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ABSTRACT

As of August 1995, there exists a backlog of $800 million in needed facility improvements, repairs, and construction in schools funded by the Bureau of Indian Affairs (BIA). The cost and number of projects has risen to a level that exceeds current program funds. With the school buildings deteriorating and the student population increasing, there is an immediate need to fund these projects. This position paper proposes a Congressional bill to create a National Indian Bonding Authority that would issue bonds to finance these projects. Existing education program money and reserve funds would be the repayment source and security for the bonds. These existing funds would be leveraged through the bonds to fund substantially more projects. BIA and tribal grant schools would establish the projects, which would be approved by existing federal agencies. A bonding underwriter would underwrite and sell the bonds, the proceeds of which would be deposited with a bond trustee acting as a disbursement agent. The issue of timely payment of principal and interest by the Indian Nations is removed by having the debt service moneys come directly from the U.S. Treasury. Included are a memo from the Acting Inspector General reflecting difficulties in the BIA audit, data on some of the unobligated and unattached construction funds that could be used to leverage and secure construction bonds, and a cover letter soliciting support for the initiative. (Contains three tables.) (TD)

National Tribal School Bonding Bill

Position Paper

August 2, 1995

Background

At the time of this writing, there exists a backlog of $500 million (historic cost estimate) in Grant School and Bureau School (together called the "Schools") facility improvement, repair and new construction needs. It is estimated that the need in 1995 dollars has risen to approximately $800 million. The magnitude of the dollars and number of projects has risen to a level where these projects cannot be funded by current Facility Improvement and Repair ("FI&R") and New Construction program funds. With the physical condition of these Schools deteriorating, and with the population within these Schools increasing, there is an immediate need for the funding of these projects.

Through the contracting (Public Law 93-638) and the granting (Public Law 100-297 and 101-301) process, the Schools have been given the authority to contract with architects, engineers and contractors for the purposes of commencing and completing the aforementioned projects. However, no direct funding mechanism allows for the payment of these professional services.

Proposal

The Schools, through their affiliation with the National Congress of American Indians, the Dakota Territory Tribal Chairmen's Association and the Dakota Area Consortium of Tribal Schools propose through actions taken by the Congress of the United States, to be allowed to bond for project needs, **using existing education program money sources and reserve funds** as the repayment source and security for the bonds.

The Program would establish a national authority with the power to issue bonds, utilizing the municipal finance market established to serve school districts and local governments across the nation.. Instead of funding the projects directly, Tribal Education Construction funds currently appropriated for these types of projects would be leveraged through the bonds to fund substantially more projects. The appropriations therefore go much farther to alleviate the construction problems facing the Schools.

Rationale

The following are offered as reasons for this proposal.

- The needs of the Schools are immediate and extensive.
- Existing program funds are insufficient to meet these project needs.

- Bonding would allow for the <u>leveraging of existing program moneys</u>, to produce sizable sums for the projects. For instance, at today's rates and under the proposed structure, the current FY1996 Facilities Improvement and Repair program request of $31.2 million plus the investment earnings on identified reserves could be leveraged to create approximately $515 million in funds for the projects.

- This bonding program **<u>would not commit future Congresses</u>** to the funding of debt service. **The risk born by the capital markets is that a future Congress would not appropriate sufficient funds to meet the debt service on the bonds.** In our exploration of these markets we believe that the combination of historical funding and the use of certain reserves should be sufficient to meet the needs of the capital markets. It is our understanding that there exists certain fund balances, described as the "X" and "M" funds within the BIA, one being balances from completed and overfunded projects, and one being balances from partially funded projects which have not yet been started. Over $90 million has been identified, and it is estimated that amounts exceeding $300 million may exist. It is proposed that these funds be pledged towards the bonds and invested to offset some of the debt service on the bonds.

- While the bond debt service would be subject to the annual appropriation of Congress for repayment, the bonding program **<u>would not require any new sources of dedicated funds from the United States government</u>**. The intent is to use existing funding for these programs as payment for debt service.

- The bonding program should be sufficient to meet the immediate and long-term needs of the Schools. Without a program such as this, the Schools could require substantial near-term funding by the United States government. We have estimated that if the full $800 million in project needs were bonded in 1995, the annual net debt service requirement (after the reserve fund earnings were applied) would be $59.575 million, fully **<u>$9.625 million or 14% less</u>** than the amount recently requested by the BIA for FY1996 Education Construction. In a way, **<u>this program could reduce the federal budget.</u>**

- The Program and the existing Public Law mentioned above would allow for **<u>increased flexibility</u>** for the Schools in determining the type and form of structure needed for the Schools. This will prevent, for instance, schools in the Dakotas and Minnesota being built with designs more appropriate for schools in the desert Southwest.

- The bonding program would link the public sector with the private sector, allowing each to provide its expertise to this situation.

<u>The Program</u>

The following outlines the process and organizations which would define this program:

1. The <u>Schools</u> would establish the projects and provide estimates on the costs of the projects. The projects and estimates would be approved by existing federal agencies through existing Public Law.

2. Based on what the United States Congress has allocated in program dollars and on the reserves mentioned above, a National Indian Bonding Authority would issue bonds, underwritten and sold by a Bonding Underwriter, such as Norwest Investment Services, Inc., to raise the required funds for the projects.

3. The Bonding Underwriter would deposit the bond proceeds with a Bond Trustee acting as a Disbursement Agent, which would hold and invest the project funds until approved by the Schools for payment to contractors. The investment earnings on the unexpended bond proceeds would be used for the funding of projects.

4. As the project work is being completed, draw requests would be presented to the Disbursement Agent for payment to the contractors. Either the Disbursement Agent or a Local Financial Institution would inspect the project to assure the work is being completed. Once approved, the Disbursement Agent would release the funds to the contractor.

5. When principal and/or interest is due on the bonds, the United States Treasury would make the debt service payments directly to the National Indian Bonding Authority, which would then transfer the funds to the same Bond Trustee acting in the capacity of Paying Agent (defined below).

6. The Bond Trustee, in the role of Paying Agent would collect debt service moneys from the Authority and from interest earned on the pledged reserves, and pay the bondholders on a timely basis.

One key factor which has been an issue between the Indian Nations and the private sector is the timely payment of principal and interest on loans or bonds. The structure contemplated above removes this timeliness issue by having the debt service moneys come directly from the United States Treasury. By this action, neither the Bureau of Indian Affairs nor the Schools would take possession of these repayment dollars. If either of these parties took possession of the repayment dollars before the Paying Agent, the capital markets would determine that the credit quality of the bonds and the timely repayment of principal and interest may have decreased. This change would precipitate higher interest rates on the bonds, which would decrease the funds available for the projects. Based on this beliet, the Schools have agreed to the above-mentioned repayment process.

THE BILL

Based on research provided by both municipal bond attorneys and the Congressional Research Service, the following is needed to implement the Program (this list may not be exhaustive, but it does reflect the research):

1. The Creation of a National Indian Bonding Authority: Similar Authorities exist in nearly every state, and common enabling legislation exists for this type of program, specifically for higher educational programs and health programs. The staffing need would be minimal, and could be funded through the Program payments. The Authority would provide oversight for the Program and would itself contain a Board of Directors for the purpose of approving bond issues.

2. Private Bond Trustee: The bill needs to allow for the use of a private Bond Trustee to act as both Disbursement Agent and Paying Agent.

3. Reprogramming of Appropriated Funds: The bill needs to allow for the reappropriation of Education Construction funds (and no other) to the Authority for the purpose of paying debt service on the bonds. Also, the bill should reflect the use of the Education portion of the "X" and "M" Funds for the purpose of securing the bonds.

4. Annual Appropriations: Finally, the bill should again state that the primary repayment source for the bonds would be the annual appropriations of Congress and not the full faith and credit of the United States government.

Overall, the Bonding Program **would allow for more self-determination by Schools**, and would allow the Schools to **continue to exist as self-governing entities**. In no way would this Program interfere with the relationship between the Tribes and the United States government, and it would not affect the trust responsibilities of the United States government to Treaty Tribes and federally recognized Tribes.

There is a limit to the dollars which this Bonding Program may raise. But it is estimated that many of the projects currently in backlog may be completed in this century, something which will not happen under existing federal programs. In fact, according to information provided on February 22, 1995 to the Association of Community Tribal Schools ("ACTS"), the Facilities Management Construction Center ("FMCC") has stated that it is not likely that the Schools will see new construction dollars until 2004. Certainly this Bonding Program can improve on this situation.

Some Commonly Asked Questions Include:

- Does the Program require the full faith and credit of the United States government for the life of the bonds? No, it only requires the annual appropriation of Congress. If a future Congress decides not to appropriate moneys toward debt service, the reserves would be tapped. If the reserves are depleted, a default would exist on the bonds. So, there is market risk to the investors.

- Can these bonds be sold? Yes. We have investigated the use of credit enhancement in the form of municipal bond insurance, and also the use of rating agencies to rate the bonds. Each has indicated a strong interest in the Program. With or without credit enhancement, we believe there are institutional investors (large mutual funds and companies) interested in purchasing these bonds.

- What is a Bond Trustee? Is it at all similar to the Trustees mentioned in other Indian programs? In no way is the Bond Trustee related to Indian Trusts or Indian Trustees. A Bond Trustee is a financial institution which has been given the powers to disburse, collect and invest bond proceeds and bond payments. There are many very qualified Bond Trustees across the country, such as Norwest Corporate Trust, which provide these services currently to comparable Authorities across the nation. A Bond Trustee has a fiduciary duty to act responsibly and is fully accountable for its actions. The federal government, along with the bondholders, Authority and even borrowers have recourse against the Bond Trustee if it inadequately or improperly perform its functions.

- Does the Program contemplate using federal funds other than Education Construction funds, such as juvenile center moneys, Indian Health Service moneys, and the like? **ABSOLUTELY NOT.** This Program is strictly used for Schools and will only use Education Construction funds.

- If funds which have been allocated for projects, but not spent, are to be used as reserves for the bonds, what happens to those projects? These projects will be given a priority over other projects, and will be given the first proceeds of the bonds. Next in line would be projects where the safety of the children is in question. Finally, new construction will be allocated the bond proceeds.

- What if there is not enough to go around? If prioritization is needed, unless an alternative is proposed, the existing prioritization process will be used.

D.A.C.T.S.

DAKOTA AREA CONSORTIUM OF TRIBAL SCHOOLS, INC.
Loneman School Corp.
P.O. Box 50
Oglala, S.D. 57764 • Phone 605-867-5633 • FAX 605-867-5109
Frank Rapp - President

To All Interested Parties,

Nov. 1, 1995

The Dakota Area Consortium of Tribal Schools (D.A.C.T.S.) is sponsoring a bill which will provide for the funding necessary to take care of the construction, renovation, and repair needs of all Bureau funded Grant and Contract Schools. We are asking the Congress of the United States to allow our Tribal Schools to use existing education program money sources and reserve funds as a repayment source and security for the bonds.

Our needs for school repair, renovation, and replacement are immediate. The present funding allocations are not sufficient to meet our needs. The cost of construction has increased about 40% in the past ten years. Our proposal does nothing more than allow our Tribal Schools to bond for construction projects like public schools and local municipalities. It is a common sense proposal that can be very effective in taking care of the deplorable facility dilemma.

We are developing a lot of Congressional support from both the Republicans and Democrats in this initiative. We are primarily working with Senator McCain, Senator Pressler, and Senator Daschle on the development and introduction of the bonding bill.

Enclosed you will find a memo from the Acting Inspector General to the Secretary of Interior reflecting difficulties in the Bureaus audit. You will also find three pages submitted from Senator McCain's Office which reflects some of the unobligated and unattached construction funds which we can use to leverage and secure the construction bonds. You will also find our latest position paper on the bonding initiative.

We are asking for your support in this initiative. Please review our position paper and contact us if you have any questions about the bonding process.

Sincerely,

Frank D. Rapp
President

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

FEB 28 1995

MEMORANDUM

TO: The Secretary

FROM: Acting Inspector General

SUBJECT SUMMARY: Final Audit Report for Your Information - "Bureau of Indian Affairs Principal Financial Statements for Fiscal Years 1993 and 1994" (No. 95-I-598)

DISCUSSION: We were unable to complete our audit or express an opinion on the reliability of the Bureau of Indian Affairs principal financial statements for fiscal years 1993 and 1994. This occurred because the Bureau did not provide information to support the amounts reported for accounts receivable, accounts payable, the fund balances with Treasury for the irrigation and the power accounts, loans receivable-liquidating funds, real property, construction in progress, and personal property. In our attempt to evaluate the Bureau's internal control structure and perform tests of compliance for fiscal year 1994, we found that the Bureau's internal control structure for these accounts did not meet the established internal control objectives.

Joyce N. Fleischman

Joyce N. Fleischman

Attachment

Prepared by: Marvin Pierce
Extension: 208-4252

12-Oct-95
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JH

Schedule of Budget Resources (B.A.) and Obligations for Budget Fiscal Year 1995

BUREAU-WIDE SUMMARY - SELECTED CONSTRUCTION PROGRAMS

	Budget Resc	Obligations	Balance Budget Resc	Project Cnt
Adv Planning & Design	8,841,969	1,179,738	7,662,232 *	18
New Construction	38,529,085	29,220,206	9,308,880 *	11
Education - FI&R	103,989,536	55,117,463	48,872,074 *	810
Law Enforcement	10,122,891	1,869,438	8,253,453	10
Emergency Shelters	327,054	190,926	136,128	4
L.E. FI&R	3,996,180	2,379,531	1,616,649	39
NonEduc - FI&R	14,902,725	3,161,716	11,741,009	69
	180,709,441	**93,119,016**	**87,590,425**	**961**

Scource: BIA 400 Funds Status - Area Office by Program 10/01/95

Hppoot

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Branch of Fiscal Services
Appropriation 14X2301 - Construction
New School Construction

Source BIA-520, 350, 350Y, FFS On Line Screens

Program 112 Budgetary Resources	FY 92 4/, 5/	FY 93	FY 94	FY 95
1 Budget Authority 2/	32,495,334.00	34,702,500.00	13,000,000.00	4,491,405.00
2. Unobligated Balance Brought Forward 1/		34,372,619.00	46,172,284.00	29,037,680.26
3. Recoveries			9,630,287.00	
4. Net. Restoration (+) or Transfer (-) 3/		(6,819,504 00)	0.00	5,000,000 00
5. Total Budgetary Resources	32,495,334.00	62,255,615 00	68,802,571.00	38,529,085 26

FOOTNOTES:

1/ Amounts include prior year carryover and unallotted

2/ Includes a general reduction of $414,666 for FY-92, $8,595 for FY-95.

3/ Transfers

	FY-93	FY-95
Emergency Response/FI&R from 114	(10,000,000)	5,000,000
Choctaw	3,180,496	
	(6,819,504)	5,000,000

4/ In FY 1992 the new Federal Finance System (FFS) was online. The financial transactions prior to FY 1992 were converted and crosswalked into the new year New programs were created, combined and some were deleted

5/ The Accounting Office (DAM) has retired the financial documents prior to FY 1992 We anticipate receiving reports however, there is a delay in retrieving the documents for FY 1992.

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Branch of Fiscal Services
Appropriation 14X2301 - Construction
Education Facilities Improvement and Repair

Source. BIA- 520, 350, 360Y, FFS On Line Screens

Program 114 Budgetary Resources	FY 92 4/, 5/	FY 93	FY 94	FY 95
1 Budget Authority 2/	49,332,479.00	45,697,241.00	49,116,000.00	38,814,722.00
2. Unobligated Balance Brought Forward 1/	38,820,051.20	39,308,525.00	27,036,411.00	74,500,162.00
3. Recoveries		0.00	21,217,090.00	235,723.85
4. Net. Restorations(+) or Transfers (+) 3/		(13,843,496.00)	12,363,000.00	(9,561,071.00)
6. Total Budgetary Resources	88,152,530.20	71,162,270.00	109,732,501.00	103,989,536.85

FOOTNOTES:

1/ Amounts include prior year carryover and unallotted.

2/ Includes a general reduction of $629,521 for FY-92, .$391,759 for FY-93, $74,278 for FY-95.

3/ Transfers:

	FY-93	FY-94	FY-95
Choctaw/Emergency Response/Restore from 117, 152	(3,180,495)	12,363,000	532,590
Emergency Response/Self-Governance	(10,563,000)		(320,000)
Emergency Response/Transfer to 112	(1,100,000)		(5,000,000)
FI&R/Self-Governance	1,700,000		(269,518)
Emergency Response/'95 Recission	(700,000)		(4,500,000)
Area Recission			(4,143)
	(13,843,495)	12,363,000	(9,561,071)

4/ In FY 1992 the new Federal Finance System (FFS) was online The financial transactions prior to FY 1992 were converted and crosswalked into the new year. New programs were created, combined and some were deleted.

5/ The Accounting Office (DAM) has retired the financial documents prior to FY 1992. We anticipate receiving reports however, there is a delay in retrieving the documents for FY 1992.

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