian Energy Policy and Programs at DOE. This amount represents a start, as the Office was never fully supported in the prior Administration. However, more funding is needed to implement the Office's authorized programs and to assist tribes interested in joining the nation's drive to increase domestic and

renewable energy production.

Title V included broad authority for the Office of Indian Energy Policy and Programs to develop programs that would support Indian energy development and electrical service on tribal lands. Title V also included authority to provide grants to Tribes or tribal organizations to establish tribal utilities, provide electrical service, and obtain transmission interconnection. Title V also included authority for the Office to provide grants to Tribes interested in carbon sequestration activities on Indian lands.

Title V also included authorization for the creation of an Indian Energy Guaranteed Loan Program. The program was intended to help encourage needed investment capital for energy projects on Indian lands.

The Department of Energy's Energy Efficiency and Renewable Energy Office includes a Tribal Programs office that provides grants to Tribes and tribal organizations for renewable energy projects. Congress provided $6 million in FY 2009 for Tribal Energy Programs.

In addition, the Committee recommends increased allocations for the following programs, which are proven to help foster economic development in Indian communities.

Department of Housing and Urban Development

Indian Community Development Block Grant. The Indian Community Development Block Grant (ICDBG) program within the Community Development Block Grant program is a competitive grant program that that funds direct grants to Tribes to provide housing and economic opportunities for low and moderate income persons. Indian and Alaska Native tribal governments traditionally receive one percent of CDBG funds. FY 2009 enacted level for this program was $65 million, a $3 million increase over the FY 2008 enacted level. Given the role this program plays in building critical economic development infrastructure in Indian Country, the Committee recommends that the ICDBG program be increased in FY 2010.

Department of the Treasury

The Treasury Department's Native American Community Development Financial Institutions (CDFI) program provides financial assistance, technical assistance, training and outreach to benefit Native American, Native Hawaiian, and Alaska Native communities. These investments are particularly important to tribal communities where there is not only a lack of private sector investment but a lack of access to any financial institutions. Many Indian communities lack a single financial institution within their borders. Native CDFIs often serve as the sole financial and non-profit institutions in their communities, providing critical access to capital, financial education and other services for reservation residents. The Treasury Department has documented that for every dollar a CDFI receives through the CDFI Fund program, the CDFI leverages $27 in private sector investments.

The FY 2008 enacted level for the Native American Set-Aside was $8 million, which was used to leverage approximately and additional $100 million in private sector investment in Indian Country. The Committee recommends that this important program continue to be funded

in FY 2010.

EMERGENCY FUND FOR INDIAN SAFETY AND HEALTH

On July 30, 2008, the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 ("the Act") was signed into law as P.L. 110-293. A bipartisan amendment was agreed to adding a separate title to the Act, which established the Emergency Fund for Indian Safety and Health at the Department of the Treasury ("Tribal Emergency Fund"). Title VI of the Act authorized $2 billion for the Tribal Emergency Fund over a 5-year period to address issues of Indian water settlements, health care, and law enforcement in Indian Country. Title VI of the Act permits funds to be drawn down by the Secretary of Interior, the Secretary of Health and Human Services, and the Attorney General in such amounts as they determine are necessary to carry out the emergency plan to address these issues in Indian Country.

As noted above, all three of the permissible uses for the Tribal Emergency Fund are at critical need levels. According to IHS, safe and adequate water supply and waste disposal facilities are lacking in approximately 11% of American Indian and Alaska Native homes, compared to 1% for the U.S. general population. The Indian Health Service estimates that the unmet need for safe drinking water and adequate sewage systems in tribal homes is estimated to be over $2.3 billion. Detention facilitates in Indian Country are neither safe nor secure. A 2008 Department of the Interior-contracted Report confirms that Indian jails are grossly insufficient. The Report recommends the construction of 263 jails throughout Indian Country at an estimated cost of $8.4 billion. Finally, Indian health care funding remains inadequate. The IHS estimates the need for IHS and tribal health care facilities at approximately $3.5 billion.

The Committee recommends that the FY 2010 Budget Resolution allocate $400 million in budget authority for the Tribal Emergency Fund within the Treasury Department budget. The Committee further requests budget authority for the entire $2 billion dollar authorization for these priorities over the remaining authorized fiscal years.

III. Recommendations for Other Important Tribal Programs

The Committee also recommends funding increases for the following important programs at levels that reflect the government's trust and treaty obligations as well as the corresponding levels of unmet need.

IMPROVING INDIAN EDUCATION

The education of American Indians and Alaska Natives lags far behind that of the rest of the country. Nearly 90 percent of the 620,000 Native students attend public schools with their non-Native peers. Approximately 10% of Native students attend schools administered by the Department of the Interior, Bureau of Indian Education (BIE), a system of 184 K-12 schools for educating American Indian and Alaska Native students in 23 states. The federally supported Indian education system includes 48,000 students, and 29 tribal colleges, universities and post-secondary schools.

American Indians have the lowest level of educational attainment of any racial or ethnic group in the United States. The national graduation rate for American Indian high school students was 49.3% in the 2003-2004 school year, compared with 76.2% for white students. Further, only 13.3% of Native Americans have an undergraduate college degree, compared to the national average of 24.4%.

Bureau of Indian Education

Johnson O'Malley. The Johnson O'Malley program grants are the cornerstone for many Indian tribes, school districts, tribal organizations, and parent committees in meeting the unique and specialized educational needs of Indian students in public schools. The purpose of these grants is to provide supplementary financial assistance to meet Indian student needs that are not provided for by the Department of Education or through No Child Left Behind. For example, Johnson O'Malley grant funds help students achieve and succeed by providing such services as: eyeglasses and contacts, resume counseling, college counseling, culturally based tutoring, summer school, scholastic testing fees, school supplies, transition programs, Native youth leadership programs, financial aid counseling and caps and gowns for graduation. The FY 2009 enacted level for the Johnson O'Malley program is $21.4.

Education Construction. A May 2007 Interior Inspector General Flash Report Indian Schools found serious health and safety deficiencies at tribal and Bureau of Indian Education schools. The Report concluded that "failure to mitigate these conditions will likely cause injury or death to children and school employees." Despite this Report and its recommendations, the funding levels for BIE Indian school construction and repair has decreased dramatically in recent fiscal years. Funding for Indian school construction was reduced to $128.8 million in FY 2009.

Scholarships and Adult Education. These programs provide financial assistance to improve the success of students at each education level and allow students to obtain the basic skills necessary to transition to community college or job placement. The FY 2009 enacted level for the Scholarships and Adult Education program is $29.6 million.

Institutions of Higher Education. Tribal Colleges and Universities, Tribal Technical Colleges (the United Tribes Technical College (UTTC) and the Navajo Technical College (NTC)), and tribal vocational institutions (Haskell Indian Nations University (HINU) and Southwestern Indian Polytechnic Institute (SIPI)), all help address the significant higher education needs of American Indians and generally serve geographically isolated populations that have no other means of accessing education beyond the high school level. These universities and institutions have become increasingly important education institutions for American Indian students and are unique in that they combine personal attention with cultural relevance to encourage American Indians – especially those living on reservations – to overcome the barriers they face to higher education. Although these institutions serve some of the most impoverished areas in the nation, they remain the country's most poorly funded postsecondary institutions. The FY 2009 enacted level for Tribal Colleges and Universities, Tribal Technical Colleges, and Tribal Vocational Institutions is approximately $80.9 million.

Department of Health & Human Services

Esther Martinez Native American Languages Preservation Act. Tribes nationwide are combating the loss of traditional languages by advocating for and instituting programs within their communities. The Esther Martinez Native American Language Preservation grant program, administered by the Administration for Native Americans, seeks to stem the loss of Native languages. Tribal students in language immersion programs have been proven to perform better academically, including on national tests, than Native students who have not been enrolled in such programs. The enacted level for this program in FY 2009 was $3.5 million.

INDIAN HOUSING AND INFRASTRUCTURE IMPROVEMENTS

Department of Housing and Urban Development

Native Americans face some of the worst housing and living conditions in the United States. According to 2002 statistics, 90,000 Indian families were homeless or under-housed. 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. [7] When physical structures that lack heating and electrical equipment are included, approximately 40% of reservation housing is characterized as inadequate, compared with 5.9% of the national households, and less than half of all reservation homes are connected to a public sewer system. One in five American Indians lives in an overcrowded home. Further, since Indian lands are held in trust or restricted-fee status, financial institutions often refuse to acknowledge Indian land as collateral for individuals to finance new homes.

To help address these disparities, the Committee recommends the following budget allocations for federal housing programs administered by the Department of Housing and Urban Development (HUD) and the Department of the Interior, through the Bureau of Indian Affairs.

Indian Housing Block Grant Program

The vast majority of funding derived by tribal housing authorities through the Indian Housing Block Grant program under Title I of the *Native American Housing and Self-Determination Act of 1996* (NAHASDA). This Act is the primary statutory authority under which the federal government carries out its responsibility to provide housing to American Indian and Alaska Natives. The NAHASDA reorganized the system of federal housing assistance to Native Americans by eliminating several separate programs and replacing them with a single block grant. The NAHASDA provides block grants to Indian tribes or their tribally designated housing entities (TDHEs) on a formula basis to help them address housing needs within their communities. The block grants may be used by TDHEs for affordable housing activities, including the purchase, modernization, or construction of housing units, as well as rental and homeowner assistance. The NAHASDA was re-authorized in the 110th Congress.

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

Indian tribes have utilized NAHASDA Block Grant Program funds in innovative ways, and have been successful in addressing some of the most urgent housing needs in Indian country, proving that investment in this program brings results. The FY 2009 enacted level for this important program is $645 million.

NAHASDA Technical Assistance and Training

Technical assistance (TA) and training have been key components of making NAHASDA as successful as it has been over the past decade. Congress recognized the need for such activities 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 TA provider to tribal communities is the National American Indian Housing Council (NAIHC), a 35-year-old consortium of more than 460 Tribes and Alaska Native villages. Training and technical assistance are effective tools in maintaining compliance with NAHASDA's exacting statutory and regulatory accountability requirements and has also helped Tribes and tribal housing authorities address new issues, such as identification and remediation of methamphetamine use in tribal housing. Approximately 5,000 tribal housing staff participated in trainings in FY 2005 and 2006.

In FY 2005, the technical assistance and training program was funded at $4.6 million. That amount was reduced to $2 million in FY 2006, $1 million in FY 2007, and $1.9 million in 2008. Congress approved funding of $3.5 million in FY2009.

Housing Improvement Program

Approximately 14.2% of Indian homes have no electricity, 11.7% lack complete plumbing, and 11% lack complete kitchen facilities. The BIA's Housing Improvement Program (HIP) is needed to address some of these troubling statistics. The BIA HIP supplements the housing programs administered by the Department of Housing and Urban Development by building and improving reservation homes for individuals that are most in need. The HIP program provides housing to Indian families who have no other resources for housing. Unlike other federal programs, HIP recipients are not expected to repay the Federal government. The HIP program policy is that every Indian family should have the opportunity for a decent home and suitable living environment. HIP serves as a safety net for the poorest families who do qualify for the income requirements set forth by Tribes that administer housing programs under the Department of Housing and Urban Development. The purpose of the HIP is to address the housing needs of its poorest members.

In recent years, the Department of the Interior proposed eliminating HIP funding due to the program servicing a limited number of tribes and eligibility overlapping with programs at the Department of Housing and Urban Development. However, HIP assistance is only available where NAHASDA funding does not meet a particular Tribe's need. Moreover, the budget justifications from the Department failed to indicate any evidence of eligibility overlapping with other federal agencies. Likewise, the Committee has not been informed that leveraging funding

for the two programs overlaps or duplicates the programs. Congress funded the HIP at $13.6 million for FY2008 and FY2009.

SELF-DETERMINATION CONTRACT SUPPORT COSTS

Contract support costs provide for basic administrative overhead necessary to ensure prudent management of and compliance with Indian Self-Determination contracts and Self-Governance compacts. Even though these costs are necessary for program support, shortfalls in funding continue to increase. Without full funding, Indian Tribes are forced to divert funding from direct services to cover the support costs, thereby forcing them to reduce services.

Contract support costs enacted levels for IHS in FY 2008 and 2009 were $267 million and $282 million respectively. The FY 2009 enacted level for Interior contract support costs is $147 million. The Committee recommends that budget authority for both Indian health and Interior contract support costs be increased to help address these longstanding shortfalls.

IV. Conclusion

We appreciate this opportunity to provide the Indian Affairs Committee's recommendations for the FY 2010 budget request and budget resolution, and look forward to working with the Budget Committee to ensure that programs that serve American Indians and Alaska Natives are funded at levels commensurate with our obligations to these communities.

Sincerely,

Byron L. Dorgan
Chairman

John Barrasso, M.D.
Vice Chairman