



**Prepared Testimony of Tonya Plummer  
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**to the U.S. House of Representatives Committee on Appropriations,  
Subcommittee on Transportation, Housing and Urban Development, and Related  
Agencies**

***Tribal Perspectives on Housing and Transportation***

**April 28, 2023**

Chairman Cole, Ranking Member Quigley and members of the Committee, thank you for inviting me here today to discuss tribal perspectives on housing. My name is Tonya Plummer, and I serve as the Director of Native American Housing Programs at Enterprise Community Partners. I am an enrolled tribal member of Assiniboine, Sioux and Cree heritage with roots in the Sisseton Wahpeton Sioux Tribe of South Dakota and the Fort Belknap Indian Community in Montana. Prior to joining Enterprise, I worked as a mortgage underwriter, was the founding director of a Native CDFI in Montana, guided my tribe in preparing for and adopting the *HEARTH Act* and helped create the Montana Native Homeownership Coalition.

Enterprise Community Partners is a national nonprofit working to make home and community places of pride, power and belonging for all. Enterprise advocates on a nonpartisan basis for sound public policy at every level of government and develops and deploys programs and supports community organizations on the ground nationwide, in urban, suburban, rural and tribal areas. Since its founding 40 years ago, Enterprise has invested more than \$347 million in Indian Country through sources



including Low Income Housing Tax Credit and New Markets Tax Credit investments, CDFI investment through the Enterprise Community Loan Fund, and Section 4 capacity building grants. Enterprise's work is guided in partnership with tribes, Native communities, and partner groups focused on Native housing, including the members of Enterprise's Native Advisory Committee.

Enterprise's Tribal Nations and Rural Communities Team has sought to support safe, decent, and culturally appropriate housing on tribal lands and rural communities since 1997. We work across the country. Some of our current projects include collaborating with Fannie Mae to create materials to advance Native homeownership, working under a Memorandum of Understanding with the Department of the Interior to invest private capital in housing on reservations, and training on the Enterprise-written Native Housing Developers Guide for multifamily housing development in Native communities.

I will speak today on the importance of the federal government's trust responsibility towards tribal nations and their housing needs, the importance of housing for tribal nations, and ways for Congress to improve the entire ecosystem of tribal housing.

Specifically, I will focus my testimony on five issues:

1. The federal government's treaty and trust responsibilities as they relate to housing;
2. The need for additional funding for programs authorized under the Native American Housing and Self-Determination Act;
3. The success of technical assistance and capacity building programs for tribes;



4. The challenges that tribes and tribal citizens face in accessing public and private capital; and
5. The importance of continuing to recognize government-to-government relationships between tribal nations and the United States in creating federal policy.

### **1. Treaty and Trust Responsibilities**

In *Seminole Nation vs. United States* (1942), the Supreme Court of the United States recognized trust responsibilities between the United States government and tribal governments as a “moral obligation of the highest responsibility and trust.”<sup>i</sup> The federal government must protect tribal property and assets when they are held in trust by the United States for the benefit of a tribal nation, and must guarantee tribal self-government and land preservation.<sup>ii</sup>

In *The Native American Housing and Self Determination Act of 1996 (NAHASDA)*, Congress recognized that the trust responsibility extends to housing, stating: “Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition; [and] ...providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping



tribes and their members to improve their housing conditions and socioeconomic status.”<sup>iii</sup>

Simply put, there is no way for tribes and tribal members to “improve their...socioeconomic status” without homes. We all want new small businesses, growing tribal enterprises, and more jobs on tribal land, but for that to happen, employees and business owners must have homes. Additionally, the very act of building homes on tribal land improves the tribal economy. Economic factors like the construction multiplier effect demonstrate that building homes leads to increased income and jobs.<sup>iv</sup>

The combination of *NAHASDA* and *The Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act)* provides a framework for HUD help fulfill the federal government’s treaty and trust obligations, but the promises of these bills have not been fully met. We all share the goal of tribes having greater responsibility and agency over their own economic conditions, but we cannot expect that to happen without equitable and consistent funding for housing and a legal and regulatory environment that does not present additional challenges.

## **2. Additional Funding for NAHASDA Programs**

In 2017, HUD completed a Congressionally mandated study of the housing needs of American Indians, Alaska Natives and Native Hawaiians, which remains the most comprehensive data source on these housing needs to date.<sup>v</sup> The fact that only one study from 6 years ago is the best available information underlines the lack of data on



the needs of Native people in this country. However, the study quantified what any of us who have driven through a reservation know: we allow the conditions of third-world countries to persist within our own borders.

The study found that American Indians and Alaska Natives experience overcrowding and physical housing problems that are “strikingly more severe” than the country as a whole. Thirty four percent of households living on tribal land had at least one physical problem, such as a lack of/deficient plumbing, electricity, or heat. This is almost five times the national average. Sixteen percent of households in tribal areas live in overcrowded homes, almost seven times the national average. To remedy overcrowding, 68,000 new homes are needed on reservations and tribal lands.

There is no way to remediate these conditions without funding and an environment that allows funding to be spent in an expedient manner. *NAHASDA* changed HUD funding structures for tribes, ending their ability to receive funding from most HUD programs and creating the Indian Housing Block Grant (IHBG) instead. Tribes and Tribally Designated Housing Entities (TDHEs) depend on IHBG funding for operating expenses, rental assistance, rehabilitation, and construction, costs for which a public housing authority or another non-tribal housing provider could use HUD Section 8 Housing Choice Vouchers (HCVs), public housing operating fund dollars and HOME funds. In principle, the IHBG is an ideal funding source because it provides flexibility and allows tribes to determine the best use of their funding allocations. However, providing adequate tribal housing requires adequate funding for the IHBG. Analysis by the National American Indian



Housing Council<sup>vi</sup> (NAIHC) shows that funding levels in inflation-adjusted dollars remained flat from 2011-2021. During that time, money spent on renewal costs for HCVs – a program to which tribes gave up access in return for the IHBG program – has increased significantly. This means that tribes have provided rental assistance, in addition to all other housing needs, with nominally flat funding, while costs of such assistance have gone up. As the board chair of NAIHC noted when he testified before the U.S. Senate Committee on Indian Affairs in March, in FY21, 379 tribes across the country had to manage all existing housing units, provide rental assistance, develop new units and pay their staff with less than \$500,000 per year. 175 tribes had to complete all these activities with less than \$100,000 per year.<sup>vii</sup> Current IHBG funding levels allow for the construction of only 1,000 homes every year, meaning that it would take 68 years to build enough houses to end the shortage of tribal housing identified by the 2017 HUD study. Given the severe health disparities that plague tribal nations, this is longer than the life expectancy of the average American Indian or Alaska Native person.<sup>viii</sup>

We applaud Congress for raising funding levels for IHBG over the last two years, but a long period of flat funding means that there is significant deferred maintenance and a lack of units. Enterprise Community Partners urges this committee to increase funding to no less than \$1.111 billion for the formula IHBG program. This funding level would provide the same purchasing power as the first year of IHBG funding. We also urge this committee to fund other key programs authorized by *NAHASDA*, including the Section



184 Indian Home Loan Guarantee and the Indian Community Development Block Grant, at the highest possible levels.

### **3. Technical Assistance and Capacity Building Programs**

Capital is not the only thing that is needed to build housing on tribal lands – capacity is just as important. To develop housing on tribal lands, capacity building is often necessary. Enterprise Community Partners is one of three organizations that administers the HUD Section 4 Capacity Building for Affordable Housing and Community Development Program (Section 4). The purpose of the Section 4 program is to develop the capacity and ability of certain community development organizations to carry out community development and affordable housing activities that benefit families with low incomes. Through this funding, Enterprise provides funding to Community Development Corporations (CDCs), Community Housing Development Organizations (CHDOs), tribes, TDHEs, and Native CDFIs that need organizational stability and increased capacity to carry out community development and affordable housing programs and business operations. In recent years, specific amounts of Section 4 funding have been set aside for grants benefitting rural communities, and in FY23, \$1 million was specifically set aside for Native communities for the first time. As often as possible, we pair this funding with direct technical assistance as we listen to and work alongside tribes to holistically make the housing, homeownership and community development offerings in as self-determined a way as possible. We physically visit, participate in planning and technical assistance, and proactively seek ways to leverage



public and private resources to maximize impact and results and gradually shift from grant dependence to self-determination. Therefore, we believe that programs that increase capacity building are just as important as capital when it comes to delivering on trust responsibilities.

We ask this committee to fund the Section 4 Capacity Building Program at \$50 million and to include set-asides for rural and Native projects. Enterprise is deeply committed to working directly with tribes, TDHEs, tribal enterprises and other partners to find and fund the most impactful capacity building projects through Section 4.

#### **4. Expedient and Predictable Access to Public and Private Capital**

Enterprise strongly encourages Congress to pass laws making the federal government work more efficiently for tribal communities. Meeting the housing-related trust responsibilities of the federal government towards tribal nations requires an entire ecosystem of support in addition to IHBG funding. We must also improve the mortgage system and access to mortgage capital –persistent problems on tribal land. Luckily, there is legislation under consideration in Congress that could improve the efficiency of lending and construction programs.

*The Tribal Trust Land Homeownership Act of 2023 (S. 70)* would address the long wait times associated with tribal mortgages. Land ownership varies from tribe to tribe, but building or buying a home on tribal land is often much more complicated than it is on fee simple land. On reservations and other lands held in trust by the federal government for tribes (“trust land”), a mortgage requires a Title Status Report (TSR) from the Bureau of





Indian Affairs (BIA). The BIA states, “The average time to prepare a TSR, depending upon the number of land owners, number of title documents, and the complexity of the title issues, may range from as little as one hour to as much as several days.”<sup>ix</sup>

However, numerous sources, including analysis by the Federal Reserve Bank of Minneapolis,<sup>x</sup> testimony of tribal leaders before Congress<sup>xi</sup> and HUD analysis of mortgage lending on tribal land<sup>xii</sup> show that TSRs commonly take 6 to 8 months, and sometimes over a year. Such delays increase cost and difficulty for all parties and discourage a secondary mortgage market environment.

This difficulty transcends funding source and program type. For example, HUD Section 184 loans for homeownership were originally intended to benefit home buyers on tribal land, but since the inception of the program, only 13% of loans have been made on tribal trust or otherwise restricted lands.<sup>xiii</sup> This low rate is likely a combination of the difficulty of the TSR process and the lack of sufficient housing stock on trust lands.

We believe that these wait times indicate that fundamental reform is needed in that agency. We urge Congress to pass the *Tribal Trust Land Homeownership Act of 2023* (S. 70) as soon as possible to create statutory timelines for the BIA to process and approve mortgages and issue a final certified TSR involving property located on tribal trust land, and to create a realty ombudsman within the BIA.

*The Native American Rural Homeownership Improvement Act* aims to increase USDA Section 502 Single Family Housing Direct Home Loans on tribal lands via Native CDFI relending. Native CDFIs are financial institutions that know the needs and unique



challenges of tribal communities. A pilot allowing Section 502 loans to be made through a CDFI relending process has proven that relending can get funds out faster than agency action alone. Since 2018, two Native CDFIs working on the Cheyenne River Indian Reservation and the Pine Ridge Indian Reservation have made double the amount of Section 502 direct loans that the USDA made in the prior ten years. We urge Congress to pass legislation permanently authorizing this pilot program and thank the Chairman for his cosponsorship of the bill in the last session of Congress. We expect this bipartisan legislation to be re-introduced in both the House and Senate soon.

*The Native American Direct Loan Improvement Act of 2023 (S. 185)* would address the low number of loans made under the Department of Veterans' Affairs Native American Direct Loan (VA NADL) Program. A 2022 U.S. Government Accountability Office (GAO) report found that between 2012 and 2021, only 180 loans were made under the program, despite an estimated eligible population as high as 70,000 veterans.<sup>xiv</sup> We believe that the Native CDFI relending concept is an appropriate solution here as well, and encourage Congress to pass the bipartisan *Native American Direct Loan Improvement Act of 2023 (S. 185)* as soon as possible.

Finally, *NAHASDA* must be reauthorized as soon as possible. The authorization for *NAHASDA*'s programs has been expired since 2013, despite attempts in every Congress to pass a bill reauthorizing them. A reauthorization bill will allow important updates to be made to the programs created by *NAHASDA* and help ensure the program's consistent availability going forward.



## 5. Policy for Government-to-Government Relationships

Enterprise applauds the current trend of cross-agency collaboration with regards to tribal housing issues, and the emphasis on government-to-government relationships between tribal nations and the United States. A silo-breaking collaboration of all federal agencies and outside organizations is required to achieve progress. HUD's Tribal Intergovernmental Advisory Committee is an important example. We also appreciate similar efforts at other agencies and encourage their continuation. The Rural Partners Network at USDA connects rural communities and tribal governments to the full suite of programs and funding offered by USDA Rural Development, helping them complete transformation projects more efficiently.<sup>xv</sup> Enterprise works directly with the Department of the Interior through their Office of Strategic Partnerships, and is one of several groups that has signed a Memorandum of Understanding with the Office of the Assistant Secretary - Indian Affairs to support affordable housing and homeownership within Tribal communities.<sup>xvi</sup>

We should celebrate these creative solutions and the increase of outreach and collaboration across government agencies, which will lead to better outcomes for tribes. However, the trust responsibility remains. These activities must complement, not replace, tribal consultation and specific working groups to ensure that policies and regulations are created in an iterative and collaborative way.



## Conclusion

As HUD and the entire federal government strive to meet their housing trust responsibility to tribal nations, I am hoping for a new era of federal Indian policy. In this era, tribes will be able to strengthen their sovereignty and the “self-determination” promised by *NAHASDA* by implementing solutions beyond tribes, TDHEs and HUD funding alone. Tribal enterprises, Native CDFIs, private capital and other government agencies have a large role to play too. In this vision, there is adequate funding, fair treatment by the federal government, and the ability for tribes to implement the solutions they have come up with for themselves.

I understand that this committee and the entirety of Congress face challenging discussions about the debt limit, and questions about the appropriate level of discretionary spending. However, upholding the federal trust responsibility and keeping the promises made to tribes should never be considered “discretionary.” The track record of a long line of broken treaties does not justify continued disregard for these promises, regardless of the political negotiating of the day. Indians were never intended to be a line item on a budget. We always have been, and always will be, the most elemental part of the fabric of this great nation.

Thank you again to Chairman Cole, Ranking Member Quigley, and all the members of the committee for inviting me to speak to you today. I appreciate your consideration of these issues and I look forward to further collaboration.

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<sup>i</sup> <https://www.law.cornell.edu/supremecourt/text/316/286>

<sup>ii</sup>

[https://www.ncai.org/tribalnations/introduction/Indian\\_Country\\_101\\_Updated\\_February\\_2019.pdf](https://www.ncai.org/tribalnations/introduction/Indian_Country_101_Updated_February_2019.pdf)

<sup>iii</sup> 25 USC §4101

<sup>iv</sup> <https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics/economic-impact/economic-impact-local-area-2015.pdf>

<sup>v</sup> <https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>

<sup>vi</sup> <https://www.indian.senate.gov/sites/default/files/2023-03-08%20NAIHC%20Testimony%20Senate%20Committee%20on%20Indian%20Affairs%20Priorities%20for%20118th%20Congress%20FINAL.pdf>

<sup>vii</sup> Ibid.

<sup>viii</sup> <https://www.cdc.gov/nchs/data/vsrr/vsrr023.pdf>

<sup>ix</sup> <https://www.bia.gov/service/land-title-services>

<sup>x</sup> [https://www.minneapolisfed.org/article/2020/shortening-the-tsr-timeline-a-proposal-to-end-delays-that-hinder-native-homeownership#\\_ftnref6](https://www.minneapolisfed.org/article/2020/shortening-the-tsr-timeline-a-proposal-to-end-delays-that-hinder-native-homeownership#_ftnref6)

<sup>xi</sup>

<https://www.indian.senate.gov/sites/default/files/Councilman%20Nathaniel%20Mount%20WRITTEN%20Statement%20SCIA%20Housing%2010-14-19%20Final.pdf>

<sup>xii</sup> <https://www.huduser.gov/portal/sites/default/files/pdf/nahsg-lending.pdf>

<sup>xiii</sup> <https://www.minneapolisfed.org/~media/assets/events/2022/2022-center-for-indian-country-development-research-summit/2022-cicd-research-summit-opportunities-and-challenges-of-homeownership-on-trust-land.pdf?la=en>

<sup>xiv</sup> <https://www.gao.gov/products/gao-22-104627>

<sup>xv</sup> <https://www.rural.gov/aboutv>

<sup>xvi</sup> <https://www.doi.gov/pressreleases/interior-department-announces-new-partnerships-and-offices-leverage-new-resources>