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Testimony for the

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2010 ERISA Advisory Council

**Disparities for Women and Minorities in Retirement and
Health Care**

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National Congress of American Indians
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Ms. Billings, Ms. Clark, and members of the 2010 ERISA Advisory Council, thank you for the opportunity to discuss disparities in retirement benefits for women and communities of color. I am pleased to be here to represent the unique interests of Native communities.

I am the Executive Director of the National Congress of American Indians (NCAI), the oldest, largest and most representative organization serving American Indian and Alaska Native people. We are the membership organization that serves the broad interests of tribal governments. Since our inception in 1944, tribal governments have come together as a representative congress through NCAI to deliberate policy issues of critical importance to Native communities.

We come to this conversation convinced that – as one of the three types of government recognized in the U.S. Constitution – federal, tribal and state governments – tribes offer a unique perspective that can make significant contributions to the debate regarding retirement policy in the United States.

As you will see from my testimony, American Indian women – and men – face myriad challenges in achieving a secure retirement. My testimony will address the questions the Advisory Council is facing by discussing: (1) the context for retirement security in Native communities; (2) causes of the gap between Native people and other Americans; and (3) the way forward to address the gap.

1. Context for Retirement Security in Native Communities

The focus of this hearing is a welcome acknowledgement by the Department of Labor and Administration that there are demonstrable differences in retirement security between different racial and ethnic groups. However, it is important to understand the context of those differences for Native people.

Native people are among the millions of working Americans who lack retirement security. The shift in the past two decades to defined contribution retirement plans “managed and funded primarily by individual employees” poses a significant challenge to low-income populations, particularly in the context of the current economic crisis.¹

Ongoing (and growing) economic crisis

In many Native communities, economic crisis is not a disaster that originated in 2007, it is a daily reality that has persisted for generations. Native communities face the scourge of high unemployment and poverty rates, health disparities, and substandard housing and infrastructure. Back in 2000, when the national unemployment rate was only 3.5 percent, the U.S. Census reported on-reservation Native unemployment at 22 percent. At the same time, per capita income for American Indians and Alaska Natives living on reservations stood at just \$7,942.²

Census data on poverty in 2000 revealed that Native families were four times more likely to live in poverty than their non-Native counterparts. This rate means that almost half of our children live in poverty.³ These economic challenges combine to mean that Native people lack the safety net other Americans can rely on. The assets of Native people represent less than 9 cents for every dollar owned by other Americans.⁴ What is most staggering is that this is data from before the economic crisis hit.

While we lack high quality unemployment data to fully understand the extent of the economic crisis' impact on our communities, our colleagues at the Economic Policy Institute produced a report in 2009 that showed the gap between American Indian and white unemployment has increased during the recession.⁵ It is also evident that, like many other communities of color, Native communities face a persistent and growing challenge with long-term unemployment. As the members of the Advisory Council know, this poses a short-term challenge and threatens the long-term financial security of Native families.

Lacking access to financial institutions

A recent FDIC study revealed that 44.5% of American Indian and Alaska Native households are underbanked and 15.6% of American Indian and Alaska Native households are completely unbanked.⁶ These figures are explained – in part – by the findings of the 2001 Native American Lending Study. The Study found that the primary financial services challenge facing Native people is that services are often completely absent. Eighty- six percent of Native communities lack access to a single financial institution (with a broad definition that included a simple ATM), and 15 percent of our community members need to travel over 100 miles to access a financial institution.⁷ These findings demonstrate the limited exposure many Native people have to financial services, even if they work for a company that offers access to retirement accounts.

A young and growing population

Retirement security for Native people is increasingly relevant for a population that is both growing and younger than the U.S. population as a whole. Given the general retirement insecurity of Native people, there is both an opportunity for meaningful innovation and a significant risk if nothing is done. The Native population grew by 20 percent between 1990 and 2000, and the median age is almost 7 years younger than the U.S. median (28.5 years compared to 35.4 years).⁸

Still facing education gaps

While Native people have made significant strides in educational attainment, they – like their nonwhite counterparts – continue to face a significant gap in educational attainment. In 2000, 18 percent of Native people had achieved an associates degree or better, compared to the national rate of 30.7 percent. The on-reservation figure was even more stark at 12.1 percent.⁹ College

attainment data for Native women are slightly better than for Native men, but only 13.7 percent of Native women possess a bachelors degree or higher, a rate less than half that of white women. Native women outpace their male counterparts by 10 percent in employment in managerial or professional positions, but they are much less likely than white women to hold those positions.

Tribal governments as key federal partners

In many rural communities, tribes serve as a significant source of employment, and are therefore key partners in the effort to improve retirement security for all Americans. In this context, the false distinction created by the section 906 tribal provisions of the Pension Protection Act of 2006 needs to be addressed immediately. The law created new language that forces tribes to carry two pension plans and distinguish between “essential government” and “commercial” activities. The language amended IRC 414(d) and ERISA 3(32) to create an unjustified standard which does not exist for state or local governments, a false distinction among types of tribal employees that is unmanageable for federal regulators and tribal employers. These provisions force tribal employers to distinguish among their employees and face uncertain oversight, creating a significant barrier to providing pension benefits for tribal employees.

The retirement gap

All of these challenges contribute to the retirement insecurity faced by many Native people. Native women mirror the experience reported in the 2005 National Women’s Retirement Survey, that women usually have little or no money left to save for retirement after paying their bills.¹⁰ While American Indian and Alaska Native people on average have a lower life expectancy, Native people who reach age 65 have higher life expectancies than the majority of the population, with men living to 84 (compared to 82 years for all men) and women living to 88 (compared to 85 for all women).¹¹ This means that – in the midst of other financial challenges – elderly Native people require greater financial resources for a comfortable retirement.

The Social Security Administration reports that Native people are as likely, or more likely, than their peers to rely on Social Security for 90 percent or more of their income. Unmarried Native people were 8 percent more likely to rely on Social Security for 90 percent or more of their income (49 percent compared to 41 percent), and married Native people were just as likely as the rest of the population to rely on Social Security for 90 percent or more of their income.¹²

While it does not specifically address Native data, the Ariel/Hewitt study offers data that can be applied to the utilization of 401(k) plans by Native people. The study shows that, even after controlling for age, salary, and job tenure “quantifiable differences are evident across race and ethnicity in how successfully 401(k) plans are used.”¹³ Low-income poses a significant problem, as the study demonstrates that participation rates go up as salaries increase.¹⁴ Given co-variance between Native, African American, and Hispanic people in an array of other socioeconomic datasets, it is reasonable to assume that they probably share the following characteristics with

other communities of color: less likely to participate in 401(k) plans, contribute to 401(k) plans at lower levels, and have smaller average account balances.¹⁵

2. Causes of the gap between Native people and other Americans

The socioeconomic context facing many Native people is ample explanation for the gap in retirement security. However, two factors continue to perpetuate the gap – the need for adequate data and the need for meaningful consultation.

Lack of adequate data

A significant challenge facing policymakers serving Native communities – at the federal, tribal and state level – is the lack of access to adequate data. In some ways, the gap in retirement security for Native people is caused by the fact that myriad leading reports on the issue – and even the notice about this hearing – fail to acknowledge the need to collect and understand data related to retirement security for Native people. A failure to document the need makes it very difficult to effectively address it with public policy.

The challenge is not restricted to data on retirement security. One key lens for measuring the impact of the crisis – the monthly unemployment report issued by the Bureau of Labor Statistics – essentially excludes on-reservation unemployment rates (often at levels well beyond 50 percent). This means the unemployment rate for states with high Native populations is likely considerably understated. The Census Bureau also identifies Native people as the population facing both the most pronounced socioeconomic disadvantage and the least accurate Census data, yet their annual report on poverty and health insurance in America does not include Native data owing to “insufficient sample size.”¹⁶

Need for consultation and coordination with tribes

Not only does the gap exist because there is insufficient data to describe and respond to it, it also exists because further consultation and coordination between tribes and the federal government is necessary to bridge the substantial gap that Native people face in retirement security. On November 5, 2009, President Obama held an historic meeting with tribal government leaders from across the United States. It was a proud day for our country as President Obama promised to improve the partnership between the federal government and tribal nations. As an initial step toward fulfilling his promise, the President issued an Executive Memorandum that directed all federal agencies to develop a plan within 90 days for consultation and coordination with tribal governments under President Clinton’s Executive Order 13175.

As recommended in NCAI’s letter to Secretary Solis (sent on December 11, 2009, after the President’s meeting), tribal leaders specifically asked the Department of Labor to: (1) refocus on substantive goals while respecting tribal sovereignty and the federal trust responsibility; (2)

develop accountability and tracking provisions; (3) focus on solutions and bring decision-makers to tribal consultation and engage in real dialogue; (4) develop methods for interagency cooperation; and (5) create opportunities for both formal consultation on developed proposals and early informal scoping on tribal issues.

Given the American Recovery and Reinvestment Act (ARRA) included \$3 billion in funding targeted specifically at the needs of tribal communities, it is striking that few – if any – of these targeted initiatives were funded by the Department of Labor (DOL).¹⁷ While tribes are eligible to compete for some general funding at DOL, the lack of tribal specific programs (as part of ARRA, or other funding programs), particularly given the pronounced challenges faced by tribal communities, clearly demonstrates the need for closer coordination to ensure the needs of Native people are met by the Department.

3. The Way Forward

To conclude my testimony, I would like to offer a series of recommendations that synthesize our sense of the way to address the gap in retirement security in Native communities.

Recommendation #1 – Implement meaningful consultation and coordination policies across the Department of Labor

As I detailed above, the President has directed the agencies to develop clear plans to consult and coordinate with tribal governments. Meaningful consultation and coordination must be implemented to ensure the needs of Native people are met through policies and programs at DOL.

Recommendation #2 – Include tribal leaders in national dialogues related to retirement policy

With respect to retirement policy specifically, it is critical that Native people be included in national policy conversations. We trust that the ERISA Advisory Council and Department of Labor will work with tribal leaders to ensure any future Presidential Commission to formulate a National Retirement Policy includes Native people and addresses the unique needs of Native people.¹⁸

Recommendation #3 – Conduct a study to explore opportunities for the federal government to support tribal governments in offering retirement benefits to their employees

As noted above, the section 906 tribal provisions of the Pension Protection Act of 2006 create a strong disincentive for tribes to offer retirement benefits to their employees. The Act must be amended to address this barrier. While the ERISA Advisory Council should certainly study the effect of this provision, they could also conduct a broader study examining the opportunities for the federal government to partner more effectively with tribes to create effect retirement policy.

Recommendation #4 – Ensure that plan sponsors follow best practices in data collection and ensure the inclusion of American Indian/Alaska Native data

NCAI is pleased to join with an array of other organizations and scholars to recommend the development of specific guidance for employers to voluntarily collect and report 401(k) plan data by race and ethnicity.¹⁹ It is imperative that this guidance ensure employers and/or plan administrators follow best practices in data collection and ensure American Indian/Alaska Native data is collected in this process. Clear and understandable guidance is also necessary to allow for aggregation of publicly available data, as some employers may provide insufficient sample size to develop effective policy for Native people.

Recommendation #5 – Conduct further studies to understand the scope of the retirement security gap faced by Native people

Native communities face significant socioeconomic challenges that exacerbate existing retirement security gaps. It is imperative that the Department of Labor partner with tribal leaders and other policymakers serving Native communities, to evaluate data collected by employers regarding utilization of 401(k) plans by Native people. Further research is required to develop effective solutions to this challenge.

Recommendation #6 – Collaborate with other federal agencies to ensure financial education strategies reach Native communities

The unfortunate contrast between the number of unbanked and underbanked Native people (outlined above) and the increasing move towards defined contribution plans means that people with little access to basic financial services are being asked to develop the skills to manage an investment account.²⁰ Effective, culturally appropriate financial education is critical to meeting that significant challenge, but it also requires efforts by the Department of the Treasury to expand access to financial services on tribal lands. Research in Native communities has echoed the recommendations of the Ariel/Hewitt study that financial education in schools is critical to boosting financial literacy.²¹ This requires coordination with both the Department of Education and Department of the Interior.

Financial education is just one tool to achieve the goal of increased retirement security for Native people. NCAI agrees with Iwry and John that financial education efforts are essential but are “ultimately insufficient” without additional support to encourage saving for retirement.²²

Without a systematic, interagency approach that addresses the root causes of retirement insecurity (low income, poverty, unemployment, lack of access to financial institutions, etc.), increased financial education comes down to merely “telling the average [person] to increase [their] savings” without addressing significant barriers and meeting the basic information needs necessary to “take the first steps toward a more secure future.”²³

Recommendation #7 – Enact policies that will expand access to defined contribution plans

The proposal to develop automatic IRAs is a compelling strategy to meet the needs of the 50 percent of working Americans who lack access to an employer-sponsored defined contribution plan.²⁴ The positive impact of automatic enrollment on groups that are most likely to under save (including Native people) is a strong argument for such proposals. This is particularly compelling, given Native people are overrepresented among young workers and low and moderate income earners who are less likely to save for retirement. Experience with automatic enrollment in 401(k) plans has shown it is possible to move groups that under save from very low participation rates to a participation rate in the mid-eighties (comparable to the rate for other workers).²⁵

Recommendation #8 – Evaluate automatic IRA policies through an explicitly racial lens

It is a truism that IRA coverage expansion is desirable. However, it is critical that such policies be developed and implemented in a manner that acknowledges the fact that “IRA ownership is 8 to 10 percentage points higher among whites than among nonwhites.”²⁶

Recommendation #9 – Ensure automatic IRA policies include robust support for participation by the self-employed and employees of small businesses

As residents of rural and remote reservation communities, Native people are much more likely to be self-employed during their working life and/or to be employees of a small business that would not be covered by many automatic IRA proposals. It is critical that any automatic IRA policies enacted include policies to ensure coverage for the self-employed and those employed by small businesses. For small businesses, this would include tax credits and other supports to encourage offering automatic IRAs to their employees.²⁷ For the self-employed, NCAI supports proposals to: (1) expand automatic debit arrangements through professional and trade associations; (2) extend payroll deposit options to independent contractors through firms from which they receive regular payments; and, (3) allow the self-employed to transmit IRA deposits with their quarterly estimated income taxes.²⁸

Recommendation #10 – Provide incentives for low and moderate income workers to save for retirement

Many policy proposals, and many research studies, on the subject of retirement security fail to acknowledge that the decision not to save for retirement is often a rational economic decision. Low and moderate income Americans are struggling to make ends meet, and incentives must be provided to encourage attention to long-term financial goals. For this reason, NCAI encourages matched deposits to the retirement contributions of low and moderate income Americans to encourage participation in retirement savings plans.²⁹

Conclusion

I want to again thank the Advisory Council for the opportunity to discuss disparities in retirement benefits for women and communities of color and to represent the unique interests of Native communities. I trust this will be the beginning of an ongoing conversation with the Council, and the Department of Labor, about the future of retirement security in Native communities.

¹ ERISA Advisory Council, (2007), “Report Of The Working Group On Financial Literacy Of Plan Participants And The Role Of The Employer,” <http://www.dol.gov/ebsa/publications/AC-1107a.html>

² U.S. Census Bureau, Census 2000

³ U.S. Census Bureau, Census 2000

⁴ Chang, Mariko, (2010), “Lifting as We Climb: Women of Color, Wealth, and American’s Future,” http://www.cunapfi.org/download/198_Women_of_Color_Wealth_Future_Spring_2010.pdf p13

⁵ Austin, Algernon, (Dec. 2009), “American Indians and the Great Recession—Economic Disparities Growing Larger” <http://www.epi.org/page/-/ib264/ib264.pdf>

⁶ FDIC National Survey of Unbanked and Underbanked Households (Dec. 2009) <http://www.fdic.gov/householdsurvey/> p10.

⁷ Department of the Treasury, (2001) *Native American Lending Study*, http://www.cdfifund.gov/docs/2001_nacta_lending_study.pdf

⁸ The Harvard Project on American Indian Economic Development, (2007), *The State of the Native Nations: Conditions under U.S. Policies of Self-Determination*, Oxford University Press: USA, p7. One third of the Native population is under the age of 18.

⁹ Harvard Project 2007: 203

¹⁰ Hounsell, Cindy, (May 2008), “Minority Women and Retirement Income,” Women’s Institute for a Secure Retirement (WISER), http://www.wiserwomen.org/pdf_files/minoritywomen08.pdf p2

¹¹ Social Security Administration, “Social Security Is Important to American Indians and Alaska Natives” <http://www.ssa.gov/pressoffice/factsheets/amerindian.htm>

¹² Social Security Administration, “Social Security Basic Facts,” <http://www.ssa.gov/pressoffice/basicfact.htm> and Social Security Administration, “Social Security Is Important to American Indians and Alaska Natives”

¹³ Ariel/Hewitt, (2007), “401(k) Plans in Living Color: A study of 401(k) savings disparities across racial and ethnic groups” <http://www.arielinvestments.com/content/view/full/1223/1173/> p6

¹⁴ Ariel/Hewitt Study 2007: 6

¹⁵ Ariel/Hewitt Study 2007: 14

¹⁶ See for example, U.S. Census Bureau, (2009), “Income, Poverty, and Health Insurance Coverage in the United States: 2008,” <http://www.census.gov/prod/2009pubs/p60-236.pdf>

¹⁷ For more details on Recovery Act investments, see NCAI Policy Research Center, (2010), “Investing in Tribal Governments: An Analysis of Impact and Remaining Need Under the American Recovery and Reinvestment Act,” <http://www.indiancountryworks.org/file/Investing%20in%20Tribal%20Governments%20-%20An%20Analysis%20of%20ARRA.pdf>

¹⁸ Recommended at: <http://www.dol.gov/ebsa/publications/2009ACreport1.html>

¹⁹ As recommended in the Ariel/Hewitt Study 2007: 14

²⁰ This point is made for the general population in ERISA Advisory Council (2009) “Approaches to Retirement Security in the United States” <http://www.dol.gov/ebsa/publications/2009ACreport1.html>

²¹ See for example, First Nations Development Institute, (2007), *Integrated Asset-Building Strategies for Reservation-based Communities*, FNDI: Longmont, CO. For details on the Ariel/Hewitt finding, see <http://www.arielinvestments.com/content/view/1223/1173/>

²² Iwry, J. Mark and David C. John, (July 16, 2008) “Protecting And Strengthening Retirement Savings: Strategies to Reduce Leakage in 401(k)s and Expand Saving Through Automatic IRAs,” Testimony Before the Special Committee on Aging United States Senate, http://www.brookings.edu/~media/Files/rc/testimonies/2008/0716_retirement_savings_iwry/0716_retirement_savings_iwry.pdf

²³ Hounsell 2008: 11

²⁴ Iwry, J. Mark, and David C. John, (July 2009) “Pursuing Universal Retirement Security Through Automatic IRAs” http://www.brookings.edu/~media/Files/rc/papers/2009/07_automatic_ira_iwry/07_automatic_ira_iwry.pdf

²⁵ William G. Gale, and David C. John, (Aug 12, 2010) “New Legislation Helps Build Retirement Security” http://www.brookings.edu/opinions/2010/0812_retirement_security_gale_john.aspx

²⁶ Satyendra, Verma, (Oct 2003), “Retirement Coverage of Women and Minorities: Analysis from SIPP 1998 Data,” AARP Public Policy Institute <http://www.aarp.org/work/retirement-planning/info-2003/aresearch-import-350-DD92.html>

²⁷ Iwry and John 2009: 29

²⁸ Iwry and John 2008: 26

²⁹ Iwry and John 2008: 26-27