

December 2009

# RURAL WATER INFRASTRUCTURE

## Improved Coordination and Funding Processes Could Enhance Federal Efforts to Meet Needs in the U.S.-Mexico Border Region





Highlights of [GAO-10-126](#), a report to the Chairman, Committee on Agriculture, House of Representatives.

## Why GAO Did This Study

A serious problem for U.S. communities along the U.S.-Mexico border is the lack of access to safe drinking water and sanitation systems. Inadequate systems can pose risks to human health and the environment, including the risk of waterborne diseases. Numerous federal programs provide grants, loans, or other assistance to rural U.S. communities, including those in the border region, for drinking water and wastewater projects.

GAO was asked to determine (1) the amount of federal funding provided to rural U.S. communities in the border region for drinking water and wastewater systems and (2) the effectiveness of federal efforts to meet the water and wastewater needs in the region. GAO analyzed agency financial data; reviewed statutes, regulations, policies, and procedures; and interviewed federal, state, local, and private sector officials.

## What GAO Recommends

GAO suggests that Congress consider requiring federal agencies to develop a coordinated plan to improve the effectiveness of drinking water and wastewater programs in the border region and recommends that the agencies take steps to comply with statutory and regulatory requirements. Because USDA and DOD generally believe they are in compliance with relevant statutory and regulatory requirements; they did not fully concur with this recommendation. GAO believes that its findings and recommendations remain valid.

View [GAO-10-126](#) or [key components](#). For more information, contact Anu K. Mittal at (202) 512-9846 or [mittala@gao.gov](mailto:mittala@gao.gov).

# RURAL WATER INFRASTRUCTURE

## Improved Coordination and Funding Processes Could Enhance Federal Efforts to Meet Needs in the U.S.-Mexico Border Region

### What GAO Found

Seven federal agencies—the Environmental Protection Agency (EPA), the Department of Agriculture (USDA), the Department of Housing and Urban Development (HUD), the U.S. Army Corps of Engineers (the Corps), Economic Development Administration (EDA), the Indian Health Service (IHS), and the Bureau of Reclamation (Reclamation)—obligated at least \$1.4 billion for drinking water and wastewater projects to assist communities in the U.S.-Mexico border region from fiscal years 2000 through 2008. USDA and EPA obligated 78 percent, or about \$1.1 billion, of the total \$1.4 billion—with USDA obligating 37 percent, or \$509 million, and EPA obligating 41 percent, or \$568 million. Agencies provided assistance for a variety of drinking water and wastewater activities, such as constructing or improving treatment facilities and installing distribution lines. For example, of the \$509 million total, USDA obligated about \$502 million to public utilities or similar entities for construction of or improvements to water and wastewater infrastructure. It obligated over \$7 million to individuals in the border region for household projects, such as repairs to indoor plumbing.

Federal efforts to meet drinking water and wastewater needs in the border region have been ineffective because most federal agencies (1) have not comprehensively assessed the needs in the region, (2) lack coordinated policies and processes, and (3) in some cases have not complied with statutory requirements and agency regulations. Although federal agencies have assembled some data and conducted limited studies of drinking water and wastewater conditions in the border region, the resulting patchwork of data does not provide a comprehensive assessment of the region's needs. Without such an assessment, federal agencies cannot target resources toward the most urgent needs or provide assistance to communities that do not have the technical and financial resources to initiate a proposal for assistance. In contrast, IHS has collected data on water and wastewater conditions for each tribal reservation. As a result, the agency can select projects that target the greatest need. In addition, although some federal agencies recognize the importance of a collaborative and coordinated process to increase program effectiveness, agencies' policies and processes are generally incompatible or not collaborative with those of other agencies. For example, most federal programs require separate documentation to meet the same requirement and the agencies do not consistently coordinate in selecting projects. As a result, applicants face significant administrative burdens and project completion can be delayed. Moreover, GAO found that some agencies do not always meet the requirements stipulated in federal statutes and agency regulations concerning how they are to determine the eligibility of applicants or projects and how they are to prioritize funds. For example, USDA and HUD do not ensure that recipients' use of targeted funds intended for use in the border region complies with statutory requirements for establishing project priorities in the border region. Finally, the Corps has not established any guidance to ensure funds are targeted to those projects with the greatest need.

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## Abbreviations

BECC	Border Environment Cooperation Commission
CDBG	Community Development Block Grant
CWTAP	Colonias Wastewater Treatment Assistance Program
CPAP	Community Program Application Processing
EDA	Economic Development Administration
EPA	Environmental Protection Agency
HUD	Department of Housing and Urban Development
IDIS	Integrated Disbursement and Information System
IHS	Indian Health Service
NADB	North American Development Bank
SAAP	Special Appropriation Act Projects
SDS	Sanitation Deficiency System
SFC	Sanitation Facilities Construction
STAG	State and Tribal Assistance Grant
USDA	Department of Agriculture
USGS	U.S. Geological Survey
WRDA	Water Resources Development Act

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United States Government Accountability Office  
Washington, DC 20548

December 18, 2009

The Honorable Collin C. Peterson  
Chairman  
Committee on Agriculture  
House of Representatives

Dear Mr. Chairman:

A serious problem along the U.S.-Mexico border is the lack of access to safe drinking water and sanitation systems.<sup>1</sup> U.S. residents who lack safe drinking water systems often buy and store water in outdoor tanks or barrels for drinking and other domestic uses. This practice represents a significant health risk because the water is often transferred or stored in open containers and is thereby subject to contamination. In addition, some residents rely on substandard septic systems or cesspools to dispose of sewage because they do not have access to wastewater treatment systems. Leaks from substandard septic systems can contaminate sources of drinking water, such as wells, and can also leave sewage on the ground, where residents, especially children, may be exposed to bacteria and other pathogens. Exposure to contaminated water and wastewater may contribute to the increased rate of waterborne diseases in this region. For example, according to an EPA report, waterborne diseases such as hepatitis A and cholera occur at much higher rates in the Texas border region than in other parts of the state.

Numerous federal programs provide grants, loans, or technical assistance to rural communities in the United States, including those in the border region, for drinking water and wastewater projects. Seven federal agencies—the U.S. Department of Agriculture (USDA), the Environmental Protection Agency (EPA), the U.S. Department of Housing and Urban Development (HUD), the U.S. Army Corps of Engineers (the Corps), the Department of Health and Human Service's Indian Health Service (IHS), the Department of Commerce's Economic Development Administration (EDA), and the Department of the Interior's Bureau of Reclamation (Reclamation)—administer programs that can assist rural communities in the border region with acquiring drinking water and wastewater systems.

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<sup>1</sup>For the purposes of this report, we identify the border region as the area within 150 miles of the U.S.-Mexico border.

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In addition, four of these seven federal agencies—USDA, EPA, HUD, and the Corps—administer programs that are targeted specifically to the border region. Agencies provide assistance for a variety of activities, such as the planning, design, and construction of treatment facilities; installation of distribution lines and pumping stations; and upgrades to household plumbing. A combination of assistance from multiple programs is used to fund some individual projects.

In response to your request for information on the status of rural water infrastructure along the border region, this report addresses (1) the amount of funding federal agencies have provided to rural households and communities in the border region for the purposes of obtaining safe drinking water and wastewater systems and (2) the effectiveness of federal efforts to meet the drinking water and wastewater needs in the border region. Our review focused on fiscal years 2000 through 2008.

To determine the extent of federal funding provided to rural households and communities in the border region for drinking water and wastewater projects, we collected and analyzed agency data on obligations provided for drinking water and wastewater activities from those federal programs that, based on our prior work and additional research, were the most likely to provide assistance to the region. As stated earlier, these programs are primarily administered by USDA, EPA, HUD, the Corps, EDA, IHS, and Reclamation. Our review included programs that provide assistance specifically to rural areas as well as programs that provide assistance to both rural and urban areas. We assessed the reliability of the data we used by reviewing information about the underlying database systems, reviewing the data to identify outliers and inconsistent or missing values, and discussing the data with knowledgeable agency officials. We determined that the data obtained from these agencies were sufficiently reliable for the purposes of our review. In addition, we electronically mapped the funds provided by the federal agencies to identify the geographic distribution of funding. To determine the effectiveness of federal efforts to meet the drinking water and wastewater needs of the region, we identified and reviewed existing federal assessments of drinking water and wastewater conditions; program statutes, regulations, policies, and procedures to solicit, accept, and prioritize applications for those agencies with programs targeted to the border region (i.e., USDA, HUD, EPA, and the Corps); and coordination efforts among these agencies. We also interviewed state and local government officials, officials from water and wastewater utilities, nonprofit officials from the region, and such private sector representatives as urban planners and engineers. In addition, we conducted site visits in Texas, New Mexico, and Arizona, in which we observed federally funded projects and discussed with state and local officials

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their experiences applying for or receiving assistance from federal agencies. Furthermore, we attended two interagency coordination meetings in which various federal and state agency officials discussed the status of ongoing drinking water and wastewater projects in the border region. A more detailed description of our scope and methodology is presented in appendix I.

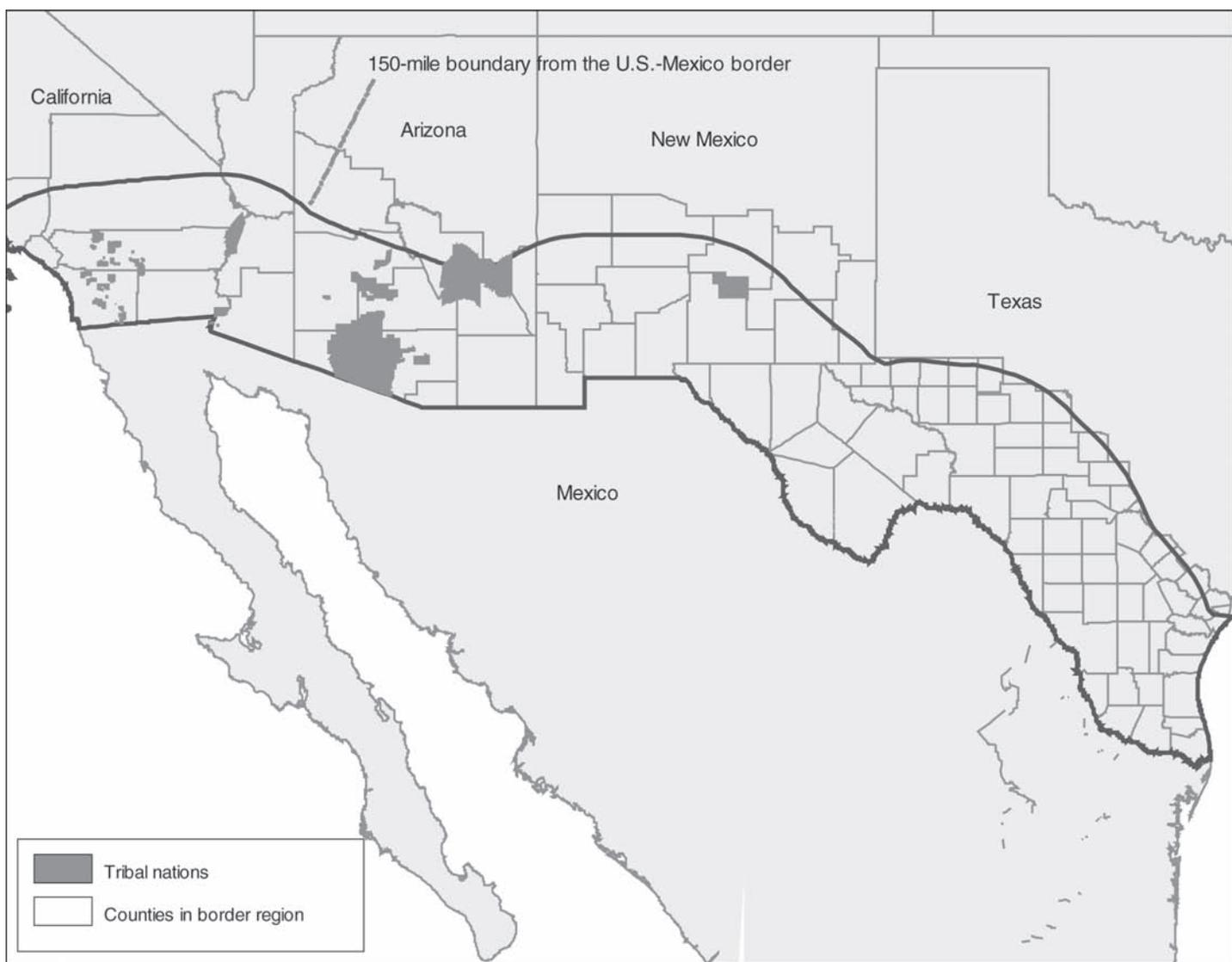
We conducted this performance audit from December 2008 to December 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

The U.S.-Mexico border extends more than 2,000 miles, from the Gulf of Mexico to the Pacific Ocean. As can be seen in figure 1, portions of four states—Texas, New Mexico, Arizona, and California—encompassing 97 counties and 44 U.S. federally recognized tribal nations make up the border region.

**Figure 1: U.S.-Mexico Border Region**



Sources: GAO; MapInfo (map).

The region includes a wide range of community types, from large cities—such as Los Angeles, California, population 3.8 million—to small, rural communities—such as Spofford, Texas, population 75. Of the 44 tribal nations in the region, 30 are in California, 8 in Arizona, 1 in New Mexico, 2 in Texas, and 3 in both California and Arizona. The tribal nations range in population from 1 household in the Jamul Indian Village in California to

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3,572 households in the Tohono O’odham tribal nation in Arizona, whose tribal land covers an area approximately the size of Connecticut.

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## History of Water and Wastewater Infrastructure in the Border Region

Throughout the border region, a lack of safe drinking water and adequate wastewater treatment has been a continuous problem exacerbated by large gains in population associated with rapid industrial growth that has occurred over the past three decades. Part of this population increase has occurred in communities now commonly referred to as colonias. Initially, colonias emerged as developers sold small plots of residential land to individuals without providing water or wastewater infrastructure. Residents often placed a trailer or similar structure on the land or built their homes themselves, many starting with just one room and adding on periodically as they were able to afford it. Numerous news articles during the 1980s and 1990s described colonias, with one referring to colonias as “pockets of poverty” with conditions similar to those generally associated with “third-world” conditions.<sup>2</sup> When colonias first began to emerge, they were often located in remote areas outside of incorporated cities where developers sold land as residential without adhering to the ordinances and regulations of the cities; however, more recently many local governments have begun to classify entire cities or subdivisions within a city as colonias.

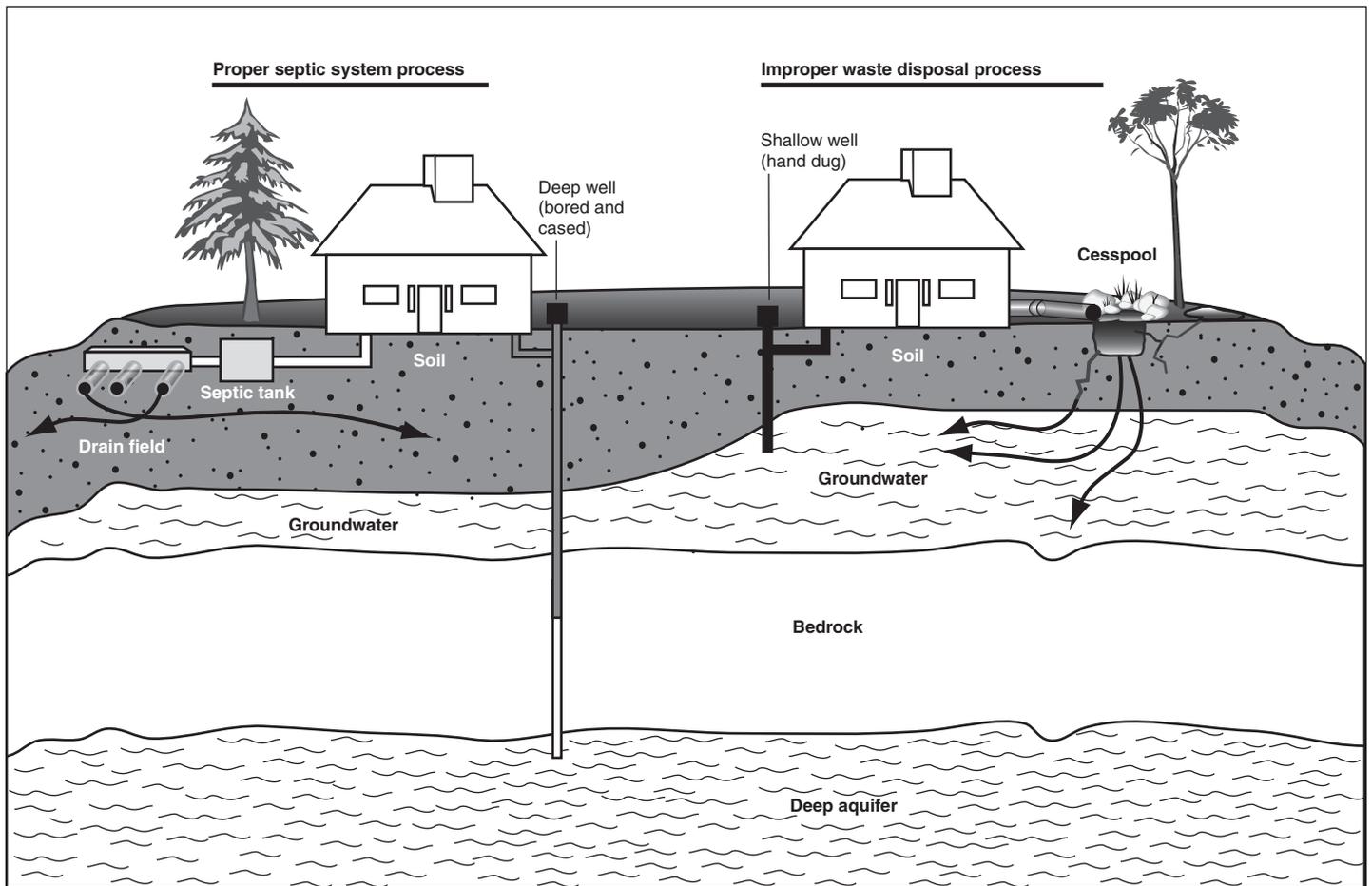
Since water and wastewater infrastructure were lacking when they bought their lots and built their homes, many residents in colonias relied on on-site alternatives. For example, to obtain water, some used contaminated wells, while others hauled and stored water in barrels or tanks. For wastewater disposal, residents used methods such as septic tanks or cesspools. Septic systems can treat waste safely, but they can also contaminate drinking water with sewage and organic matter if they are not installed and maintained properly. Effective septic systems require that the type and amount of soil be sufficient to absorb wastewater, and that the systems not be located too close to groundwater or surface water. In contrast, cesspools can pose a risk of contamination because they do not treat wastewater and are merely holes in the ground for the disposal of sewage. Problems associated with failing septic systems are not restricted to colonias. Rural households throughout the region can experience

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<sup>2</sup>Peter Applebome, “Along U.S. Border, a Third-World Is Reborn,” *New York Times*, March 27, 1988. Ken Flynn, “Lack of Clean Water, Sewers Breed Disease In Border Settlements,” *Los Angeles Times*, March 19, 1989. Brenda Miller, “Senator Sees Colonia Water Woes First-hand,” *The Monitor*, Sept 18, 1994.

difficulties maintaining proper on-site wastewater treatment. Figure 2 compares proper septic system function with improper cesspool disposal.

**Figure 2: Proper and Improper On-site Wastewater Treatment**



Source: GAO analysis of EPA data.

In response to public health concerns in the border region caused by a lack of clean drinking water and adequate sewage treatment, Congress

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established various programs with dedicated funding.<sup>3</sup> For example, in the early 1990s, Congress established dedicated funding for water and wastewater projects to benefit residents of colonias.<sup>4</sup> These funds have been used for a number of projects to provide colonia residents safe drinking water and adequate sewage disposal, yet some colonias continue to lack these basic services. Appendix II provides additional information on the establishment of federal funding to assist colonias.

Colonias are still found throughout the border region, though their characteristics vary widely. Present-day colonias are communities of all types and sizes, both incorporated and unincorporated. For example, a colonia can be a tribal reservation, a fast-growing retirement community, or a high-poverty subdivision. Moreover, not all colonias have the same level of need. For example, a town in Arizona that already had water and wastewater service was designated a colonia in 2008 because the local water utility did not have the funds to address routine repairs, and believed that the designation would increase its ability to receive federal funds. In contrast, residents of the El Conquistador colonia in Hudspeth County, Texas, have lived without access to water and wastewater service for over 20 years.

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## Agencies That Provide Assistance in the Region

To help communities and households throughout the border region obtain safe drinking water and adequate wastewater treatment, seven federal agencies provide grants, loans, and technical assistance under separate programs and congressional authorizations. These include the following:

- EPA, which has funding for drinking water and wastewater systems that is complementary to its regulatory and enforcement authorities under the Safe Drinking Water Act and the Clean Water Act. EPA provides grants for water and wastewater infrastructure in the border region through several different programs including the

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<sup>3</sup>In addition to funding dedicated for colonias, the United States and Mexican governments established the Border Environment and Cooperation Commission (BECC) and the North American Development Bank (NADB) following the 1993 ratification of the North American Free Trade Agreement, to help implement a NAFTA provision that recognized the need for additional water and wastewater infrastructure in the border region.

<sup>4</sup>Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 916 (Nov. 28, 1990); Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, § 2327 (Nov. 28, 1990); Water Resources Development Act of 1992, Pub. L. No. 102-580, § 219 (Oct. 31, 1992).

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- *U.S.-Mexico Border Water Infrastructure Program.* EPA's binational program provides grants to water and wastewater facilities within 62 miles of the border.<sup>5</sup> EPA allots most of these funds to the Border Environment Cooperation Commission (BECC) and the North American Development Bank (NADB).<sup>6</sup> These organizations then administer these funds to implement project development activities and construction. In addition to the funds administered by BECC and NADB, EPA provides grants to tribal nations within the border region.
  - *Colonias Wastewater Treatment Assistance Program (CWTAP).* EPA awarded grants to the state of Texas from fiscal years 1993 through 1999 for the purpose of funding the construction and improvement of water and wastewater systems in colonias.<sup>7</sup> The state of Texas obligated this funding, along with a state match, to public entities during fiscal years 2000 through 2008.
  - *Drinking Water and Clean Water State Revolving Fund Programs.* EPA annually provides grants to states to help finance local drinking water and wastewater projects nationwide through the Drinking Water and Clean Water State Revolving Fund Programs.<sup>8</sup> The states use this funding, along with a required 20 percent match, to capitalize their state revolving funds. The funds provide low-cost loans or other financial assistance for a wide range of water infrastructure projects. In addition, EPA provides funds from the Drinking Water and Clean Water Revolving Fund Programs to tribal nations throughout the United States for water and wastewater projects.
  - USDA, which provides grants, loans, and technical assistance for rural water and wastewater projects through its Water and Environmental Program.<sup>9</sup> The department can provide assistance for various activities,

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<sup>5</sup>According to the La Paz Agreement on cross-border environmental cooperation between the United States and Mexico, the U.S.-Mexico border region extends 100 kilometers (approximately 62.1 miles) on either side of the border.

<sup>6</sup>BECC and NADB are jointly financed through both the U.S. and Mexican governments.

<sup>7</sup>Congress last appropriated funding for this program in fiscal year 1998; EPA last obligated funding in fiscal year 1999.

<sup>8</sup>The Drinking Water State Revolving Fund Program was established to make funds available to drinking water systems to finance infrastructure improvements. The Clean Water State Revolving Fund Program was established to fund wastewater treatment projects.

<sup>9</sup>USDA defines a rural area as a city of 10,000 or fewer residents or any unincorporated area.

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such as construction of water treatment and sewage collection facilities, connection of single-family homes to water distribution or wastewater collection lines, and training for the operation of water and wastewater utilities. While the program is available to eligible entities nationwide, USDA has been required by annual appropriations acts to set aside a portion of this funding—up to \$25 million annually—for water and wastewater systems that benefit colonia residents (referred to as the Section 306C Colonia funds).<sup>10</sup>

- HUD, which disburses grants to states and local governments through the Community Development Block Grant (CDBG) Program to fund housing, infrastructure, and other community development activities. The annual appropriation for CDBG is split according to HUD formulas so that 70 percent is allocated among eligible metropolitan cities and counties (referred to as entitlement communities) and 30 percent among the states to serve cities with populations of fewer than 50,000 and counties with populations of fewer than 200,000 (referred to as nonentitlement communities). Each border state is required to use up to 10 percent of total funds for projects to meet the water, sewage, and housing needs of colonia residents (referred to as the Colonia Set-aside).<sup>11</sup> According to a HUD official, HUD determines each state's Colonia Set-aside amount annually based on input from state officials and other colonia stakeholders, such as nonprofit organizations. For fiscal years 2000 through 2008, HUD established a 10 percent annual set-aside amount for Texas, New Mexico, and Arizona and a 5 percent annual set-aside for California. Additionally, HUD provides CDBG funds to tribal nations that can be used for any eligible CDBG activity, including water or wastewater projects.
- IHS, which constructs water and wastewater projects through its Sanitation Facilities Construction (SFC) Program. This assistance is available to tribal nations within the United States, and through the program, IHS constructs various projects, including distribution and collection lines, treatment facilities, and home connections.

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<sup>10</sup>See, e.g., Consolidated Appropriations Act 2008, Pub. L. No. 110-161 (Dec. 26, 2007), 121 Stat. 1866-67; Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-97 (Nov. 10, 2005) 119 Stat. 2136; 7 U.S.C. § 1926C (2009).

<sup>11</sup>Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 916 (Nov. 28, 1990).

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- EDA, which provides grants to economically distressed areas through its Public Works and Economic Development Program.<sup>12</sup> The funds are used for construction of public facilities, including water and wastewater facilities.
  - The Corps, which has provided assistance for water and wastewater projects in the border region as directed by Congress. Congress has authorized and appropriated funds for the Corps to provide assistance for a number of projects, including projects to benefit colonias in need of water or wastewater infrastructure.
  - Reclamation, which has been directed to provide assistance for drinking water or wastewater treatment projects in response to individual project authorizations but does not have an established program for such assistance. However, in 2006, Congress passed the Rural Water Supply Act, directing Reclamation to develop a rural water supply program.

Entities that can seek assistance from most of these federal agencies include local units of government, tribal nations, water or wastewater utilities or similar entities, nonprofit organizations, or individual homeowners. Each federal program has its own application process but generally involves the following steps:

- *Pre-application meeting.* Federal agencies generally require the entity seeking assistance to meet with agency officials prior to submitting an application. During this meeting, officials and the potential applicant discuss program eligibility, the type of assistance needed, and application requirements.
- *Submission of application.* After the pre-application discussion, the entity seeking assistance prepares an application that can include information such as financial, engineering, and environmental studies that describe the project plan and its costs. Some agencies require additional documentation, such as evidence of public support for the project and documentation that the entity cannot obtain commercial credit at a reasonable rate.

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<sup>12</sup>EDA defines an area as economically distressed if it meets one of the following three conditions: (1) an unemployment rate that is at least 1 percent greater than the national average, (2) a per capita income that is 80 percent of the national average or less, or (3) the area has experienced or is about to experience a special need arising from sudden and severe changes in economic conditions.

- *Review and evaluation of application.* Once an agency receives an application, officials review it for eligibility. After the agency determines that an application meets program eligibility requirements, it may be further evaluated, depending on whether the assistance being requested is from a competitive or a noncompetitive program. For competitive programs, agencies generally score each application according to established criteria and then rank the applications so that the projects with the highest scores will receive priority for available funds. For noncompetitive programs, agencies will generally obligate funding as applications are deemed eligible until all available funds are depleted.

## Federal Agencies Provided at Least \$1.4 Billion over 9 Years for Water and Wastewater Infrastructure in the Border Region

We found that seven federal agencies obligated at least \$1.4 billion for drinking water and wastewater projects in the U.S.-Mexico border region from fiscal years 2000 through 2008. USDA and EPA obligated 78 percent, or about \$1.1 billion, of the total \$1.4 billion. The remaining 22 percent, or \$309 million, came from HUD, the Corps, IHS, EDA, and Reclamation. Table 1 provides additional data regarding federal funds obligated to the border region for water and wastewater projects by agency and program.

**Table 1: Federal Funds Obligated to the Border Region for Water and Wastewater Projects, by Agency and Program, Fiscal Years 2000-2008**

Agency/ program	Grants	Loans
<b>EPA</b>		
U.S.-Mexico Border Water Infrastructure Program	\$298 million	
Colonias Wastewater Treatment Assistance Program	173 million	
Congressionally directed funds	61 million	
Indian Clean Water and Tribal Drinking Water Revolving Fund Programs	36 million	
<b>EPA total</b>	<b>568 million</b>	
<b>USDA</b>		
Water and Environmental Program	92 million	\$209 million
Section 306C Colonia Funds	208 million	
<b>USDA total</b>	<b>300 million</b>	<b>209 million</b>
<b>HUD</b>		
CDBG Programs	217 million	
Congressionally directed funds	925,000	
<b>HUD total</b>	<b>218 million</b>	
<b>IHS</b>		
Sanitation Facilities Construction Program	45 million	

Agency/ program	Grants	Loans
EDA		
Public Works and Economic Development Program	39 million	
Corps	4 million	
Reclamation	4 million	
<b>Total federal funding</b>	<b>\$1.2 billion</b>	<b>\$209 million</b>

Source: GAO analysis of USDA, EPA, HUD, IHS, EDA, Corps, and Reclamation data.

Notes: Individual program totals may not add to agency totals because of rounding.

In addition to the funding reported in the table, EPA's U.S.-Mexico Border Water Infrastructure Program obligated funds to support projects in Mexico.

The \$4 million in Corps assistance reported was obligated through technical assistance.

Details about the funding provided by each of the seven federal agencies to the border region from fiscal year 2000 through 2008 include the following:

- EPA obligated at least \$568 million in grants, or 41 percent of the total federal funding provided to the region.<sup>13</sup> Of that, about \$471 million was obligated through programs targeted to the border region, while just over \$98 million was obligated through nationwide programs. Of the \$471 million targeted to the border region, EPA obligated \$298 million in grant funds through the U.S.-Mexico Border Water Infrastructure Program, and \$173 million in grant funds through the Colonias Wastewater Treatment Assistance Program.<sup>14</sup> Of the \$98 million from nationwide programs, \$61 million was congressionally directed in EPA's State and Tribal Assistance Grant (STAG) account appropriations, according to data provided by EPA. The remaining nationwide program funds were obligated to tribal nations through the Drinking Water and Clean Water Revolving Fund Programs (about \$36 million). Appendix V provides additional data on the

<sup>13</sup>EPA obligations have benefited both urban and rural communities.

<sup>14</sup>A 2008 EPA Inspector General report found that nearly 10 years after EPA Region 6 awarded the last CWTAP grant to the Texas Water Development Board, funding remained unspent. The report further states that if Region 6 does not improve its oversight of the program, the funds will probably not be fully spent by the current CWTAP grant fund drawdown projection of 2010. However, the report acknowledges that EPA has taken some positive steps to address unliquidated obligations in the CWTAP, such as working with the board to establish a schedule for using the remaining funds. EPA, *Millions of Federal Dollars Remain for Colonias Projects*, 08-P-0184 (Washington, D.C.: 2008). EPA obligated the \$173 million in Colonias Wastewater Treatment Assistance Program funding prior to fiscal year 2000. However, although EPA obligated these funds to the Texas Water Development Board prior to fiscal year 2000, the Texas Water Development Board continued to obligate the funds to local communities and other entities from fiscal year 2000 through fiscal year 2008.

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obligations from EPA in the border region. In addition, state-administered revolving loan funds partially capitalized by EPA provided approximately \$3.4 billion in loan financing to water and wastewater projects in the border region through the Clean Water and Drinking Water State Revolving Fund Programs from fiscal years 2000 through 2008.<sup>15</sup> For example, the California Department of Health obligated about \$1.7 million for repairs to the drinking water distribution system in Imperial County, California. Appendix VI provides additional data on the obligations from the Drinking Water and Clean Water State Revolving Fund programs in the border region.

- USDA obligated about \$509 million, or about 37 percent of the total federal funding.<sup>16</sup> Of the \$509 million, it obligated \$208 million in grant funds through its Section 306C Colonia funds. The remaining \$302 million—\$209 million in loan funds and \$93 million in grant funds—was obligated through its nationwide Water and Environmental Program. Of the \$509 million total, USDA obligated about \$502 million (98 percent) to public utilities or similar entities for construction or improvements to water and wastewater infrastructure. For example, USDA obligated \$2.9 million in grants and almost \$1 million in loans to the city of Truth or Consequences, New Mexico, for improvements to the wastewater treatment plant and extension of collection lines. It obligated over \$7 million to individuals in the border region for household projects, such as installing indoor plumbing. Appendix IV provides additional data on the obligations from USDA funds in the border region.
- HUD obligated about \$218 million, or 16 percent of the total federal funding provided to the region.<sup>17</sup> Almost all of the funds, \$217 million, were obligated as grant funds through the Community Development Block Grant Programs. The remainder, \$925,000, was obligated from HUD's Economic Development Initiative Special Project account, according to

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<sup>15</sup>We do not report this sum as part of our total for federal funding to the border region because these funds are loans from a nonfederal fund and thus do not represent the same kind of outlays as direct federal funding.

<sup>16</sup>USDA also provides grants from the Technical Assistance and Training Grant Program to national nonprofit organizations, such as the National Rural Water Association and the Rural Community Assistance Program, which may have provided technical assistance to entities in the border region.

<sup>17</sup>In addition, HUD provides funds for a variety of planning activities, some of which are used for water and wastewater projects. However, because of data limitations we could not accurately determine whether a planning activity was related to water or wastewater projects. These activities are not included in the totals presented in the report.

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officials. Of the \$217 million in CDBG grants, \$51 million of this was identified by states in HUD's database as obligated for water or wastewater projects in a colonia.<sup>18</sup> For example, New Mexico obligated about \$265,000 to extend water distribution lines to 20 residents of a colonia in Sierra County. Additional funds from the Colonia Set-aside Program may have been used in colonias for water and wastewater projects, but we were unable to determine the total amount because HUD does not comprehensively distinguish in its data system which of the CDBG obligated funds are under the Colonia Set-aside. Of the \$217 million in CDBG grants, HUD obligated \$2.6 million through its Indian CDBG program to two tribal nations—the Salt River Pima-Maricopa Indian Community and the San Pasqual Band of Mission Indians. Appendix VII provides additional data on the obligations from HUD in the border region.

- IHS obligated about \$45 million for the construction of sanitation facilities on tribal nations in the border region. For example, IHS obligated about \$8 million to provide basic sanitation services to residents of the Tohono O'odham tribal nation by participating in a modular bathroom program.<sup>19</sup> Through this effort, residents living in traditional adobe structures that lack indoor plumbing are able to attach a modular bathroom to the home and then connect to a wastewater distribution line. Appendix VIII provides additional data on federal obligations made to each tribal nation in the border region.
- EDA obligated about \$39 million in grant funds for public infrastructure projects that included water or wastewater activities. These funds were obligated for 29 projects. For example, EDA obligated \$3.2 million in grant funds for a water system project in San Bernardino, California. This project included land acquisition for new water wells, well drilling, new

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<sup>18</sup>HUD officials reported that \$118.8 million was to the Colonia Set-aside Program from fiscal years 2000 through 2008. The agency currently does not require states to distinguish these funds when reporting on CDBG fund uses in HUD's data system. States currently have the option to identify if a project occurred in a colonia by using a check box in HUD's data system, but HUD acknowledges that states have not been consistent about using this check box. HUD officials reported that the agency intends to issue guidance in the future to remind states of the importance of using the check box and have requested the agency include a new data field specifically to identify states' use of Colonia Set-aside funds. HUD reports that once this change to the data system is made, it will be able to identify all projects funded with the set-aside, and could then verify that all such projects are located in a colonia..

<sup>19</sup>Along with the cost for the modular bathrooms, this total also includes improvements to the water and wastewater systems that serve them.

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pipeline, a booster pump, obtaining water rights, an engineering and environmental assessment, and removal of an elevated water tank.

- The Corps obligated just over \$4 million in assistance to projects within the border region. The assistance was used for 6 congressionally directed projects in New Mexico, and 3 projects to assist colonias in Texas conducted under the Water Resources Development Act of 1992, which authorized the Corps to assist communities with water and wastewater needs.<sup>20</sup>
- Reclamation obligated almost \$4 million in grant funds for 5 water supply projects, for which Congress specifically authorized and appropriated funds, according to agency documents. Reclamation currently funds projects only in response to specific congressional directives, but it was authorized in 2006 by the Rural Water Supply Act to establish a rural water supply program.<sup>21</sup> We reported in 2007 that Reclamation planned to develop programmatic criteria to determine eligibility for participation in this program and to assess the status of authorized rural water supply projects and other federal programs that address rural water supply issues, as the act required, by December 2008.<sup>22</sup> As of September 2009, agency officials told us that the establishment of the program is still a priority, but it has been delayed by the change of Administration and by efforts to develop a strategy for implementation of the American Recovery and Reinvestment Act funds.<sup>23</sup> Agency officials stated they hope to have the program established by the end of calendar year 2009.

Of the 97 counties in the border region, 94 received some assistance, and 3 received no assistance during fiscal years 2000 through 2008. Figure 3 shows the amounts provided to the 94 counties that received some assistance, which ranged from a low of just under \$260,000 provided to Reagan County, Texas, and to a high of almost \$130 million provided to Cameron County, Texas.

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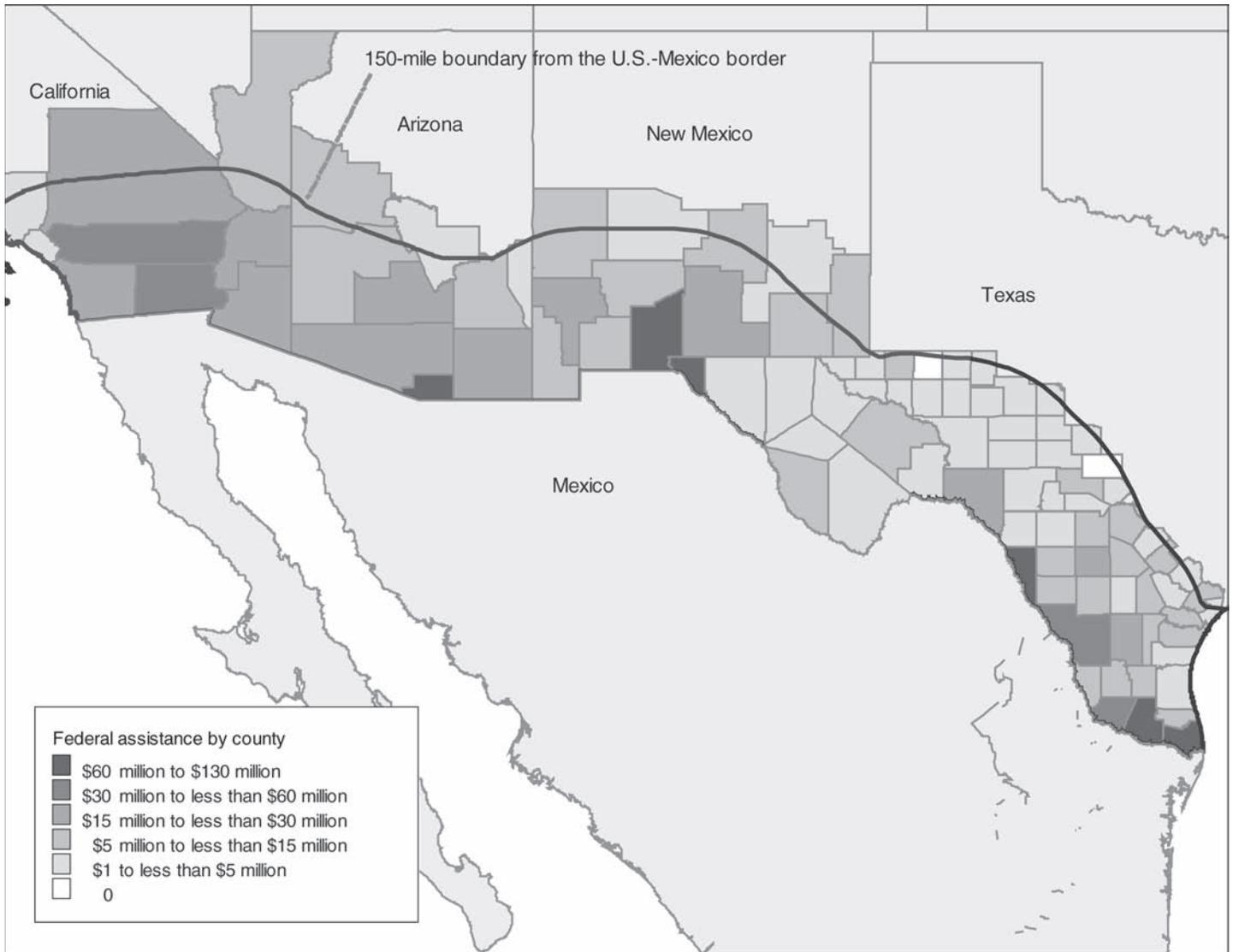
<sup>20</sup>Water Resources Development Act of 1992, Pub. L. No. 102-580, § 219 (1992).

<sup>21</sup>Rural Water Supply Act of 2006, Pub. L. No. 109-451 § 103 (2006).

<sup>22</sup>GAO, *Water Resources: Four Federal Agencies Provide Funding for Rural Water Supply and Wastewater Projects*, GAO-07-1094, (Washington, D.C.: Sept. 7, 2007).

<sup>23</sup>American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, p. 23 (2009).

**Figure 3: Federal Funding Obligated from USDA, EPA, HUD, the Corps, EDA, and Reclamation for Water and Wastewater Projects, Fiscal Years 2000-2008**



Sources: GAO analysis of USDA, EPA, HUD, the Corps, EDA, and Reclamation data; MapInfo (map).

Note: Because tribal nations do not conform to county boundaries, IHS obligations are not included in figure 3.

Appendix III provides further data on each county, including its rural-urban classification and the funding obligated by federal agencies.

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## Federal Efforts Have Not Been Effective in Meeting the Water and Wastewater Needs of the Border Region

Federal efforts have not effectively addressed the drinking water and wastewater needs in the border region because agencies (1) have not comprehensively assessed the needs of the region, (2) lack coordinated policies and processes, and (3) in some cases have not complied with statutory requirements and agency regulations.

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## Agencies Have Not Comprehensively Assessed Water and Wastewater Conditions, Hampering Their Ability to Meet the Needs of the Region

Over the years, some federal agencies have conducted assessments to identify water and wastewater conditions in the border region, but none of these assessments either individually or collectively provides a comprehensive picture of the needs of the region. We identified the following assessments that either have been conducted by federal agencies or are ongoing:

- EPA commissioned a study to set a baseline, as of December 2003, for its U.S.-Mexico Border Water Infrastructure Program by estimating the number of households without basic water and wastewater service in the area served by the program. While the data collection effort was used by the agency to establish performance measures and strategic goals, the agency did not establish a process to update the data to reflect current conditions. Without such a process, the accuracy and usefulness of the data are limited. In addition, the study did not distinguish between homes with appropriate septic systems and homes without them.

In addition, EPA has reviewed applications received from both the U.S. and Mexico sides of the border through its U.S.-Mexico Border Water Infrastructure Program in 2004, 2006, and 2008 to determine the total amount of funding requested from the border region. The requests for assistance ranged from \$590 million to over \$1 billion in project construction costs. During the most recent solicitation, over 130 projects on the U.S. side of the border requested assistance representing \$800 million in total project cost, according to EPA officials. While EPA told us this effort provides the agency with a snapshot that reflects the existing needs in the region, it acknowledges this snapshot is not a comprehensive assessment of need in the region and captures only the need from those entities that seek assistance from the U.S.-Mexico Border Water Infrastructure Program.

Further, EPA conducts the nationwide Clean Watersheds Needs Survey every 4 years to identify the funds needed to address problems with wastewater treatment facilities. Similarly, the agency conducts an

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assessment every 4 years to identify the funds needed for existing drinking water facilities to comply with safe drinking water quality standards. However, on the basis of information provided by agency officials, we do not believe that either of these efforts provides the agency with a comprehensive assessment of the border region. For example, according to officials, these assessments have not traditionally been successful in collecting data from small communities. Officials told us that the 2004 Clean Watersheds Needs Survey had a 36 percent response rate from wastewater systems that serve small communities (those with fewer than 10,000 wastewater customers). In addition, officials told us the 2007 drinking water assessment includes data for all existing utilities serving over 100,000 customers, but only a sample of small community systems are included in the assessment—600 of the approximately 33,000 such systems nationwide. Because many of the communities in the border region are small, we do not believe that they would be captured by the survey.

- In 2008, USDA, reported on the amount of funds directed to colonias in each of the four border states and the amount of unfunded applications the agency received for the program in fiscal year 2008. This report was in response to a request from the Senate Agriculture Committee to, among other things, provide a report that “identifies where additional resources are most needed.”<sup>24</sup> According to our review of USDA’s report, the department did not identify where additional resources are needed, but simply reported its backlog of applications from each state.<sup>25</sup> For example, the report stated that the department had a pre-application and application backlog of approximately \$117 million—with pre-applications accounting for \$108 million and applications accounting for \$9 million. As with EPA’s assessment of applications submitted to the U.S.-Mexico Border Water Infrastructure Program, these figures represent only those entities that have contacted USDA for assistance, and therefore do not provide a complete assessment of those areas where resources are most needed.
- HUD has provided funds for local governments to identify colonias and the water and wastewater conditions within them. From 1992 through 2008, HUD-funded assessments were completed for 43 of the 67 Texas counties

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<sup>24</sup>Senate Report 110-134, Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2008.

<sup>25</sup>USDA, *Report on Water and Waste Programs—Resources Provided and Needs of the Native Americans, Including Alaskan Natives and the Colonias Populations* (November 2008).

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in the border region. For example, a 2008 assessment for Dimmitt County, Texas, found that 113 housing units lacked centralized water service. However, as some assessments were conducted more than a decade ago or longer, they may not reflect current conditions. HUD also provided funds to the U.S. Geological Survey (USGS) to collect data on infrastructure in colonias for 6 counties in Texas. The dataset, released in 2007, includes information such as number of households, source of potable water, and whether wastewater collection is available.

- Since 1989, IHS has collected data on the water and wastewater infrastructure conditions for each tribal reservation in the United States. This information is available through its Sanitation Deficiency System and is updated annually. As a result, IHS can select projects that target the greatest need and report on effectiveness to meet the water and wastewater needs of tribal nations, including those within the border region.
- In 2007, BECC began efforts to identify the water and wastewater infrastructure needs within the 62-mile region north of the U.S.-Mexico border. The study is expected to compare the number of existing water and wastewater connections with the total number of homes and is expected to identify gaps in access to centralized services. According to BECC officials, data collection and analysis were completed for New Mexico in the first quarter of 2009 and are currently being conducted for Texas, California, and Arizona. BECC expects to complete all data collection and analysis and issue the study by the end of 2010.

Without a comprehensive assessment of the needs of the region and the existing condition of water and wastewater systems, federal agencies are hampered in their ability to identify and provide assistance to those communities with the greatest need. Instead, we found that most federal programs generally provide funds to those communities with the ability to initiate projects and seek assistance, which may not be the ones with the greatest need. According to several state and local officials, it is often the communities in the border region that do not have the institutional capacity to identify solutions or apply for funding that are in need of assistance. For example, rural communities, such as unincorporated colonias, may not be aware of potential solutions for obtaining water and wastewater services or how to start the process to seek these services.<sup>26</sup>

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<sup>26</sup>When we shared this concern with the agencies, EPA officials told us that Clean Water Act regulations limit the agency's ability to provide assistance to unincorporated communities without the establishment of a utility or improvement district.

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Rural communities may also lack the financial resources to hire a consultant who can help them design a project and prepare the application materials, including the preliminary engineering and environmental documents. According to several officials that we spoke to, engineering and environmental reports can cost from \$30,000 to \$100,000. A prior federal study has identified this high initial cost as a major obstacle to providing federal assistance for water and wastewater service in the region.<sup>27</sup> While federal assistance to help offset this high initial cost is available through some programs, such as EPA's U.S.-Mexico Border Water Infrastructure Program, the overall federal assistance provided for such activities is minimal—from fiscal years 2000 through 2008, the program provided funds to 62 projects in the border region representing about \$15 million in grant funds.<sup>28</sup>

Although few federal agencies have made efforts to build institutional capacity in border communities, we did find some efforts by state programs and nonprofits. For example, the Texas Colonias Initiative Program has colonia ombudsmen who assist communities with basic infrastructure needs. In 1999, the state of Texas established a Colonias Initiative Program to advance efforts to connect colonia residents' homes to water and wastewater services. The program's ombudsmen work in counties in the border region with the highest colonia populations—Hidalgo, El Paso, Starr, Webb, Cameron, Nueces, and Maverick Counties. The role of the ombudsmen includes the following:

- serving as liaisons among colonia residents, federal and state agencies, local governments, and utility companies;
- facilitating effective communication among colonia stakeholder groups to improve living conditions for colonia residents;
- mediating among interested groups to resolve situations that prevent the provision of water and wastewater service;
- serving as conduits for information by conducting community outreach and facilitating community meetings with colonia residents; and

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<sup>27</sup>EPA, *How Investment in Water, Wastewater, and Irrigation Infrastructure Has Affected the Mexico-Texas Border*, EPA-X4-976742-01, Prepared by the University of Texas at Austin (Austin, Tex.: 2007).

<sup>28</sup>In addition, BECC provides some assistance for these activities through nonfederal funds.

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- monitoring the different phases of projects to ensure progress and project completion.

State and local officials told us that the ombudsmen had helped communities overcome obstacles to obtaining service and had provided valuable information on colonia conditions to state and federal agencies.

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### Agencies Lack Coordinated Policies and Processes for Providing Federal Assistance in the Border Region

The federal agencies that provide most of the funding for water and wastewater projects in the border region—EPA, USDA, and HUD—have not developed comprehensive coordinated policies and procedures, resulting in administrative burdens for applicants, duplication of efforts, and inefficient use of resources. However, the agencies have long recognized the need for improved coordination, and in 1997 these agencies issued a joint memorandum to encourage cooperation among federal, state, and local funding agencies. The memorandum states that the agencies will foster coordination efforts by establishing a uniform application, standardizing requirements, coordinating funding cycles, and collaborating in project selection to improve program delivery to small and rural communities, including those in the border region.<sup>29</sup>

Despite the fact that this joint memorandum was issued over a decade ago, we found that most programs still have different application processes, different requirements for engineering and environmental reports, different deadlines for submitting applications, and different processes for selecting projects.<sup>30</sup> Since water and wastewater projects often depend on assistance from more than one agency, these separate and differing requirements can increase the burden on applicants and delay project completion, according to officials we spoke to.<sup>31</sup> For example, an engineer in Texas representing a public utility told us that one applicant trying to expand water service to colonia residents had to pay \$30,000 more in fees

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<sup>29</sup>USDA-Rural Utility Service, Department of Housing and Urban Development, and U.S. Environmental Protection Agency, *Joint Memorandum: Cooperation and Coordination on Jointly Financed Water and Wastewater Activities* (Washington, D.C.: 1997).

<sup>30</sup>For projects that receive technical assistance from EPA's U.S.-Mexico Border Water Infrastructure Program, the agency will tailor engineering and environmental reports to meet the standards of the primary funding agency.

<sup>31</sup>EPA and USDA officials commented that the numerous instances of jointly funded projects show that agencies are coordinating. We do not disagree that projects often rely on multiple sources of funding, but we found that the lack of coordinated policies placed additional burden on applicants and delayed project completion.

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because the engineer had to complete two separate sets of engineering documentation for EPA and USDA. The applicant could have saved these funds had EPA and USDA established uniform engineering requirements. In addition, because most federal programs have no process by which to coordinate and share information on projects they have selected for funding, we found examples where agencies made inefficient use of limited resources.<sup>32</sup> For example, we found a case where EPA and USDA both provided funds to design wastewater projects that would serve the same communities in Hidalgo County, Texas. EPA provided funds to design the project as an expansion of service from an existing utility, while USDA provided funds to design the project as a new wastewater treatment facility. The community elected to build the new facility, thus eliminating the need for the EPA design work and resulting in a waste of those federal funds. In another example, HUD provided a utility in Hudspeth County, Texas, over \$860,000 in grant funds from 2004 to 2006 to extend water distribution and waste collection lines for residents of a colonia. However, as of September 2009, the distribution lines remain unused because the utility does not have enough water to serve the additional households. The utility intended to use funding from USDA to construct a new well, but the funding obligated by the agency was not enough to cover project costs.<sup>33</sup> The utility has been unable to obtain the additional assistance from federal agencies, and no additional water supply has been acquired in the 3 years after the HUD funds were provided to construct the distribution lines, resulting in a \$900,000 investment of federal funds in distribution lines that are not usable. We received conflicting reports about this project from USDA and utility officials. Specifically, a USDA official in the state office told us that the agency could provide loan funds only to complete the project and that the agency advised the utility against applying for assistance because the utility could not handle any additional loan burden. In contrast, USDA headquarters officials told us that the agency orally offered a loan to the utility to complete the project, but the utility did not submit an application to officially request the assistance, and a representative of the utility told us that the utility did meet with USDA officials and it was discouraged from submitting an application.

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<sup>32</sup>EPA's U.S.-Mexico Border Water Infrastructure Program recently adopted a process to coordinate with federal agencies that are providing funding for a project the program may fund.

<sup>33</sup>The funding obligated by the agency was initially intended to cover full project costs, but because of cost increases caused by various reasons the funding was insufficient.

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In contrast, federal and tribal officials told us that the collaborative relationship between EPA's tribal programs and IHS is a model that has been beneficial for tribal nations. The agencies have created a process to coordinate project selection and development in which EPA uses data on the needs of tribal nations from IHS to select projects. According to EPA data, IHS administers almost all jointly funded projects, and as a result applicants need to deal with only one federal point of contact.

Furthermore, we found examples of states in the border region that have made efforts to better coordinate funding for water and wastewater projects among federal, state, and local agencies and thereby make the application process easier, maximize the use of funds, and reduce complications during project development. The following are examples of coordination within the states:

- Texas has developed a coordination group for the state and federal agencies that provide funding to colonias, and for representatives from regulatory agencies. This group meets quarterly to discuss the status of ongoing projects in colonias and any impediments to their completion.
- California organizes "funding fairs," where several state and federal agencies come together in communities throughout the state to provide information on potential assistance that may be available.
- Arizona has developed a committee that consists of several state and federal agencies that conduct meetings throughout the state. According to state officials, these meetings provide communities the opportunity to discuss their needs with the officials and to determine which funding agency could best meet their needs.
- New Mexico, through executive orders, established an initiative to, among other things, increase collaboration among state agencies that fund water infrastructure.<sup>34</sup> As a result of the initiative, the state developed a single application process for entities seeking assistance with water and wastewater infrastructure to complete and submit to one state office through a Web-based portal that then disseminates the application to numerous other state and federal agencies for review. The state has also developed a single set of engineering requirements that state and some federal agencies agreed to accept. In addition, a workgroup of state and federal officials meets biweekly to review the applications and identify the

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<sup>34</sup>State of New Mexico, Office of the Governor, Executive Orders 2005-031 and 2007-050.

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combination of programs that would best meet the needs of individual applicants. Federal participation includes the New Mexico USDA Rural Development office, and state participation includes the New Mexico state agencies administering the HUD CDBG Program and the Clean Water and Drinking Water State Revolving Fund Programs.

Our past work on issues that cut across multiple agencies, such as rural water infrastructure, has shown that agencies face numerous challenges in their efforts to improve coordination.<sup>35</sup> For example, we have found that agency missions may not be mutually reinforcing or procedures and processes may be incompatible. However, we found that without a coordinated approach, programs can waste scarce funds and limit the overall effectiveness of the federal effort. In order to overcome significant differences in agency missions, cultures, and established ways of doing business, collaborating agencies must have a clear and compelling rationale to work together. The compelling rationale for agencies to collaborate can be imposed externally through legislation or other directives or can come from the agencies' own perceptions of the benefits they can obtain from working together. In either case, among the key practices that can help agencies enhance and sustain their collaborative efforts, include the following:

- defining and articulating a common outcome;
- agreeing on roles and responsibilities;
- establishing compatible policies, procedures, and other means to operate across agency boundaries;
- identifying and addressing needs by leveraging resources; and
- developing mechanisms to monitor, evaluate, and report on results.<sup>36</sup>

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<sup>35</sup>GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005), and *Managing for Results: Barriers to Interagency Coordination*, [GAO/GGD-00-106](#) (Washington, D.C.: Mar. 29, 2000).

<sup>36</sup>[GAO-06-15](#).

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## Agencies Have Not Always Ensured Compliance with Statutory Requirements in Implementing Programs for the Border Region

We found that USDA, HUD, and the Corps have not always ensured compliance with statutory requirements and regulations concerning the eligibility of applicants or projects or the prioritization of funds from programs targeted at the border region.

## Agencies Are Not Ensuring Compliance with Statutory Eligibility Requirements

HUD and the Corps are not ensuring compliance with eligibility requirements set by Congress when they distribute federal assistance. Specifically, we found the following:

- *HUD*. Under the Cranston-Gonzalez Act, the states of Arizona, California, New Mexico, and Texas shall each make available, “for activities designed to meet the needs of the residents of colonias in the State relating to water, sewage, and housing,” a specified percentage of CDBG funds they receive.<sup>37</sup> Under the act, the term “colonia” means any identifiable community that, among other things, is determined to be a colonia on the basis of objective criteria, including lack of potable water supply; lack of adequate sewage systems; and lack of decent, safe, and sanitary housing. In short, the act requires grants to be made for projects meeting the needs of colonias residents, which must be related to water, sewage, and housing.

We found that HUD has not developed guidance for determining what constitutes a colonia, has not made such determinations, and has not reviewed states’ determinations. Lacking guidance and direction from HUD, states have applied the requirement differently. For example, in California and New Mexico most colonias are designated as communities with substandard housing and a lack of either potable water or adequate sewage systems. In Arizona, designations use any one of the three statutory criteria. In Texas, designations are made for areas with substandard housing that lack either adequate water or wastewater treatment, and which are unincorporated, criteria not found in the act. HUD officials said that the CDBG Program relies on states to make decisions that make the most sense for the particular state, and officials

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<sup>37</sup>Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 916 (Nov. 28, 1990). The act originally required the set-aside only for fiscal years 1991 to 1994. Appropriations acts made the set-aside mandatory in fiscal year 1996 and then permanently required beginning in fiscal year 1997. Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134, 110 Stat 1321-272 (Apr. 26, 1996); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 Pub. L. 104-204, 110 Stat 2874, 2887 (Sept. 26, 1996).

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do not agree that varying interpretations by states suggest that the lack of guidance is problematic. However, officials stated that in the future, HUD will issue guidance that reportedly will include information on the documentation needed by states to support that a colonia meets statutory requirements.

HUD officials also told us that the agency interprets the statute as authorizing colonia funds to be spent on any currently eligible CDBG activity. However, the statute expressly limits the Colonia Set-aside to activities relating to water, sewage, and housing. As the agency has not limited state use of the funds, grants have been obligated for numerous activities. Arizona obligated only about 32 percent of the Colonia Set-aside funds for water, wastewater, or housing activities, and the remainder was used for other activities not consistent with the limitations in the act, including about \$560,000 for a neighborhood job center and almost \$180,000 for a garbage collection vehicle. HUD officials did not say whether the guidance the agency intends to issue in the future will discuss eligible activities.

- *Corps.* The Water Resources Development Act of 1992, as amended, authorizes the Corps to provide assistance for wastewater treatment facilities, water systems, and related structures for colonias in the United States along the United States-Mexico border.<sup>38</sup> Although the act does not define colonias, the legislative history for the program shows that colonias were considered to be rural settlements in the border region that lack adequate basic water and sewer facilities, specifically stating that most of these communities rely on outhouses or substandard septic tanks. We found that the Corps has not defined “colonia” for the purposes of the act, or developed any guidance for use of these funds. The Corps recognizes that unlike other Section 219 projects, which have specifically identified project locations (e.g., congressionally directed), the colonias Section 219 project is essentially a programmatic authority. Nonetheless, Corps officials stated the program was too small for the agency to develop guidance. While the Corps states that it independently verifies that the assistance it provides under this provision is going to colonias, Corps officials acknowledged that the agency does not have criteria for identifying eligible colonias, and it is unclear by what basis the Corps has verified the communities are colonias as meant in

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<sup>38</sup>Pub.L. No. 102-580, § 219 (Oct. 31, 1992); Water Resources Development Act of 2007, Pub. L. No. 110-114 § 5006(a) (Nov. 8, 2007).

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the authorizing statute.<sup>39</sup> As a result, the Corps cannot ensure that its assistance is going to colonias.

Appendix II provides additional information on the establishment of federal funding to assist colonias and GAO's analysis of legal requirements related to eligibility and project priorities.

Agencies Do Not Ensure Funds Intended for Use in the Border Region Are Provided to Those with the Greatest Need

USDA and HUD do not ensure that funds intended for use in the border region comply with statutory requirements for establishing project priorities in the border region. Further, the Corps has not established any guidance to ensure funds are targeted to those projects with the greatest need. Specifically, we found the following:

- *USDA*. The Consolidated Farm and Rural Development Act, as amended, directs USDA to provide financial assistance for water supply and waste facilities and services to communities whose residents face significant health risks, because the community's residents do not have access to such facilities. The act states that USDA must give preference to entities "that propose to provide water supply or waste disposal services to the residents of those rural subdivisions commonly referred to as colonias that are characterized by substandard housing, inadequate roads and drainage, and a lack of adequate water or waste facilities."<sup>40</sup> Thus, the provision requires USDA to give preference to water and waste projects in colonias where other infrastructure and housing are also inadequate.

We found that USDA has no process in place to ensure that entities "propos[ing] to provide water supply or waste disposal services" to these colonias are given preference. Instead, USDA told us it views an entity proposing to assist any community the relevant state or local government has designated as a colonia as qualifying for the preference.<sup>41</sup> USDA does not attempt to independently verify whether these entities meet the threshold eligibility requirement (proposing to serve communities in which most residents lack access to adequate water or waste facilities), or that the

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<sup>39</sup>Moreover, the Corps' field personnel initially told us that they rely on a state agency to determine which projects should receive assistance. While the Corps asserted it has flexibility in determining whether a community is an eligible colonia, it cannot reasonably make a determination without any criteria at all.

<sup>40</sup>Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624 § 2327, Nov. 28, 1990.

<sup>41</sup>In addition, USDA said it awards funds to them on a first-come, first-served basis and there is no need for ranking and comparing the projects to establish funding priorities.

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areas to be served meet the statutory definition of “colonia.” The agency also has failed to provide any guidance elaborating on the meaning of an “adequate” water or waste disposal system, or of “colonia.” Despite the lack of guidance, USDA told us that it considers as inadequate a system with any violation of the Safe Drinking Water Act or Clean Water Act, as appropriate.

As a result of these issues, we believe that USDA has no assurance that entities proposing to serve eligible colonias with the required characteristics have received the required statutory preference.<sup>42</sup> For example, we found that USDA gave an entity proposing a water utility improvement project in New Mexico the colonia preference and obligated \$700,000 from the colonia funds. The improvements to the water utility included a new well, tank, and related infrastructure. Rather than reserving the colonia preference to projects that serve areas living without these basic necessities, the agency provided the same preference to this project, which was intended to serve new development, according to the USDA project summary. By awarding the same preference to projects that benefit communities with existing infrastructure, the agency is failing to give preference to those entities proposing to “provide water supply or waste disposal services” to colonias that have the statutory characteristics and live without basic necessities.

- *HUD*. The Cranston-Gonzalez Act requires Colonia Set-aside grants to be made in accordance with a distribution plan that gives priority to colonias having the greatest need for such assistance. To do so would require a state to at a minimum identify colonias, discuss the relative needs of colonias, and select projects reflecting the colonias with greatest needs.<sup>43</sup> However, we found that HUD has failed to ensure that state distribution plans reflect that priority is given to the colonias with the greatest need. Instead, HUD officials told us that it is up to the states to determine the needs-based grant priorities and the agency does not believe it has the authority to direct states on how to distribute the funds as long as it is in accordance with a distribution plan. We believe that without direction and oversight from

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<sup>42</sup>The legislative history of the colonias provision describes them as the poorest areas with no infrastructure. Floor statements describe colonias as areas completely lacking water supply and wastewater systems, rather than having such systems that are inadequate in the sense of needing upgrade; for example, colonias are described as without running water, or as having wells inadequately separated from waste disposal.

<sup>43</sup>For example, a state might identify the universe of colonias and then prioritize them based on need, or identify key characteristics of that category of colonias having the greatest need and then identify and prioritize colonias with those characteristics.

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HUD, states may not be meeting the statutory requirements. For example, one state does not distinguish between Colonia Set-aside funds and regular CDBG funds and does not actually “set aside” the colonias funds to distribute based on priority of needs. Instead, the state splits the available funds among the regional Councils of Governments, which then determine how to distribute the funds to local projects. The distribution process can vary by region—e.g., one region rotates eligibility among the eligible entities in the county, providing each eligible entity an equal distribution of the funds. The state later adds up the total of the projects that it considers qualifying as colonias to justify the set-aside amount. While HUD officials may believe states are identifying the colonias with the greatest needs, we do not agree that this complies with the act, which requires the agency to take the necessary steps to ensure that the states are doing so. In a July 2008 report, the HUD Inspector General also recommended that HUD address this issue, and HUD agreed to issue guidance to assist states to “more clearly articulate the priorities” in developing their method of distribution.<sup>44</sup> As of November 2009, the agency had not yet issued this guidance, but officials told us the agency still intends to issue the guidance in the near future.

- *The Corps.* We have previously reported that for a federal program to be effective it should, among other things, be well targeted to those with the greatest needs and the least capacity to meet those needs.<sup>45</sup> However, we found that the Corps lacks any guidance specific to the colonias funds and does not have a process to ensure that assistance authorized for colonias is targeted at those with greatest need. Instead we found that the Corps selects projects on an ad hoc basis.<sup>46</sup> According to a Corps official, when funds become available, the Corps notifies state officials and asks these officials to notify communities of the available assistance. Then communities are required to send a letter to the Corps requesting assistance. When the Corps receives a letter for assistance, it consults with state officials to discuss the project and primarily bases its decision to

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<sup>44</sup>In July 2008, the HUD Inspector General issued a report auditing the Colonias Set-aside program, including HUD actions to ensure compliance and detailed review of uses of funds by states. Our findings are consistent with those reported by the Inspector General. HUD, *HUD's Community Development Block Grant Set-Aside for Colonias Was Not Used for Its Intended Purposes*, 2008-FW-0001 (Washington, D.C.: July 29, 2008).

<sup>45</sup>GAO, *21st Century Challenges, Reexamining the Base of the Federal Government*, [GAO-05-325SP](#) (Washington, D.C.: Feb.1, 2005).

<sup>46</sup>Corps officials first told us that they considered the colonias projects as congressional directives, but later acknowledged that no specific projects had been identified by Congress.

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assist the community on the entity's readiness to enter into the required cost-sharing agreement. By using this approach, the Corps is failing to ensure limited funds are provided to those with the greatest need.

Appendix II provides additional information on the establishment of federal funding to assist colonias and GAO's analysis of legal requirements related to eligibility and project priorities.

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## Conclusions

Meeting the drinking water and wastewater needs of the border region is a difficult undertaking. Among other things, the remoteness of many communities can make it difficult to identify residents in need of water and wastewater services. In addition, the program differences resulting from separate mandates and project eligibility requirements for the various federal programs add to the complexity of coordinating funding needed to complete projects in the region. The ultimate success of providing these basic services to residents of the border region hinges on several factors, of which a well-coordinated implementation approach based on a comprehensive assessment of the region's existing water and wastewater needs is key. Federal agencies have obligated more than \$1.4 billion in recent years to fund numerous projects that provided water and wastewater service to residents in the border region. However, despite the extensive efforts that have gone into these projects and the agencies' recognition over a decade ago of the benefits from coordinated policies and procedures, the lack of (1) an overall needs assessment for the region, (2) comprehensive coordinated policies and procedures, and (3) compliance with all statutory and program requirements is undermining the effectiveness of the federal efforts. We believe that the impact of these deficiencies has limited the availability of federal assistance, created an administrative burden for applicants, delayed project completion, and failed to ensure that federal funds are used effectively and directed according to the criteria established in federal statutes. In a time of constrained resources, continuing to provide an uncoordinated federal response is not the most effective use of federal resources to meet the drinking water and wastewater needs in the border region.

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## Matters for Congressional Consideration

In order to better address the needs of the region, Congress may wish to consider establishing an interagency mechanism or process, such as a task force on water and wastewater infrastructure in the border region that includes the federal agencies that administer programs in the region. Congress may wish to direct any task force, in partnership with state and local officials, to

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- leverage collective resources to identify needs within the border region—including the identification of the water infrastructure status within colonias, and the extent to which the lack of institutional capacity has impeded communities within the border region from seeking assistance;
  - in light of these needs, establish a framework for compatible and coordinated policies and procedures across relevant agencies, such as a coordinated process for the selection of projects, and standardized applications and environmental review and engineering requirements, to the extent possible;
  - evaluate the degree to which there are gaps in the programs and what resources or authority would be needed to address them; and
  - provide periodic status reports regarding the progress made in developing this strategic and coordinated approach.

Congress may also wish to consider reemphasizing the priorities for use of Colonia Set-aside funds by specifically requiring HUD to make these funds available only for grants related to the three existing statutory purposes, and by directing HUD to report annually to Congress on the purposes for which such funds were used and the steps it is taking to ensure that the funds are being used for the required purposes.

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## Recommendations for Executive Action

We are making the following three recommendations for executive action.

To ensure that funding established to meet the needs of colonias is used in ways that are consistent with statutory and regulatory requirements, we recommend that

- The Secretary of Agriculture direct Rural Development to revise its process of determining eligibility to ensure that the agency only provides Section 306C colonia funds for projects that benefit colonias, as defined by federal statute, and to revise its priority process to better target limited funds to those projects meeting the statutory preference criteria.
- The Secretary of Housing and Urban Development ensure that state agencies provide Colonia Set-aside funds only for projects that benefit colonias, as defined by federal statute, and to promptly establish guidance to ensure states follow a method of distribution that results in the prioritization of Colonia Set-aside funds to those colonias with the greatest need. Further, the Secretary should monitor the states' uses of all Colonia Set-aside funds as a distinct component of CDBG monitoring.

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- If the Corps continues to assist communities with water and wastewater related activities through the colonia program, the Secretary of Defense direct the Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers to develop eligibility criteria and a standard process to review and select activities for funding that targets the assistance to those with the greatest need. The process should comply with all applicable regulations and include verification of eligibility.

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## Agency Comments and Our Evaluation

We provided the U.S. Department of Agriculture (USDA), the Environmental Protection Agency (EPA), the Department of Housing and Urban Development (HUD), and the U.S. Army Corps of Engineers (Corps) with a draft of this report for their review and comment. In addition, we sent relevant portions of the report to the Department of Commerce's Economic Development Administration, the Department of Health and Human Service's Indian Health Service, and the Department of the Interior's Bureau of Reclamation for their review and technical comment.

In its written comments, USDA provided several observations on the report's findings but disagreed with the report's recommendation. Specifically, USDA agreed that our report accurately reflects the assistance that has been provided in the border region and stated that more work and additional funding are needed to continue the progress being made. USDA also agreed with our report's finding that there is no comprehensive federal assessment of the region's water and wastewater systems. However, USDA questioned whether a federal level comprehensive assessment is needed to effectively address water system inadequacies or whether a locally based federal presence that leverages local knowledge of local conditions might not be more effective. While we agree that local knowledge of local needs is an important element that can help inform decision makers, we continue to believe that without a comprehensive assessment of the region, federal agencies providing assistance to the region lack necessary information on the magnitude of the problem and on how best to prioritize and target limited resources. Additionally, USDA stated that it believes the examples presented in our report where coordination would have improved the project outcome are rare instances and that the examples of state level coordination in our report demonstrate that effective coordination is occurring amongst the programs. While we agree that some level of coordination is occurring, we disagree that the examples cited in our report are rare instances. During our review, we contacted numerous officials in the border region—including local, state, and tribal officials; engineers and other consultants; nonprofit representatives; water and wastewater utility representatives; and residents—and these officials consistently provided us with numerous

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examples of the type of concerns they have experienced due to ineffective coordination among the federal agencies. Moreover, while state efforts to coordinate funding for water and wastewater projects are beneficial; we found that these efforts are not consistent throughout the region and can not replace the need for coordination of policies and procedures among federal agencies. We therefore continue to believe that without a coordinated approach federal programs continue to place additional burden on applicants, waste scarce funds, and limit the overall effectiveness of the federal effort. Finally, in its comments, USDA disagreed with our recommendation that it should revise its process of determining eligibility to ensure that Section 306C colonia funds are only provided to those projects that benefit colonias, as defined by federal statute, and to revise its priority process to better target limited funds to those projects meeting the statutory preference criteria. Specifically, USDA stated that its current process complies with statutory requirements and that preference is given to entities that propose to provide water or waste disposal services to colonias. In explaining its position, USDA stated that the characteristics of a colonia to be given preference per the statute do not constitute a definition. We disagree with USDA's interpretation of the statute and continue to believe that USDA must determine that an area proposed for assistance has these characteristics before the agency provides preference to an entity for funding decisions. Our recommendation would allow entities that propose to provide water and wastewater disposal services to colonias that match the statutory characteristics to receive preference for limited federal funds and ensure that the agency is providing federal funds to those with the greatest need. USDA's letter can be found in appendix IX.

In its written comments on the draft report, HUD provided several clarifications about its disagreement with our interpretation of the statutory requirements for the CDBG program and also commented on our recommendations, although it did not state whether it agreed or disagreed with them. For example, with regard to our recommendations that state agencies only provide colonia set-aside funds for projects that benefit colonias, as defined by federal statute, and that HUD establish guidance to ensure that states follow a method of distribution that results in the prioritization of Colonia Set-aside funds to those colonias with the greatest need, HUD stated that it will issue guidance to the states that will address the proper administration of the Colonia Set-aside funds. HUD stated that this guidance is currently being finalized, but did not provide a timetable for its release or specify how the guidance would address the issues GAO identified. With regard to our recommendation that HUD should take additional actions to monitor the states' use of Colonia Set-aside funds, HUD stated that it already monitors distinct components of the state

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CDBG program and as part of this process also monitors a portion of the Colonia Set-aside funds. HUD stated that it has recently developed a new monitoring exhibit specifically to assist in the review of Colonia Set-aside funds. Because HUD has not finalized its guidance we believe that our recommendation remains valid. The Department of Housing and Urban Development's letter can be found in appendix X.

In its comments on the draft report, DOD stated that it believes that the Corps' current method of determining which communities receive assistance under its Section 219 program is appropriate; however, DOD partially concurred with our recommendation, and stated that should Congress direct additional funds to the colonias Section 219 program, the Corps will develop written guidance on eligibility criteria and the process for selection of activities. While we appreciate DOD's agreement with the need for a formal process and written guidance, we continue to be concerned about the Corps ad hoc selection process for these colonias water and wastewater projects. This is because such a process fails to ensure that limited funds are provided to those colonias with the greatest need—which GAO has found to be a key factor in federal program effectiveness. The Department of Defense's letter can be found in appendix XI.

The U.S. Environmental Protection Agency, the Department of Commerce's Economic Development Administration, the Department of Health and Human Service's Indian Health Service, and the Department of the Interior's Bureau of Reclamation provided technical comments, which we incorporated throughout the report as appropriate.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this report. At that time, we will then provide copies of this report to the appropriate congressional committees and other interested parties. We will also send copies to the Secretaries of Agriculture, Housing and Urban Development, and Defense, and the Administrator of the Environmental Protection Agency. In addition, this report will be available at no charge on GAO's Web site at <http://www.gao.gov>. If you or your staff have questions about this report, please contact me at (202) 512-3841 or [mittala@gao.gov](mailto:mittala@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix XII.

Sincerely Yours,



Anu K. Mittal  
Director, Natural Resources and Environment

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# Appendix I: Scope and Methodology

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## Determining How Much Federal Funding Was Provided to the Border Region

To determine how much federal funding was obligated to rural households and communities in the border region for water and wastewater projects, we identified seven agencies with programs that may have provided assistance to these areas. We then collected and analyzed obligation and project location data from each of the seven agencies—the U.S. Department of Agriculture (USDA), the Environmental Protection Agency (EPA), the Department of Housing and Urban Development (HUD), the U.S. Army Corps of Engineers (the Corps), the Department of Health and Human Service’s Indian Health Service (IHS), the Department of Commerce’s Economic Development Administration (EDA), and the Department of the Interior’s Bureau of Reclamation (Reclamation)—from fiscal years 2000 through 2008. We collected data from each agency for the 97 counties that are within 150 miles of the border region. We geographically located the data using MapInfo. We assessed the reliability of the data we used by reviewing information about the underlying database systems, reviewing the data to identify outliers and inconsistent or missing values, and discussing the data with knowledgeable agency officials. We present more details about the data, their limitations, and how we addressed these limitations below. On the basis of these efforts, we determined that the data were sufficiently reliable for the purposes of this report.

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## Environmental Protection Agency

The Border Environmental Cooperation Commission and the North American Development Bank provided grant and loan obligation data for all projects that received funds from EPA’s U.S.-Mexico Border Water Infrastructure Program. The reports are based on data tracked by the agency’s financial systems and program management data. As U.S.-Mexico Border Water Infrastructure Program grant funds are obligated to entities in both the United States and Mexico, we filtered the data to include only projects that were located in the United States. Additionally, we included only water and wastewater projects in our review.

EPA provided grant obligation data for congressionally designated projects from the Special Appropriation Act Projects (SAAP) database. We filtered these data to include only projects whose primary purpose was designated as drinking water or wastewater. The SAAP database does not include county-level data, so we identified the county for each project based on location data EPA was able to provide. After the county was identified for each project, we filtered the data to include only projects in counties within 150 miles of the border.

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EPA provided grant obligation data on tribal programs from spreadsheets used to track projects. EPA provided data for those tribal nations it determined to be within 150 miles of the border region.

State agencies from Arizona, California, New Mexico, and Texas provided loan obligation data for the Drinking Water State Revolving Fund and Clean Water State Revolving Fund programs.

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U.S. Department of  
Agriculture

USDA provided grant and loan obligation data for all water and wastewater utility programs from its Community Program Application Processing (CPAP) system. For some projects that were within the areas of our site visits, we obtained additional information, such as copies of the original applications and project summary data. USDA provided grant obligation data for the single-family programs from the Rural Development Data Warehouse. A number of records in the dataset did not include physical addresses. However, all records did include at least county and state data.

We did not include one of USDA's Section 504 single-family programs in our review. The Section 504 program provides funds to individual households for numerous activities, including water and wastewater projects—such as repairs to septic systems or water wells—but the funds can also be used for other household repairs not related to water or wastewater. USDA does not centrally track how the funds were utilized, and we could not determine what portion of the funds was relevant for our review.

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Department of Housing  
and Urban Development

HUD provided grant obligation data from its Integrated Disbursement and Information System (IDIS). HUD was not able to extract data by county, but rather provided data for all water and wastewater activities in counties eligible to receive Community Development Block Grant funding in Texas, New Mexico, Arizona, and California. We then reviewed the project location data and determined the county in which each project was located, and we imported the data into a geographic information system and extracted only those activities conducted in the 97 counties included in our review.

Within the IDIS, HUD tracks project activities through matrix codes. We obtained data for matrix code 03J—water and sewer improvements, and matrix code 14A—rehab, single-family residential units. HUD also provides funds for planning purposes—matrix code 20—some of which may have

been used for water and wastewater activities. However, we found the data for matrix code 20 often did not include enough information to determine whether the project included a water or wastewater component. We did not include these projects in our review.

Furthermore, although we requested data from fiscal years 2000 through 2008, HUD could not ensure that all funds for fiscal year 2008 were included in our data. At the time HUD extracted the data, the agency had not verified that all states had finished inputting data into the database. However, officials stated that they believe most, if not all, of the data were included.

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**Indian Health Service**

IHS provided grant obligation data from its Project Data System. We obtained data for all water and wastewater projects in Arizona, California, New Mexico, and Texas. We then reviewed and filtered the data by tribal name and included only the funds obligated to tribal nations located within 150 miles of the U.S.-Mexico border. We determined the tribal nations located in the border region using data provided by EPA, IHS, and the Bureau of Indian Affairs. IHS also provided needs data from the Sanitation Deficiency System.

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**Economic Development Administration**

EDA provided grant obligation data from its Operations Planning and Control System. Agency officials identified and provided data for those projects with a water or wastewater component. We reviewed the data and excluded several projects from our review as they were not directly related to the provision or improvement of water or wastewater systems, and thus outside the scope of our review.

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**U.S. Army Corps of Engineers**

The Corps provided data from its P2 Project Management System. Corps officials identified and provided data for drinking water and wastewater projects that received assistance in the border region. We did not collect data for regulatory permits or projects conducted on military installations in the region.

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**Bureau of Reclamation**

Reclamation identified and provided data for water and wastewater projects. We determined that several projects were not directly related to the provision or improvement of drinking water or sewage treatment systems, and were thus outside the scope of our review. Specifically, we

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did not include obligations for activities related to storm water runoff, water recycling, or desalination studies.

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**Rural Areas Identified  
Using a System Based on  
Population and  
Commuting Patterns with  
Census Tracts**

The federal government has not established a formal or consistent definition of what constitutes a rural area. The term “rural” is defined differently by Congress and each federal agency according to agency guidelines and individual project or program authorizations. Depending on the agency, rural areas may be defined as ranging from fewer than 2,500 to fewer than 50,000 persons. Some agencies and programs that fund water and wastewater projects in the border region do not focus on serving rural or urban areas but instead provide funds to eligible applicants from any location.

We determined that, for purposes of this report, the best system for differentiating rural from urban areas would be based on ZIP codes rather than on counties. Because the number of ZIP codes in the nation is so much larger than the number of counties, classification systems based on ZIP code measures offer a more precise means of identifying rural areas than county-based systems. However, because of data limitations and the multiple ZIP codes often served by projects, we could not reliably track funding to the ZIP code level; we chose to use the dominant Rural Urban Commuting Area (RUCA) system, developed by the Washington State Office of Community and Rural Health in 2001. The system relies on both population and commuting patterns of census tracts to classify each county as rural or urban based on the counties’ dominant commuting patterns.<sup>1</sup> The dominant RUCA system is based on the 10-tiered subcounty RUCA system developed by ERS in conjunction with the Department of Health and Human Services in the late 1990s. The rural-urban continuum system does not explicitly define “rural.” However, the rural-urban continuum codes can be combined to create rural and urban designations for counties.

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<sup>1</sup>Washington State Department of Health, “Guidelines for Using Rural-Urban Classification Systems for Public Health Assessment,” 2001.

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## Effectiveness of Federal Efforts

To assess the effectiveness of federal efforts, we based our review on key evaluation criteria identified in previously published GAO reports.<sup>2</sup> Our review did not assess the benefits of individual projects; rather, we determined the effectiveness of the collective federal effort of the programs. Specifically, to determine the effectiveness of the federal effort, we identified whether the agencies with programs targeted to the border region had (1) comprehensively assessed the needs they seek to address; (2) developed cooperative policies, procedures, and requirements; and (3) adhered to all statutory and regulatory requirements, including those that ensure assistance is targeted to those with the greatest need.

In order to determine whether federal agencies have comprehensively identified the drinking water and wastewater needs of the region, we reviewed existing assessments and interviewed federal officials regarding their assessment efforts. To determine agencies' efforts to enhance and sustain collaboration with other agencies, we reviewed coordination documentation, such as memorandums of agreement; reviewed program requirements; and interviewed federal officials. To determine if agencies' programs comply with statutory requirements, we reviewed applicable authorizing statutes, appropriations acts, regulations, and agency policies and guidance. We also reviewed program policies and procedures to solicit and accept applications, and interviewed federal officials regarding their practices. In addition, we reviewed key legislative history for key statutes and any relevant case law. Furthermore, we asked agency attorneys and program officials for explanations where we found noncompliant practices.

We conducted site visits to colonias, tribal nations, and other communities in Texas, New Mexico, and Arizona. During the site visits, we observed water and wastewater conditions in the border region and federally funded projects. We also interviewed local, state, tribal, and federal officials; engineering consultants; nonprofit representatives; urban planners; water and wastewater utility representatives; and residents regarding their experiences applying for or receiving assistance from federal agencies. In selecting our site visit locations, we considered a number of factors, including (1) geographic location, (2) proximity to

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<sup>2</sup>GAO, *21st Century Challenges, Reexamining the Base of the Federal Government*, [GAO-05-325SP](#) (Washington, D.C.: Feb.1, 2005), GAO, *Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C.: June 1, 1996); and *Practices That Can Help Enhance and Sustain Collaboration Among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct.21, 2006).

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identified colonias, (3) proximity to tribal nations, (4) location of federally funded water and wastewater projects, (4) location of federal agency field offices, and (5) recommendations from state and local officials of areas that either lacked basic services or have received the services as a result of receiving federal funds. While the results of the site visits cannot be generalized to all sites or projects, the results do reflect a range of geographic diversity and water and wastewater needs. In addition to the site visits, we conducted telephone interviews with local, state, tribal, and federal officials, and nonprofit representatives in Texas, New Mexico, Arizona, and California not located within the areas where we conducted site visits to obtain additional information on water and wastewater conditions in their communities and their experiences with federal assistance.

Furthermore, we attended two interagency coordination meetings in which various federal and state agency representatives discussed the status of ongoing drinking water and wastewater projects in the border region and the challenges they face completing them.

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# Appendix II: Additional Information on Eligibility and Prioritization Requirements for USDA, HUD, and Corps Programs Targeted to the Border Region

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This appendix provides additional information on GAO’s analysis of legal requirements related to eligibility and project priorities for targeted USDA, HUD, and Corps programs. This information includes relevant history of the program’s original authorizing legislation, and additional details and citations.

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## Legislative History of the USDA, HUD, and Corps Colonias Programs

The federal government’s role in assisting colonias was primarily established when the 101st and 102nd Congresses established dedicated funding—in programs administered by USDA, HUD, and the Corps—to address the needs of colonias.<sup>1</sup> These agencies were directed to establish programs dedicated to assisting these communities. The legislative histories of the program authorizations emphasize that the key concern over colonias was public health impacts stemming from the lack of clean drinking water and the inadequate disposal of sewage; for example, one particular concern was that the inadequate systems in use, combined with flooding conditions, would result in human waste in the roads.<sup>2</sup> Statements throughout the Congresses consistently depict colonias as areas that lack safe drinking water and sewage disposal facilities, and the

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<sup>1</sup>Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 916 (Nov. 28, 1990); Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, § 2327 (Nov. 28, 1990) (amending the Consolidated Farm and Rural Development Act); Water Resources Development Act (WRDA) of 1992, Pub. L. No. 102-580, § 219 (Oct. 31, 1992).

<sup>2</sup>See, e.g., S. Rep. 102-283 (May 15, 1992) at 10 (“Colonias are rural, often remote communities along the U.S.-Mexico border. It is estimated that some 350,000 people live in colonias and most generally lack sewage treatment facilities and safe drinking water . . . . [P]rovision of adequate water and sewer facilities to colonias . . . . is especially important in light of the risk of cholera spreading to these communities from Central America.”). The history also includes several recitations of statistics of increased incidence of hepatitis and other diseases in the colonias.

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**Appendix II: Additional Information on  
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colonias were sometimes likened to areas with “third world” conditions.<sup>3</sup> Substandard housing is also mentioned,<sup>4</sup> but the lack of water and sewer are the predominant characteristics. For example, the sponsor of the HUD-administered Colonia Set-aside explained, “These citizens do not have sewer, they do not have sewage systems, they do not have running water, and I think that is a travesty in America, that American citizens do not have the basic necessities of life.”<sup>5</sup> Another representative, when introducing amendments to the USDA program legislation, stated “[t]here are hundreds of individuals that live in the colonias that will suffer from a lack of adequate water and sanitation facilities. This situation is truly dangerous in terms of sanitation and health hazards from the lack of proper water and sewer systems.”<sup>6</sup> Finally, when the provision authorizing the Corps’ colonias assistance was added to the Water Resource and Development Act bill, a representative explained: “Colonias are rural settlements along the United States-Mexico border which lack or have inadequate basic water and sewer facilities. All of the colonias to receive funding under this amendment are located in the United States . . . . Most of the inhabitants of these communities use outhouses or substandard

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<sup>3</sup>See, e.g., 136 Cong. Rec. H6122 (daily ed. July 31, 1990) (Statement of Mr. Ortiz speaking on the amendment adding the provision for the CDBG set-aside) (“For those of our colleagues who are still unfamiliar with the plight of the impoverished men, women and children living in colonias, let me make a comparison with which you can identify. The colonias are America’s version of the Third World. These people have never known clean drinking water, simply because they have no access to an adequate water supply. Additionally, they lack any sort of wastewater disposal system, exposing them to serious health risks. These people are the most vulnerable citizens in our society, making it incumbent on us to make life as safe for them as possible.”); 134 Cong. Rec. H10161 (daily ed. Oct. 13, 1988) (Statement of Mr. Bartlett on a predecessor bill) (“Mr. Speaker, today literally tens of thousands of individuals along the borders live in circumstances of the worst and most unsupportable kinds of living conditions, unsupportable and comparable in many areas with conditions found in Third World countries. The reason for that is they live in these areas called colonias, which are small plots of land side by side, sold and subdivided as plots of land, but without the basic urban infrastructure put into those colonias. They are sold without sewer and water and other items of infrastructure.”).

<sup>4</sup>See, e.g., H. Rep. No. 100-1101 (1988) at 3 (concerning a predecessor bill of the Community Development Block Grant set-aside) (“According to estimates by Congressional Research Service, over 180,000 persons live in the subdivision areas, known as ‘colonias.’ Most of these subdivisions are located in unincorporated areas of poor, essential rural counties of these states. The inhabitants of these areas lack such basic facilities, as waste and sewage systems, as well as safe and sanitary housing.”).

<sup>5</sup>136 Cong. Rec. H6122 (daily ed. July 31, 1990) (Statement of Mr. Coleman).

<sup>6</sup>138 Cong. Rec. S17233 (Oct 7, 1992) (Statement of Mr. Ford regarding HR 6138, which became Pub. L. 102-554 and allowed an exception to one of the eligibility requirements for recognized colonias).

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septic tanks for their waste disposal. A set-aside for these areas is particularly crucial from a health standpoint. Because of substandard water resources, contagious diseases pose a particular threat to people living in colonias.”<sup>7</sup>

USDA

The Consolidated Farm and Rural Development Act, as amended, directs USDA to provide financial assistance for water supply and waste facilities and services to communities whose residents face significant health risks, because the communities’ residents do not have access to such facilities.<sup>8</sup> The act states that USDA must give preference to entities “that propose to provide water supply or waste disposal services to the residents of those rural subdivisions commonly referred to as colonias that are characterized by substandard housing, inadequate roads and drainage, and a lack of adequate water or waste facilities.”<sup>9</sup> Thus, the provision requires USDA to give preference to water and waste projects in colonias where other infrastructure and housing are also inadequate.

We found that USDA has no process in place to ensure that entities “propos[ing] to provide water supply or waste disposal services” to these colonias are given preference. USDA officials explained that the agency considers the funding for colonias to be a set-aside, and therefore only

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<sup>7</sup>138 Cong. Rec. H9239 (Sept. 23, 1992).

<sup>8</sup>Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, § 2327, Nov. 28, 1990 (emphasis added) (amending the Consolidated Farm and Rural Development Act, § 306c), codified at 7 U.S.C. § 1926c (2009). The act also requires funds to be available only if they will be used primarily to provide services to residents of a county meeting certain per capita income and unemployment criteria; as an exception, this requirement may be satisfied if a rural area was recognized as a colonia as of Oct. 1, 1989. 7 U.S.C. § 1926c(2) (2009).

<sup>9</sup>In addition to these statutory eligibility requirements, appropriations acts have limited funds for the 306C colonias program to those colonias along the United States/Mexico border, which USDA has interpreted to mean within 150 miles of the border. See, e.g., Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000, Pub. L. No. 106-78 (Oct. 22, 1999), 113 Stat. 1150-51; Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-97 (Nov. 10, 2005), 119 Stat. 2136.

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considers entities proposing to assist colonias for this funding.<sup>10</sup> However, in implementing the program, USDA told us it views any entity proposing to assist an area that the relevant state or local government has designated as a colonia as qualifying for the preference,<sup>11</sup> and awards funds to them on a first-come, first-served basis.<sup>12</sup> USDA does not attempt to independently verify whether these entities meet the threshold eligibility requirement (that they propose to provide service to areas where most residents lack access to adequate water or waste facilities), or that the areas to be served meet the statutory definition of “colonia.” While agency regulations repeat the statutory requirement for threshold eligibility<sup>13</sup> and

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<sup>10</sup>Recent appropriations acts have provided either an upper limit or a fixed amount, within the Rural Community Advancement Program funds, to be used in colonias for water and wastewater improvements. See, e.g., Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-97 (Nov. 10, 2005), 119 Stat. 2136 (stating that “not to exceed \$25,000,000 shall be for water and waste disposal systems to benefit the Colonias . . . including grants pursuant to section 306C”), Consolidated Appropriations Act, 2008 Pub. L. No. 110-161 (Dec. 26, 2007) (providing \$65 million for colonias, Alaskan villages, and Native Americans, to be allocated consistent with the historical allocation). USDA has a similar set-aside program for Native American tribes.

<sup>11</sup>While an amended provision of the statute refers to areas “recognized as” colonias, this provision serves only as an exception to threshold income and unemployment criteria, and does not apply to the preference provision. See Agricultural Credit Improvement Act of 1992, Pub. L. No. 102-554 § 24 (October 28, 1992); 7 U.S.C. §§ 1926c(a)(2), (c)(1) (2009).

<sup>12</sup>USDA regulations provide for a numerical score to be assigned to each application. 7 C.F.R. § 1777.13(d) (2009). The scores include points for a “colonia” but do not reflect whether a colonia meets the statutory preference criteria. 7 C.F.R. 1777.13(d)(4) (2009). USDA officials initially confirmed the regulation does not include priority points for the specified group in the statute (explaining its position that “the preference group listed is equal to the eligible applicants”). USDA officials later stated that the regulation sets up a scoring system whereby statutory preference characteristics are identified and points are awarded based on the preference. However, the regulation merely awards points to colonias, and does not provide for identification of the individual characteristics. 7 C.F.R. § 1777.13(d)(4) (2009). In addition, USDA generally does not use the scores, but awards funds on a rolling basis. While the regulations provide that scores are to be used when requests exceed available funds, 7 C.F.R. § 1777.13(c), this condition does not occur, since instead of having periodic deadlines at which points USDA could determine whether requested amounts exceed those available, USDA awards funds until they are gone. Thus, even if USDA changes its practice and develops scores to identify projects qualifying for the preference as a subset of colonias, its practice of awarding funds on a rolling basis would fail to give effect to the scores.

<sup>13</sup>7 C.F.R. § 1777.12 (b) (2009).

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define “colonia”,<sup>14</sup> the agency has failed to provide any guidance elaborating on the meaning of an “adequate” water or waste disposal system, or how to identify those colonias with the statutory preference characteristics. Despite the lack of guidance, USDA told us that it considers as inadequate a system with any violation of the Safe Drinking Water Act or Clean Water Act, as appropriate. Furthermore, the agency simply accepts local designations of colonias to satisfy the regulation and the statute.

As a result, USDA has no assurance that entities proposing to serve colonias with the required characteristics have received the required preference.<sup>15</sup> By allowing colonia funds to be used for projects that benefit communities with existing infrastructure, the agency is failing to give preference to those colonias that have the statutory characteristics and live without basic necessities.

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<sup>14</sup>7 C.F.R. § 1777.4 (2009) (The regulatory definition differs from the statute’s articulation of colonias in the context of preference. Compare the regulation’s “Any identifiable community designated in writing by the State or county in which it is located; determined to be a colonia on the basis of objective criteria including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing, inadequate roads and drainage; and existed and was generally recognized as a colonia before October 1, 1989” to the statute’s preference to entities proposing to serve residents of rural subdivisions “commonly referred to as colonias, that are characterized by substandard housing, inadequate roads and drainage, and a lack of adequate water or waste facilities.”). USDA acknowledged the two are not identical, but stated its position that they are substantially similar.

<sup>15</sup>The legislative history of the colonias provision describes them as the poorest areas with no infrastructure. A committee report on a predecessor bill describes colonias as follows: “It is not uncommon for colonia residents to rely on water from irrigation ditches or from shallow wells drilled on the lot where their home is located, in some cases dangerously close to outhouses or pit latrines. In other areas, colonia residents are forced to transport and store water from many miles away, often in used, 55-gallon chemical drums. The water from such sources is often dangerously contaminated. In colonias without adequate wastewater systems, heavy rains can cause raw sewage overflows or seepage to the soil’s surface. Residents are sometimes forced to wade through the overflow to get to school or work.” H.R. Rep. 101-415 (1990). Floor statements describe colonias as areas completely lacking water supply and wastewater systems, rather than having such systems that are inadequate in the sense of needing upgrade; for example, colonias are described as without running water, or as having wells inadequately separated from waste disposal. See, e.g., 136 Cong. Rec. H796-97 (Statement of Mr. De La Garza, “This title seeks to provide assistance to all identified colonias which have substandard housing, inadequate roads and drainage, and a lack of adequate water or wastewater facilities;” statement of Mr. Coleman, “These residents live in homes without running water or sewage collection facilities.”).

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HUD

Under section 916 of the Cranston-Gonzalez National Affordable Housing Act, the states of Arizona, California, New Mexico, and Texas shall each make available, *“for activities designed to meet the needs of the residents of colonias in the State relating to water, sewage, and housing,”* a specified percentage of CDBG funds they receive.<sup>16</sup> Under the act, the term “colonia” means any identifiable community that, among other things, is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing.<sup>17</sup> The act requires grants to be made in accordance with a distribution plan that gives priority to colonias having the greatest need for such assistance. In short, the act requires grants to be made for projects meeting the needs of colonias residents, which must be related to water, sewage, and housing, and which give priority to the colonias with greatest need.

With respect to the meaning of “colonia,” HUD told us the agency has not developed guidance regarding interpretation of the definition or determination of eligible entities.<sup>18</sup> HUD’s sole written interpretation of the

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<sup>16</sup>Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 916 (Nov. 28, 1990), as amended by Housing and Community Development Act of 1992, Pub. L. No. 102-550, § 810 (Oct. 28, 1992); 42 U.S.C. § 5306 Note (2009) the act originally required the set-aside only for fiscal years 1991 to 1994 (emphasis added). Appropriations acts made the set-aside mandatory in fiscal year 1996 and then permanently required beginning in fiscal year 1997. Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134, 110 Stat 1321-272 (April 26, 1996); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 Pub. L. 104-204, 110 Stat 2874, 2887 (Sept. 26, 1996).

<sup>17</sup>Statements throughout the legislative history of the act consistently depict colonias as lacking in drinking water and sewer facilities. Conversely, there are no statements in the history suggesting a colonia could be a community merely featuring substandard housing, but having adequate water and wastewater. See, e.g., 134 Cong. Rec. H10161 (daily ed. Oct. 13, 1988) (Statement of Mr. Bartlett) (“Mr. Speaker, today literally tens of thousands of individuals along the borders live in circumstances of the worst and most unsupportable kinds of living conditions, unsupportable and comparable in many areas with conditions found in Third World countries. The reason for that is they live in these areas called colonias, which are small plots of land side by side, sold and subdivided as plots of land, but without the basic urban infrastructure put into those colonias. They are sold without sewer and water and other items of infrastructure.”).

<sup>18</sup>E.g., HUD OGC-CD Div., interview. HUD’s Web site describes colonias: “Colonias are rural communities located within 150 miles of the US-Mexican Border. They often lack the basic necessities most Americans take for granted—running water, electricity, and paved roads... Without safe, sanitary and affordable housing, drinkable water, sewer and drainage systems, colonias struggle with issues often associated with ‘Third World’ countries.” [Http://www.hud.gov/groups/farmwkercolonia.cfm](http://www.hud.gov/groups/farmwkercolonia.cfm) (last visited Oct. 22, 2009).

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definition, issued in a 2003 notice,<sup>19</sup> asserts that all three criteria must be met; nonetheless, HUD officials also stated that the agency allows states to interpret the definition as requiring only one of the three criteria to be met.<sup>20</sup> Finally, HUD officials told us that as they give grants to the states for distribution to colonias, the states are ultimately responsible for determining eligible entities; to do so, the states rely on formal “designation” of colonias. Without guidance from HUD, states have applied the requirement differently. For example, in California and New Mexico, most colonias are designated as communities with substandard housing and a lack of either potable water or adequate sewage systems. In Arizona designations use any one of the three statutory criteria. In Texas, designations are made for areas with substandard housing that lack either adequate water or wastewater treatment, and which are unincorporated, a criterion not found in the act. While interpreting colonias as those designated by states may have been the correct interpretation of the Cranston-Gonzalez Act until 1992, in that year Congress repealed a provision requiring that a colonia must be designated as such by the state to be eligible for funds.<sup>21</sup> A committee report explains that the designation process was changed so that a colonia can be qualified for this program without regard to a state or county action.<sup>22</sup> We believe that HUD’s reliance on the states in carrying out section 916 fails to give effect to this change in law. HUD officials said that the CDBG Program relies on states to make decisions that make the most sense for the particular state, and officials do not agree that varying interpretations by states suggest that the lack of guidance is problematic. However, officials stated that HUD will be issuing guidance, which they say will include information on the documentation states need to support that a colonia meets statutory requirements.

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<sup>19</sup>HUD Office of Community Planning & Development, Notice CPD-03-10: Use of HUD Resources to Assist Colonias (Oct. 8, 2003). The notice expired in 2004. However, in its response to the IG report, HUD stated it would reissue the notice. HUD Office of Inspector General, Audit Report 2008-FW-0001, p. 26 (July 29, 2008).

<sup>20</sup>E.g., HUD OGC-CD Div., interview.

<sup>21</sup>Housing and Community Development Act of 1992, Pub. L. No. 102-550, § 810 (Oct. 28, 1992).

<sup>22</sup>According to a relevant committee report, the state designation requirement had frustrated the purposes of the colonias grant program because some states and counties had designated few, if any, recipients. H.R. Rep. No. 102-760 at 146, 152-53. (1992) (accompanying H.R. 5334).

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HUD officials also told us that it is up to the states to determine the needs-based grant priorities. However, under the act, states must distribute the colonia funds according to distribution plans that give priority to the colonias in the greatest need of assistance.<sup>23</sup> To do so would require a state to at a minimum identify colonias, discuss the relative needs of colonias, and select projects reflecting the colonias with the greatest needs.<sup>24</sup> However, we found that HUD has failed to ensure that state distribution plans reflect priority given to the colonias with greatest need. Instead, HUD officials do not believe the agency has the authority to direct states on how to distribute the funds as long as it is in accordance with a distribution plan. Without direction and oversight from HUD, states may not be meeting the statutory requirements. While HUD officials may believe states are identifying the colonias with the greatest needs, section 916 requires the agency to not just rely on mere belief, but take such steps as required to ensure it is doing so.

HUD officials also told us that the agency interprets the statute as authorizing colonia funds to be spent on any currently eligible CDBG activity. However, the statute expressly limits the set-aside to activities relating to water, sewage, and housing.<sup>25</sup> Lacking guidance and direction from HUD, states have applied the requirement differently.

Finally, HUD officials said they are required to give states “maximum feasible deference” in interpreting statutory requirements related to the Colonia Set-aside. HUD regulations establish the maximum feasible deference policy; however, the regulations provide for deference only to states’ interpretations of CDBG requirements under the Housing and Community Development Act of 1974 and certain HUD regulations.<sup>26</sup> The

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<sup>23</sup>Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 916(c) (November 28, 1990); 42 U.S.C. § 5306 Note (2009).

<sup>24</sup>For example, a state might identify the universe of colonias and then prioritize them based on need, or identify key characteristics of that category of colonias having the greatest need, and then identify and prioritize colonias with those characteristics.

<sup>25</sup>Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 916(a) (Nov. 28, 1990); 42 U.S.C. § 5306 Note (2009). HUD officials stated that the agency considers the separate provision itemizing activities, section (b), to conflict with and supersede the limitation of section (a) for funds to be set-aside for activities relating to water, sewage, and housing. However, the provisions are harmonious, as the limitation in section (a) acts to modify the activities listed in (b). Thus, the statute indicates that set-aside funds are to be used for those activities in (b) that relate to water, sewage, and housing.

<sup>26</sup>24 C.F.R. §§ 570.480(c), 570.3 (2009).

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Colonia Set-aside requirement, however, was established by section 916 of the Cranston-Gonzalez National Affordable Housing Act,<sup>27</sup> which stands alone and is not an amendment to the Housing and Community Development Act of 1974. Thus, HUD’s maximum feasible deference regulation by its terms does not encompass state interpretations related to the set-aside.<sup>28</sup> Even if it were applicable, the regulation limits deference to state interpretations that “are not plainly inconsistent with the Act and the Secretary’s obligation to enforce compliance with the intent of the Congress as declared in the Act.”<sup>29</sup> As outlined above, HUD has not taken steps to ensure state interpretations related to funding of set-aside projects, such as which activities are eligible, are in accordance with law.

**The Corps**

The Water Resources Development Act of 1992 authorized the Corps to provide assistance to colonias.<sup>30</sup> The colonias authorization is unique among WRDA section 219 projects, which are otherwise specific earmarked projects; that is, Congress has not directed the funds to particular colonias projects.<sup>31</sup> The authorization limits grants to “colonias in the United States along the United States-Mexico border,” but does not define colonias. While limited, the legislative history shows that colonias were understood to be “rural settlements along the United States-Mexico border which lack or have inadequate basic water and sewer facilities,” and that “[m]ost of the Inhabitants of these communities use outhouses or

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<sup>27</sup>Pub. L. No. 101-625, § 916 (Nov. 28, 1990).

<sup>28</sup>In the 2003 notice, HUD, by contrasting the colonia set-aside requirement with the general policy of maximum feasible deference, recognized the set-aside as an exception to that policy (“Although States are afforded maximum feasible deference in choosing which projects and grantees to fund with CDBG dollars, the Cranston-Gonzalez National Affordable Housing Act (NAHA) established the Colonia Set-Aside, which mandated that Texas, New Mexico, California and Arizona spend up to 10% of their FY 1991 CDBG grant on projects that benefit colonias.”). HUD Office of Community Planning & Development, Notice CPD-03-10: Use of HUD Resources to Assist Colonias (Oct. 8, 2003).

<sup>29</sup>24 C.F.R. §§ 570.480(c), 570.3 (2009).

<sup>30</sup>Pub.L. No. 102-580 § 219 (Oct. 31, 1991); Pub.L. No. 110-114 § 5006(a)(3) (Nov. 8, 2007), 121 Stat 1192 (authorizing appropriation of \$35 million “for providing construction assistance” to the colonias project).

<sup>31</sup>The Corps considers the colonias funds to be a congressional add. In the absence of specific projects identified by Congress, the Corps has exclusively awarded assistance to projects recommended by a Texas state agency. The Corps implements the assistance, as with all other section 219 projects, using cost-share agreements, a form of cooperative agreement.

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substandard septic tanks for their waste disposal.”<sup>32</sup> In addition, Congress has elsewhere defined colonias as “based on objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing.”<sup>33</sup> Nonetheless, the Corps has never developed a definition, an interpretation, or guidance for staff to use in determining whether an assistance recipient is a colonia eligible for the program. Although the Corps recognizes that the colonias section 219 project is essentially a programmatic authority, nonetheless, Corps officials stated the program was too small for the agency to develop guidance. The Corps claimed to independently verify in letter reports, which are brief project reports that the Corps prepares before providing assistance to an entity, that the assistance it provides under this provision is going to colonias; however, the Corps acknowledged that it does not have criteria for identifying eligible colonias. Thus, while these letter reports describe the areas, it is unclear by what basis the Corps has verified they are colonias as meant in the authorizing statute.<sup>34</sup> As a result, the Corps cannot ensure that its assistance is going to colonias.

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<sup>32</sup>138 Cong. Rec. H9239 (daily ed. Sept. 23, 1992) (statement of Mr. Laughlin, offering colonias amendment on predecessor bill to WRDA 1992). See also *id.* at H9240 (statement of Mr. Coleman describing “these communities, in which people live without running water or safe sewage disposal . . . In the colonias, residents live with the ever present threat of cholera—a Third World disease that menaces only where people live, in the most unsanitary conditions. This disease threatens because many of the people must draw their water from wells that are dangerously close to substandard septic systems and, therefore, contaminated with human waste.”).

<sup>33</sup>Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 916(e)(1) (November 28, 1990), 42 USC § 5306 note (2009).

<sup>34</sup>Moreover, the Corps’ field personnel initially told us that they rely on a state agency to determine which projects should receive assistance. While the Corps asserted it has flexibility in determining whether a community is an eligible colonia, it cannot reasonably make a determination without any criteria at all.

# Appendix III: Total Obligations and Rural-Urban Categories for Water and Wastewater Projects in the Border Region, Fiscal Years 2000-2008, by County

State	County	Rural-urban continuum code	USDA Water and Environmental Program grants	USDA Water and Environmental Program loans	EPA U.S.-Mexico Border Water Infrastructure Program and CWTAP	Congressionally directed in EPA STAG account	HUD CDBG	Corps	EDA	Reclamation	Total
AZ	Cochise	Urban (4)	\$5,983,185	\$6,924,160	\$15,246,570	0	\$707,968	0	0	0	\$28,861,883
AZ	Gila	Urban (4)	540,190	0	0	748,400	480,335	0	0	0	1,768,925
AZ	Graham	Rural (6)	2,208,290	1,195,000	0	6,768,447	173,340	0	0	0	\$10,345,077
AZ	Greenlee	Rural (7)	555,150	\$75,000	0	0	943,034	0	0	0	1,573,184
AZ	La Paz	Rural (6)	8,665,890	5,880,110	0	0	0	0	1,400,000	0	15,946,000
AZ	Maricopa	Urban (1)	1,969,649	742,000	0	3,265,300	3,889,833	0	0	0	9,866,782
AZ	Mohave	Urban (4)	2,165,900	2,964,000	0	1,433,600	1,855,922	0	0	0	8,419,422
AZ	Pima	Urban (2)	8,536,740	4,280,000	68,691	2,494,700	3,379,667	0	0	0	18,759,798
AZ	Pinal	Urban (1)	12,736,276	6,632,605	0	0	1,305,186	0	0	0	20,674,067
AZ	Santa Cruz	Urban (4)	280,720	881,000	61,451,177	2,993,554	365,813	0	0	0	65,972,264
AZ	Yavapai	Urban (3)	5,895,470	5,649,479	0	0	733,750	0	0	0	12,278,699
AZ	Yuma	Urban (3)	7,285,064	7,018,340	7,359,501	0	953,514	0	0	0	22,616,419
CA	Imperial	Urban (3)	11,774,134	11,540,700	2,592,244	0	5,170,391	0	1,446,690	0	32,524,159
CA	Los Angeles	Urban (1)	0	446,500	0	0	Not Collected	0	0	0	446,500
CA	Orange	Urban (1)	0	0	0	0	Not Collected	0	0	0	0
CA	Riverside	Urban (1)	8,150,985	15,219,000	37,786	2,083,149	1,928,333	0	8,931,000	0	36,350,253
CA	San Bernardino	Urban (1)	4,772,902	4,148,334	0	12,342,667	1,928,333	0	7,125,000	989,997	31,307,233
CA	San Diego	Urban (1)	7,716,441	1,700,000	0	12,735,333	425,354	0	0	2,406,000	24,983,128
NM	Catron	Rural (9)	5,377,046	49,600	0	0	1,031,634	0	0	0	6,458,280
NM	Chaves	Urban (5)	0	0	0	0	1,798,773	0	0	0	1,798,773
NM	Dona Ana	Urban (3)	31,428,830	6,882,900	21,859,544	2,890,100	1,747,693	130,494	850,000	0	65,789,561
NM	Eddy	Urban (5)	6,566,721	1,437,700	0	0	2,564,698	0	0	0	10,569,119
NM	Grant	Rural (7)	15,939,245	815,000	0	2,373,600	1,474,258	0	0	0	20,602,103
NM	Hidalgo	Rural (7)	4,866,148	104,000	725,700	96,200	1,206,225	0	0	0	6,998,273
NM	Lea	Urban (5)	0	0	0	1,425,350	5,844,378	2,420,180	1,450,000	0	11,139,908
NM	Lincoln	Rural (7)	1,931,747	1,142,236	0	2,321,100	3,955,304	0	0	0	9,350,387
NM	Luna	Rural (6)	3,392,153	0	264,133	0	0	920,284	1,250,000	0	5,826,570

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State	County	Rural-urban continuum code	USDA Water and Environmental Program grants	USDA Water and Environmental Program loans	EPA U.S.- Mexico Border Water Infrastructure Program and CWTAP	Congressionally directed in EPA STAG account	HUD CDBG	Corps	EDA	Reclamation	Total
NM	Otero	Urban (4)	13,170,826	1,213,919	0	867,300	529,540	0	0	0	15,781,585
NM	Sierra	Rural (6)	2,931,000	1,624,500	0	433,600	257,005	0	0	0	5,246,105
NM	Socorro	Rural (6)	843,976	786,000	0	0	2,136,110	0	0	0	3,766,086
TX	Aransas	Urban (2)	0	0	0	0	2,586,745	0	0	0	2,586,745
TX	Atascosa	Urban (1)	1,306,000	3,016,100	0	0	3,985,421	0	0	0	8,307,521
TX	Bandera	Urban (1)	0	0	0	0	1,329,271	0	0	0	1,329,271
TX	Bee	Urban (4)	509,250	0	0	0	3,592,705	0	0	0	4,101,955
TX	Bexar	Urban (1)	0	0	0	3,613,700	3,568,927	0	1,800,000	0	8,982,627
TX	Brewster	Rural (7)	1,640,635	0	1,754,889	0	0	0	0	0	3,395,524
TX	Brooks	Rural (6)	0	3,052,000	0	0	3,907,467	0	794,421	0	7,753,888
TX	Cameron	Urban (2)	16,644,239	30,093,600	68,330,278	0	12,164,874	98,764	1,420,000	0	128,751,755
TX	Concho	Rural (8)	0	0	0	0	820,544	0	0	0	820,544
TX	Crane	Rural (6)	0	0	0	0	1,158,659	0	0	0	1,158,659
TX	Crockett	Rural (7)	0	0	0	0	461,390	0	0	0	461,390
TX	Culberson	Rural (9)	0	0	0	0	556,980	0	0	0	556,980
TX	Dimmit	Rural (6)	0	0	2,077,594	0	3,346,826	0	0	0	5,424,420
TX	Duval	Rural (7)	10,260,180	6,232,000	0	0	2,091,180	0	0	0	18,583,360
TX	Ector	Urban (3)	4,920,400	3,247,200	0	0	3,692,292	0	0	0	11,859,892
TX	Edwards	Rural (9)	0	0	0	0	1,190,607	0	0	0	1,190,607
TX	El Paso	Urban (2)	3,209,146	9,608,000	58,737,820	433,500	6,236,201	0	0	0	78,224,667
TX	Frio	Rural (6)	1,971,000	2,690,000	9,683,274	0	2,156,605	0	0	0	16,500,879
TX	Gillespie	Rural (7)	0	0	0	0	0	0	0	0	0
TX	Glasscock	Rural (8)	0	0	0	0	350,000	0	0	0	350,000
TX	Goliad	Urban (3)	1,597,600	200,000	0	0	1,500,000	0	0	0	3,297,600
TX	Hidalgo	Urban (2)	14,128,824	8,152,300	50,948,407	625,500	18,082,498	0	5,716,823	480,868	98,135,220
TX	Hudspeth	Rural (8)	346,140	1,012,000	0	0	2,552,032	0	0	0	3,910,172
TX	Irion	Urban (3)	0	0	0	0	529,989	0	0	0	529,989
TX	Jeff Davis	Rural (9)	1,704,957	100,000	0	0	1,963,440	0	0	0	3,768,397
TX	Jim Hogg	Rural (6)	7,394,514	4,031,000	0	0	190,237	0	0	0	11,615,751
TX	Jim Wells	Urban (4)	2,228,633	4,256,000	0	0	4,580,165	0	0	0	11,064,798
TX	Karnes	Rural (6)	1,439,000	3,361,000	0	0	7,870,180	0	0	0	12,670,180
TX	Kendall	Urban (1)	0	0	0	0	779,750	0	0	0	779,750
TX	Kenedy	Rural (9)	0	0	0	0	585,511	0	0	0	585,511

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Water and Wastewater Projects in the Border Region, Fiscal  
Years 2000-2008, by County**

State	County	Rural-urban continuum code	USDA Water and Environmental Program grants	USDA Water and Environmental Program loans	EPA U.S.- Mexico Border Water Infrastructure Program and CWTAP	Congressionally directed in EPA STAG account	HUD CDBG	Corps	EDA	Reclamation	Total
TX	Kerr	Urban (4)	3,162,772	0	0	0	2,761,853	0	0	0	5,924,625
TX	Kimble	Rural (7)	0	0	0	0	374,999	0	0	0	374,999
TX	Kinney	Rural (9)	0	0	0	0	633,433	0	0	0	633,433
TX	Kleberg	Urban (4)	628,000	1,969,000	0	0	976,100	0	0	0	3,573,100
TX	La Salle	Rural (6)	3,313,483	789,000	0	0	621,747	0	1,250,000	0	5,974,230
TX	Live Oak	Rural (6)	3,172,500	5,619,000	0	0	2,779,600	0	0	0	11,571,100
TX	Loving	Rural (9)	0	0	0	0	500,000	0	0	0	500,000
TX	Mason	Rural (9)	0	0	0	0	1,165,000	0	0	0	1,165,000
TX	Maverick	Urban (5)	7,147,448	0	63,115,228	867,300	3,797,817	0	0	0	74,927,793
TX	McMullen	Rural (8)	0	0	0	0	1,117,508	0	0	0	1,117,508
TX	Medina	Urban (1)	0	975,000	0	0	5,767,224	0	0	0	6,742,224
TX	Menard	Rural (8)	599,000	1,361,000	0	0	704,997	0	0	0	2,664,997
TX	Midland	Urban (3)	0	0	0	0	0	0	0	0	0
TX	Nueces	Urban (2)	1,702,500	1,926,000	0	0	2,982,075	\$97,073	1,500,000	0	8,207,648
TX	Pecos	Rural (7)	1,037,000	553,000	228,186	0	3,049,994	0	800,000	0	5,668,180
TX	Presidio	Rural (7)	5,477,587	3,704,000	120,713	0	1,264,784	0	0	0	10,567,084
TX	Reagan	Rural (6)	0	0	0	0	258,809	0	0	0	258,809
TX	Real	Rural (9)	0	0	0	0	1,136,131	0	0	0	1,136,131
TX	Reeves	Rural (7)	188,200	62,800	0	0	2,895,920	0	0	0	3,146,920
TX	Refugio	Rural (6)	1,864,500	1,936,000	0	0	3,715,568	0	0	0	\$7,516,068
TX	San Patricio	Urban (2)	4,248,135	961,000	0	0	7,392,019	0	1,643,823	0	14,244,977
TX	Schleicher	Rural (8)	0	0	0	0	799,157	0	0	0	799,157
TX	Starr	Urban (4)	12,468,723	12,065,500	17,830,708	0	7,704,128	0	1,500,000	0	51,569,059
TX	Sterling	Rural (8)	0	0	0	0	324,030	0	0	0	324,030
TX	Sutton	Rural (7)	0	0	0	0	349,998	0	0	0	349,998
TX	Terrell	Rural (9)	0	0	372,943	0	0	0	0	0	372,943
TX	Tom Green	Urban (3)	1,179,000	521,000	0	0	1,248,508	0	0	0	2,948,508
TX	Upton	Rural (8)	0	0	0	0	643,536	0	0	0	643,536
TX	Uvalde	Rural (7)	520,580	2,899,000	0	0	571,817	0	0	0	3,991,397
TX	Val Verde	Urban (5)	342,724	0	17,229,341	0	0	0	0	0	17,572,065
TX	Ward	Rural (6)	2,773	0	0	0	2,469,131	0	0	0	2,471,904
TX	Webb	Urban (3)	2,968,170	315,000	39,099,609	0	3,222,721	419,667	0	0	46,025,167
TX	Willacy	Rural (6)	1,548,775	361,000	4,770,396	0	4,043,270	0	0	0	10,723,441

**Appendix III: Total Obligations and Rural-Urban Categories for  
Water and Wastewater Projects in the Border Region, Fiscal  
Years 2000-2008, by County**

State	County	Rural-urban continuum code	USDA Water and Environmental Program grants	USDA Water and Environmental Program loans	EPA U.S.- Mexico Border Water Infrastructure Program and CWTAP	Congressionally directed in EPA STAG account	HUD CDBG	Corps	EDA	Reclamation	Total
TX	Wilson	Urban (1)	0	155,000	0	0	2,658,948	0	0	0	2,813,948
TX	Winkler	Rural (6)	0	0	0	0	1,202,179	0	0	0	1,202,179
TX	Zapata	Rural (6)	1,258,138	0	6,998,141	0	4,028,271	0	0	0	\$12,284,550
TX	Zavala	Rural (7)	2,286,762	4,342,000	0	0	3,723,436	0	0	0	10,352,198
<b>Total:</b>			<b>\$300,101,965</b>	<b>\$208,917,583</b>	<b>\$450,902,873</b>	<b>\$60,812,400</b>	<b>\$213983946</b>	<b>\$4,086,462</b>	<b>\$38,877,757</b>	<b>\$3,876,865</b>	<b>\$1,281,559,851</b>

Source: GAO analysis of USDA, EPA, HUD, Corps, EDA, and Reclamation data

Note: We did not collect data from the HUD entitlement counties of Los Angeles, California and Orange, California. These counties are considered by HUD as completely urban. HUD data also do not include the \$925,000 authorized through a congressional directive.

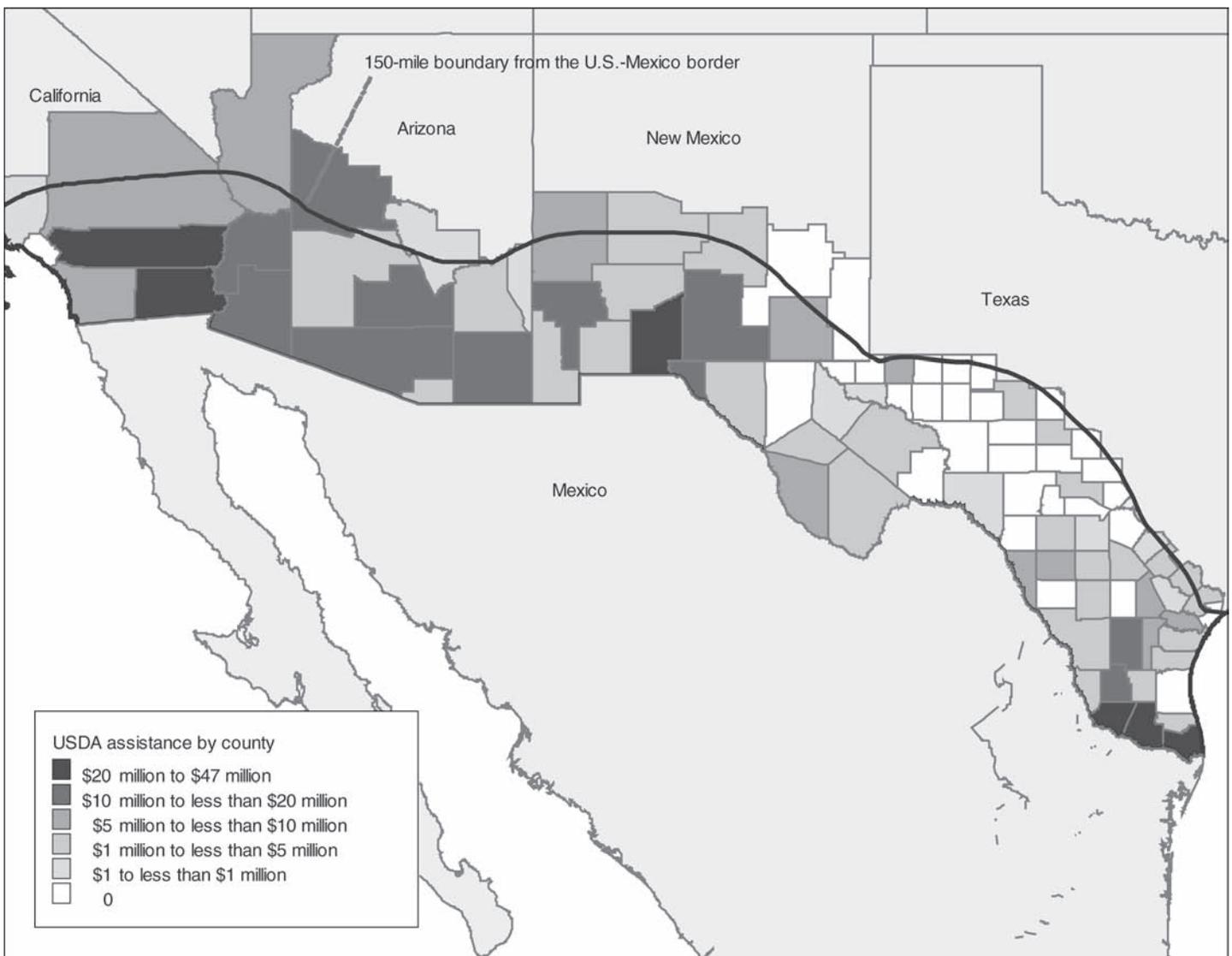
Rural-Urban continuum codes with category definitions:

- (1) County in metro area with 1 million population or more
- (2) County in metro area of 250,000 to 1 million population
- (3) County in metro area of fewer than 250,000 population
- (4) Nonmetro county with urban population of 20,000 or more, adjacent to a metro area
- (5) Nonmetro county with urban population of 20,000 or more, not adjacent to a metro area
- (6) Nonmetro county with urban population of 2,500-19,999, adjacent to metro area
- (7) Nonmetro county with urban population of 2,500-19,999, not adjacent to metro area
- (8) Nonmetro county completely rural or less than 2,500 urban population, adjacent to metro area
- (9) Nonmetro county completely rural or less than 2,500 urban population, not adjacent to metro area

# Appendix IV: Total USDA Obligations for Water and Wastewater Projects in the Border Region, Fiscal Years 2000-2008, by County

The following figure displays the ranges of USDA funding obligated to counties in the border region for water and wastewater projects.

**Figure 4: Federal Funding Obligated from USDA**

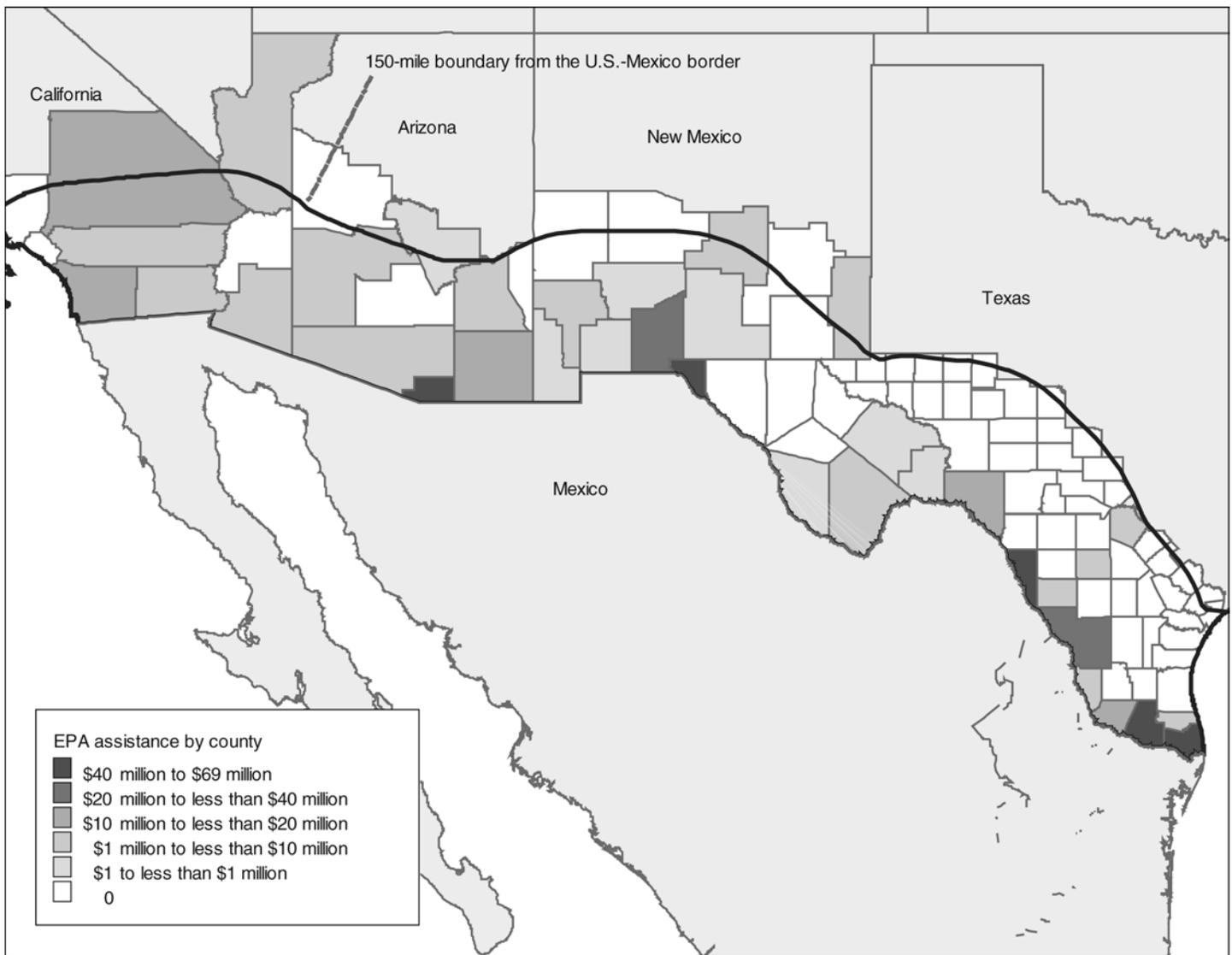


Sources: GAO analysis of USDA CPAP data; MapInfo (map).

# Appendix V: Total EPA Obligations and Rural-Urban Categories for Water and Wastewater Projects in the Border Region, Fiscal Years 2000-2008, by County

The following figure displays the ranges of EPA funding obligated to counties in the border region for water and wastewater projects.

**Figure 5: Federal Funding Obligated from EPA**



Sources: GAO analysis of EPA data; MapInfo (map).

Note: Figure does not include funding provided by the Clean Water and Drinking Water State Revolving Funds or EPA's tribal programs. As several tribal nations cross county boundaries, we could not include it in the analysis conducted for this figure. Tribal data are presented in detail in appendix VIII.

# Appendix VI: Total Obligations from Clean Water and Drinking Water State Revolving Funds and Rural-Urban Categories for Water and Wastewater Projects in the Border Region, Fiscal Years 2000-2008, by County

State	County	Rural-urban continuum code <sup>1</sup>	Clean Water State Revolving Fund Program	Drinking Water State Revolving Fund Program	Total
AZ	Cochise	Urban (4)	\$21,133,687	\$3,001,936	\$24,135,622
AZ	Gila	Urban (4)	0	5,120,000	5,120,000
AZ	Graham	Rural (6)	15,695,000	7,723,380	23,418,380
AZ	Greenlee	Rural (7)	145,331,926	2,200,000	147,531,926
AZ	La Paz	Rural (6)	247,938,323	0	247,938,323
AZ	Maricopa	Urban (1)	0	193,048,850	193,048,850
AZ	Mohave	Urban (4)	133,120,141	9,640,758	142,760,899
AZ	Pima	Urban (2)	27,344,476	98,091,704	125,436,180
AZ	Pinal	Urban (1)	375,000	203,195	578,195
AZ	Santa Cruz	Urban (4)	0	0	0
AZ	Yavapai	Urban (3)	32,852,760	11,131,869	43,984,629
AZ	Yuma	Urban (3)	53,339,310	46,714,395	100,053,705
CA	Imperial	Urban (3)	0	22,081,858	22,081,858
CA	Los Angeles	Urban (1)	818,592,156	0	818,592,156
CA	Orange	Urban (1)	236,224,971	22,905,222	259,130,193
CA	Riverside	Urban (1)	69,615,907	54,649,148	124,265,055
CA	San Bernardino	Urban (1)	107,938,488	8,200,261	116,138,749
CA	San Diego	Urban (1)	231,744,069	23,573,374	255,317,443
NM	Catron	Rural (9)	0	0	0
NM	Chaves	Urban (5)	0	0	0
NM	Dona Ana	Urban (3)	5,400,000	7,070,000	12,470,000
NM	Eddy	Urban (5)	0	875,304	875,304
NM	Grant	Rural (7)	2,000,000	808,000	2,808,000
NM	Hidalgo	Rural (7)	0	0	0
NM	Lea	Urban (5)	40,500,000	8,761,750	49,261,750
NM	Lincoln	Rural (7)	600,000	4,210,206	4,810,206
NM	Luna	Rural (6)	0	222,309	222,309
NM	Otero	Urban (4)	0	6,565,000	6,565,000
NM	Sierra	Rural (6)	0	1,841,089	1,841,089
NM	Socorro	Rural (6)	0	0	0
TX	Aransas	Urban (2)	0	0	0
TX	Atascosa	Urban (1)	0	0	0
TX	Bandera	Urban (1)	0	0	0
TX	Bee	Urban (4)	0	0	0
TX	Bexar	Urban (1)	246,440,000	0	246,440,000

**Appendix VI: Total Obligations from Clean Water and Drinking Water State Revolving Funds and Rural-Urban Categories for Water and Wastewater Projects in the Border Region, Fiscal Years 2000-2008, by County**

<b>State</b>	<b>County</b>	<b>Rural-urban continuum code<sup>1</sup></b>	<b>Clean Water State Revolving Fund Program</b>	<b>Drinking Water State Revolving Fund Program</b>	<b>Total</b>
TX	Brewster	Rural (7)	0	4,860,000	4,860,000
TX	Brooks	Rural (6)	0	0	0
TX	Cameron	Urban (2)	4,975,000	5,730,000	10,705,000
TX	Concho	Rural (8)	144,285	0	144,285
TX	Crane	Rural (6)	0	0	0
TX	Crockett	Rural (7)	0	0	0
TX	Culberson	Rural (9)	0	0	0
TX	Dimmit	Rural (6)	0	0	0
TX	Duval	Rural (7)	0	0	0
TX	Ector	Urban (3)	0	0	0
TX	Edwards	Rural (9)	0	0	0
TX	El Paso	Urban (2)	104,105,000	10,845,000	114,950,000
TX	Frio	Rural (6)	37,510,000	145,000	37,655,000
TX	Gillespie	Rural (7)	0	0	0
TX	Glasscock	Rural (8)	0	0	0
TX	Goliad	Urban (3)	0	0	0
TX	Hidalgo	Urban (2)	64,395,000	23,612,000	88,007,000
TX	Hudspeth	Rural (8)	0	0	0
TX	Irion	Urban (3)	0	0	0
TX	Jeff Davis	Rural (9)	0	0	0
TX	Jim Hogg	Rural (6)	0	0	0
TX	Jim Wells	Urban (4)	0	0	0
TX	Karnes	Rural (6)	0	3,600,000	3,600,000
TX	Kendall	Urban (1)	2,500,000	0	2,500,000
TX	Kenedy	Rural (9)	0	0	0
TX	Kerr	Urban (4)	0	0	0
TX	Kimble	Rural (7)	0	3,480,000	3,480,000
TX	Kinney	Rural (9)	0	0	0
TX	Kleberg	Urban (4)	0	0	0
TX	La Salle	Rural (6)	0	0	0
TX	Live Oak	Rural (6)	0	0	0
TX	Loving	Rural (9)	0	0	0
TX	Mason	Rural (9)	0	0	0
TX	Maverick	Urban (5)	17,340,000	38,110,000	55,450,000
TX	McMullen	Rural (8)	0	0	0
TX	Medina	Urban (1)	0	0	0
TX	Menard	Rural (8)	0	0	0

**Appendix VI: Total Obligations from Clean Water and Drinking Water State Revolving Funds and Rural-Urban Categories for Water and Wastewater Projects in the Border Region, Fiscal Years 2000-2008, by County**

State	County	Rural-urban continuum code <sup>1</sup>	Clean Water State Revolving Fund Program	Drinking Water State Revolving Fund Program	Total
TX	Midland	Urban (3)	0	0	0
TX	Nueces	Urban (2)	0	0	0
TX	Pecos	Rural (7)	0	0	0
TX	Presidio	Rural (7)	1,265,000	0	1,265,000
TX	Reagan	Rural (6)	0	0	0
TX	Real	Rural (9)	0	0	0
TX	Reeves	Rural (7)	6,870,000	8,375,000	15,245,000
TX	Refugio	Rural (6)	0	525,000	525,000
TX	San Patricio	Urban (2)	7,745,000	0	7,745,000
TX	Schleicher	Rural (8)	0	0	0
TX	Starr	Urban (4)	2,885,000	20,900,000	23,785,000
TX	Sterling	Rural (8)	0	0	0
TX	Sutton	Rural (7)	6,000,000	3,000,000	9,000,000
TX	Terrell	Rural (9)	0	0	0
TX	Tom Green	Urban (3)	0	0	0
TX	Upton	Rural (8)	0	0	0
TX	Uvalde	Rural (7)	4,000,000	0	4,000,000
TX	Val Verde	Urban (5)	2,190,000	18,008,000	20,198,000
TX	Ward	Rural (6)	0	0	0
TX	Webb	Urban (3)	0	0	0
TX	Willacy	Rural (6)	0	3,245,000	3,245,000
TX	Wilson	Urban (1)	0	0	0
TX	Winkler	Rural (6)	4,595,000	0	4,595,000
TX	Zapata	Rural (6)	6,415,000	14,826,000	21,241,000
TX	Zavala	Rural (7)	0	0	0
		<b>Total</b>	<b>\$2,709,120,499</b>	<b>\$697,900,607</b>	<b>\$3,407,021,106</b>

Source: GAO analysis of Arizona, California, New Mexico, and Texas Clean Water and Drinking Water State Revolving Fund program data.

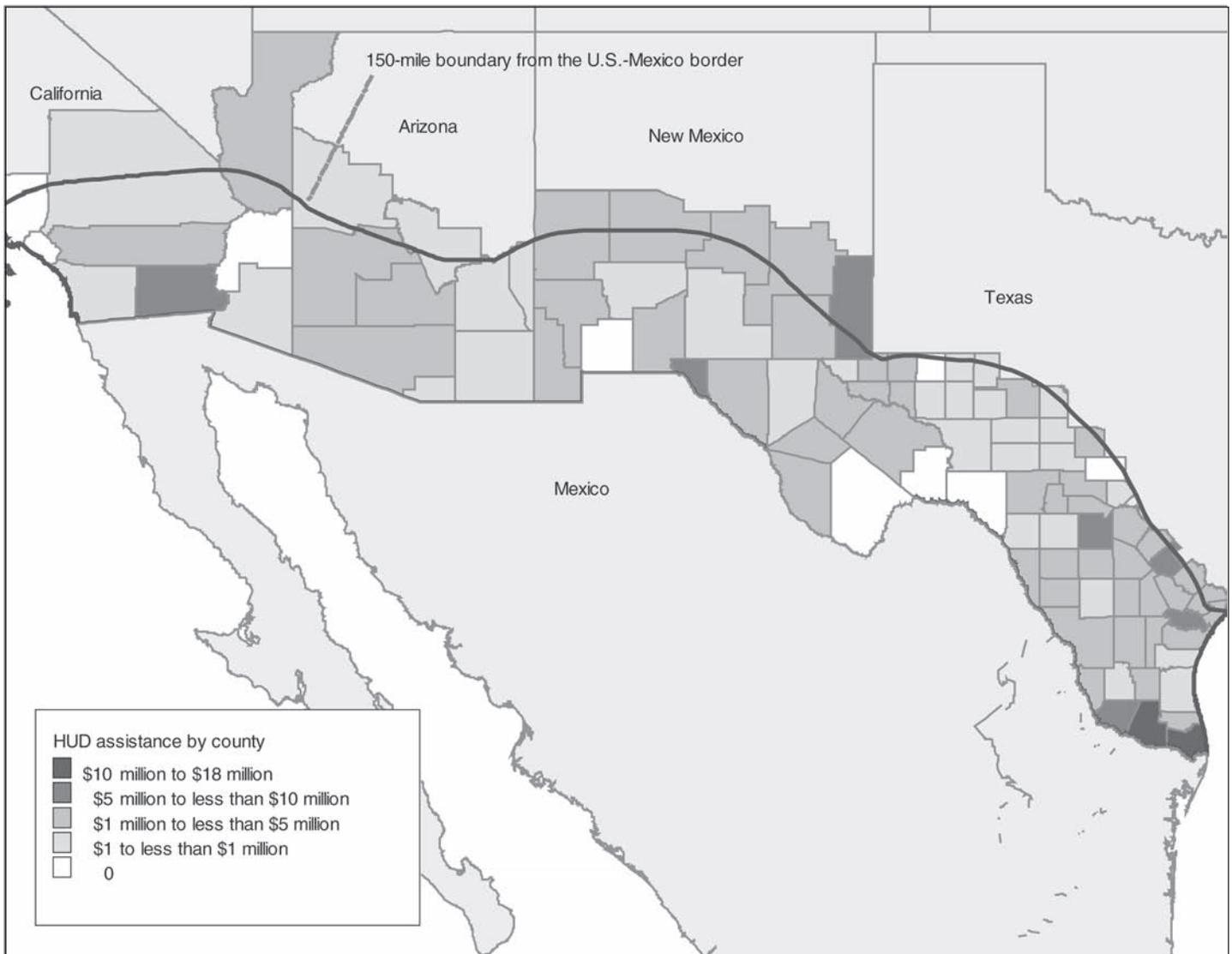
<sup>1</sup>Rural-urban continuum codes with category definitions:

- (1) County in metro area with 1 million population or more
- (2) County in metro area of 250,000 to 1 million population
- (3) County in metro area of fewer than 250,000 population
- (4) Nonmetro county with urban population of 20,000 or more, adjacent to a metro area
- (5) Nonmetro county with urban population of 20,000 or more, not adjacent to a metro area
- (6) Nonmetro county with urban population of 2,500-19,999, adjacent to metro area
- (7) Nonmetro county with urban population of 2,500-19,999, not adjacent to metro area
- (8) Nonmetro county completely rural or less than 2,500 urban population, adjacent to metro area
- (9) Nonmetro county completely rural or less than 2,500 urban population, not adjacent to metro area

# Appendix VII: Total HUD Obligations and Rural-Urban Categories for Water and Wastewater Projects in the Border Region, Fiscal Years 2000-2008, by County

The following figure displays the ranges of HUD funding obligated to counties in the border region for water and wastewater projects.

**Figure 6: Federal Funding Obligated from HUD**



Sources: GAO analysis of HUD IDIS data; MapInfo (map).

# Appendix VIII: Total Obligations for Water and Wastewater Projects in the Border Region, Fiscal Years 2000-2008, by Tribal Nation

Tribe	IHS Sanitation Facilities Construction Program	EPA Tribal Border Infrastructure	EPA Drinking Water Tribal Set-aside	EPA Clean Water Indian Set-aside	HUD Indian CDBG	USDA	Tribe total
Agua Caliente Band of Cahuilla Indians, California	\$1,030,600	0	0	0	0	0	\$1,030,600
Ak Chin Indian Community, Arizona	880,000	0	0	109,500	0	0	989,500
Augustine Band of Cahuilla Indians, California	0	0	0	0	0	0	0
Cabazon Band of Mission Indians, California	0	0	0	0	0	0	0
Cahuilla Band of Mission Indians, California	0	0	0	0	0	0	0
Campo Band of Diegueno Mission Indians, California	170,377	491,000	0	0	0	0	661,377
Capitan Grande Band of Diegueno Mission Indians of California:	0	0	0	0	0	0	0
Chemehuevi Indian Tribe, California	1,506,990		502,474	763,815		1,000,000	3,773,279
Cocopah Tribe of Arizona	220,000	170,300	1,058,000				1,448,300
Colorado River Indian Tribe, Arizona and California	689,880	0	505,100	4,746,800	0	0	5,941,780
Ewiiapaayp Band of Kumeyaay Indians, California	0	0	0	0	0	0	0
Fort McDowell Yavapai Nation, Arizona	760,000	0	0	0	0	0	760,000
Fort Mojave Indian Tribe of Arizona and California	434,100	0	0	686,900	0	0	921,000
Gila River Indian Community, Arizona	5,307,700	0	1,855,000	6,754,100	0	0	13,916,800
Iipay Nation of Santa Ysabel, California	1,346,781	1,227,900	0	0	0	0	2,574,681

**Appendix VIII: Total Obligations for Water  
and Wastewater Projects in the Border  
Region, Fiscal Years 2000-2008, by Tribal  
Nation**

<b>Tribe</b>	<b>IHS Sanitation Facilities Construction Program</b>	<b>EPA Tribal Border Infrastructure</b>	<b>EPA Drinking Water Tribal Set-aside</b>	<b>EPA Clean Water Indian Set-aside</b>	<b>HUD Indian CDBG</b>	<b>USDA</b>	<b>Tribe total</b>
Inaja Band of Diegueno Mission Indians, California	0	0	0	0	0	0	0
Jamul Indian Village of California	0	0	0	0	0	0	0
Kickapoo Traditional Tribe of Texas	233,000	0	40,000	0	0	0	273,000
La Jolla Band of Luiseno Mission Indians, California	160,000	2,407,999	559,000	0	0	0	3,126,999
La Posta Band of Diegueno Mission Indians, California	0	0	0	0	0	0	0
Los Coyotes Band of Cahuilla and Cupeno Indians, California	244,500	0	0	0	0	0	244,500
Manzanita Band of Diegueno Mission Indians, California	0	217,127	0	0	0	0	217,127
Mesa Grande Band of Diegueno Mission Indians, California	47,600	760,000	518,000	0	0	0	1,325,600
Mescalero Apache Tribe, New Mexico	2,334,000	0	1,100,000	823,500	0	0	4,257,500
Morongo Band of Mission Indians, California	0	0	0	0	0	0	0
Pala Band of Luiseno Mission Indians, California	0	3,022,440	0	0	0	0	3,022,440
Pascua Yaqui Tribe of Arizona	982,000	0	0	109,500	0	0	1,091,500
Pauma Band of Luiseno Mission Indians, California	0	60,000	0	0	0	0	60,000
Pechanga Band of Luiseno Mission Indians, California	0	\$278,621	0	0	0	0	278,621
Quechan Tribe, California and Arizona	2,180,000	1,729,300	550,000	115,000	0	0	4,574,300
Ramona Band or Village of Cahuilla Mission Indians of California	0	0	0	0	0	0	0

**Appendix VIII: Total Obligations for Water  
and Wastewater Projects in the Border  
Region, Fiscal Years 2000-2008, by Tribal  
Nation**

<b>Tribe</b>	<b>IHS Sanitation Facilities Construction Program</b>	<b>EPA Tribal Border Infrastructure</b>	<b>EPA Drinking Water Tribal Set-aside</b>	<b>EPA Clean Water Indian Set-aside</b>	<b>HUD Indian CDBG</b>	<b>USDA</b>	<b>Tribe total</b>
Rincon Band of Luiseno Mission Indians, California	140,000	1,785,000	0	0	0	0	1,925,000
Salt River Pima-Maricopa Indian Community, Arizona	2,645,000	0	559,992	2,943,200	2,000,000	0	9,938,992
San Carlos Apache Tribe, Arizona	10,337,500	0	50,000	1,790,800	0	0	12,178,300
San Manuel Band of Mission Indians, California	0	0	0	0	0	0	0
San Pasqual Band of Diegueno Mission Indians of California	161,732	1,047,515	0	0	605,000	0	1,814,247
Santa Rosa Band of Cahuilla Indians, California	0	0	484,000	0	0	0	484,000
Soboba Band of Luiseno Indians, California	0	0	0	0	0	0	0
Sycuan Band of the Kumeyaay Nation	176,000	55,400	0	0	0	0	231,400
Tohono O'odham Nation of Arizona	13,163,776	4,796,032	3,018,732	6,286,097	0	0	27,264,637
Torres Martinez Desert Cahuilla Indians, California	0	1,424,469	545,790	0	0	0	1,970,259
Twenty-Nine Palms Band of Mission Indians of California	0	0	0	0	0	0	0
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians, California	0	500,000	0	0	0	0	500,000
Ysleta Del Sur Pueblo of Texas	0	0	0	0	0	0	0
<b>Total</b>	<b>\$45,151,536</b>	<b>\$19,973,103</b>	<b>\$11,346,088</b>	<b>\$25,129,212</b>	<b>\$2,605,000</b>	<b>\$1,000,000</b>	<b>\$106,795,739</b>

Source: GAO analysis of IHS, EPA, USDA, and HUD data.

Note: Additional USDA funds were provided to tribal nations through USDA's colonia program. These funds are not represented in this table.

# Appendix IX: Comments from the Department of Agriculture

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



United States Department of Agriculture  
Rural Development  
Office of the Under Secretary

DEC 08 2009

Anu Mittal  
Director, Natural Resources and Environment  
United States Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Mittal:

Thank you for providing the Department of Agriculture (USDA) Rural Development and the Rural Utilities Service (RUS) your Government Accountability Office (GAO) draft report entitled, "Rural Water Infrastructure: Improved Coordination and Funding Processes Could Enhance Federal Efforts to Meet Needs in the U.S.-Mexico Border Region," Report Number GAO-10-126. For your consideration, USDA offers the following comments to the draft report and requests that a copy of these comments be included in your final report. USDA's response is limited to portions of the GAO report relating to USDA.

We commend GAO for providing this report and recommendations on the pressing issue of the needs along the U.S.-Mexico border for clean drinking water and sanitation service. The report notes conditions in the border area that create increased instances of water-borne illnesses and other unsafe living conditions.

USDA is undertaking a major effort to better address the issues you raise. In early October 2009, we began a project that will improve program delivery and make funding intended for Colonias more effective. Our goals are to not only build water systems, roads and community centers but to provide tools for the communities to develop economically and to become sustainable. We are committed to improving the quality of life and providing economic opportunity for all of rural America, including the U.S.-Mexico border region.

The backbone of an improved quality of life is basic infrastructure such as utilities (i.e., water, electric, and telecommunications), road systems and housing. Essential community facilities and local business development are also critical to community growth and sustainability. Through the delivery of more than 40 loan and grant programs in the Rural Development mission area, USDA is uniquely positioned to help rural community leaders in their efforts to provide economic opportunities, create sustainable communities and improve the quality of life for their residents. Our programs build utility systems, affordable single and multi-family housing, essential community facilities, businesses and cooperatives.

1400 Independence Ave., S.W. • Washington, DC 20250-0700  
Web: <http://www.rurdev.usda.gov>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."  
To file a complaint of discrimination write USDA, Director, Office of Civil Rights,  
1400 Independence Avenue, S.W., Washington, DC 20250-9410 or call (800) 795-3272 (Voice) or (202) 720-6382 (TDD).

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Ms. Anu Mittal

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Programs are administered by over 6,000 Rural Development staff with nearly 500 field offices throughout Rural America. Rural Development field staff is well-trained Rural Development specialists who work across all the programs Rural Development offers and often assist in bringing other Federal and State programs to the rural areas they serve.

The U.S.-Mexico border region is a challenging area in which to successfully deliver programs. The Rural Community Assistance Partnership through Community Resource Group, Inc. (CRG), a technical assistance provider funded through the USDA Rural Development Technical Assistance and Training Grant Program, has worked in the border region of Texas for over 20 years. The CRG Director states, "Generally speaking, this is a very difficult area to work in because of: (1) the very low income of most of the residents, demanding that user costs be kept low, and often resulting in deferred maintenance of existing facilities, (2) a lack of understanding of State and Federal regulatory requirements for providing water and wastewater disposal services, (3) a lack of understanding of fiduciary responsibilities from utility boards and/or management, (4) frequent drought conditions, often resulting in a lack of adequate water supply, (5) poor planning to meet future demands, or maintain and replace critical system components and equipment, and (6) areas have very high growth rates making it difficult for existing providers to keep up with demand." Another technical assistance provider, the National Rural Water Association (NRWA), and its Arizona affiliate, tells of very remote areas in the border area that have water systems that were developed originally to support a migrant worker population and have often deteriorated. NRWA states: "Water systems are often privately owned and have no structured operation. The owner takes the profits and returns nothing to the infrastructure. The residents lack the authority by ownership or capability to organize and make improvements. Language, poverty and suspicion of the government compound the problem." The results are inadequate water systems. Addressing these technical, financial, and managerial capacity inadequacies is necessary to achieving sustainable water system improvements.

Water system financing is critical in solving the inadequate water system issue in the U.S.-Mexico border area. USDA Rural Development utilizes authorizations provided in Section 306 of the Consolidated Farm and Rural Development Act (CONACT), Water and Waste Disposal Loans and Grants (codified at 7 U.S.C. 1926) and Section 306C of the CONACT (Section 306C), Water and Waste Facility Loans and Grants to Alleviate Health Risks (codified 7 U.S.C. 1926c), as the basis for financial assistance in the U.S.-Mexico border area. Congress has acknowledged the significant need for better access to clear water in certain regions of Rural America, including the U.S.-Mexico border and the areas known as Colonias, with set-asides within annual appropriations. Your report accurately reflects the assistance USDA programs have provided for delivery of new or improved water service to over 110,000 households and rural businesses over the last 5 years with funding set-aside for the Colonias.

In February 2009, Congress provided additional resources for the USDA RUS Water and Waste Disposal Loan and Grant Program through the American Recovery and Reinvestment Act (ARRA). As a result, communities across Rural America, including the Colonias, will benefit from more than \$3 billion in new or improved water and waste infrastructure. As an example, the Yuma County Improvement District in Arizona is assisting a Colonia area by providing

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service through the centralized sewer system. Total project costs are estimated at over \$19 million and Rural Development is providing over \$12 million in ARRA grant and \$2 million in ARRA loan funding. This project will improve the wastewater system and remove the potential health and safety concerns.

Significant effort and funding have been brought to the Colonias areas, and those benefiting from the funding have an improved quality of life. More work and additional funding are needed to continue the progress being made. Your report concluded that Federal efforts have not been effective in meeting the water and wastewater needs of the border region because agencies (1) have not comprehensively assessed the needs of the region, (2) lack coordinated policies and processes, and (3) in some cases have not complied with statutory requirements and agency regulations.

I would like to address the findings in your report and provide some clarification.

*Agencies have not comprehensively assessed the water and wastewater conditions, hampering their ability to meet the needs of the region.* There is no dispute that a Federal level comprehensive assessment of the water systems in the U.S.-Mexico border region does not exist. The issue is whether such an assessment at the Federal level would be the most effective method of addressing the water system inadequacies in the region. Given our experience in the region, we believe that local officials have the greatest awareness of the areas most in need and the capacity of those areas to sustain services and infrastructure. The report acknowledges this through its discussion of interviews with local officials, stating "According to several State and local officials, it is often the communities in the border region that do not have the institutional capacity to identify solutions or apply for funding that are in need of assistance." We believe that our program delivery through the USDA network of field offices ensures a locally-based Federal presence that leverages local knowledge to identify local needs.

In the report, you state that most Federal programs generally provide funds to those communities with the ability to initiate projects and seek assistance, which may not be the ones with the greatest need. We believe USDA is funding needed projects for communities that are sustainable or are headed in the direction of becoming sustainable. These sustainable communities or, in some cases, county governments are the key to solving the border area water system inadequacies. The local units of government that have the ability to initiate projects and seek assistance need to work together with the funding agencies to reach the very needy areas you mention in your report. We will work to improve that partnership and its reach as part of our Colonia initiative.

*Agencies lack coordinated policies and processes for providing Federal assistance in the border region.* A joint memorandum between USDA, Environmental Protection Agency (EPA), and Department of Housing and Urban Development (HUD) was issued in 1997 to foster cooperation among the programs at the delivery level, which is primarily at the State level. The memorandum was designed to encourage State-level program managers to develop policies and processes that would best work within their State, rather than to prescribe a National approach.

See comment 1.

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We believe the reported examples of coordination at the State level in California, Texas, Arizona, and New Mexico accomplish what the writers of the joint USDA, EPA and HUD memorandum intended and demonstrate that effective coordination is occurring amongst the programs where they are delivered.

See comment 2.

The cited examples of efforts where coordination would have improved the project outcome are rare instances, but we note that we must continue our efforts to improve coordination and the effectiveness of the funding.

See comment 3.

*Agencies have not always ensured compliance with statutory requirements in implementing programs for the border region.* The report states that the CONACT language requires USDA to give preference to water and waste projects in Colonias that are characterized by substandard housing, inadequate roads and drainage, and a lack of adequate water or waste facilities. The statute on its face clearly states that the Secretary shall give preference to eligible entities that propose to provide water supply or waste disposal services to the residents of those rural subdivisions commonly referred to as Colonias and lists certain characteristics, 7 U.S.C. 1926c (c)(1). The preference is limited to providers who serve the Colonias.

See comment 4.

The report states that USDA has failed to provide any guidance elaborating on the meaning of an adequate water or waste disposal system, or of Colonia. Congress established the Clean Water Act (CWA), P.L. 92-500 and the Safe Drinking Water Act (SDWA), P.L. 93-523 to set the standard for what is an adequate water or waste disposal system. The EPA implementation of the CWA and SDWA established compliance requirements for water systems. A noncompliant water system is inadequate. The USDA Regulation, 7 C.F.R. 1777, defines a Colonia as any identifiable community designated in writing by the State or county in which it is located; determined to be a Colonia on the basis of objective criteria including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing, inadequate roads and drainage; and that existed and was generally recognized as a Colonia before October 1, 1989. We believe this definition meets the statutory intent.

In response to your Recommendations for Executive Action, USDA offers the following:

**Recommendation:** To ensure that funding established to meet the needs of the Colonias are used consistent with statutory and regulatory requirements, GAO recommends the Secretary of Agriculture direct Rural Development to revise its process of determining eligibility to ensure that the agency only provides Section 306C Colonia funds for projects that benefit Colonias, as defined by Federal statute, and to revise its priority process to better target limited funds to those projects meeting statutory preference criteria.

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See comment 4.

**USDA Response:** USDA believes that it is providing Section 306C Colonia funds in a manner consistent with the statute. These funds are available only to eligible entities with projects proposing to provide water and/or waste services to designated Colonias. The statute is very clear that preference in awarding loans and grants is to be given to rural water supply corporations, cooperatives, or similar entities or public agencies that propose to provide water services to residents of those rural subdivisions commonly referred to as Colonias. The substandard housing, inadequate roads and drainage, and a lack of water or wastewater systems are all characteristics of a Colonia, but, in our opinion, do not constitute a statutory definition. In other words, the preference is to the entity proposing to provide service to the Colonias. Pursuant to the statute and agency regulations, applications from entities proposing to serve Colonias are assigned 50 priority points in the review process. Additional points are assigned to projects proposing to serve areas with lower population and income levels. Collectively, these priority points help identify and direct assistance to those eligible areas that meet the statutory preference.

Through the aforementioned Rural Development Colonia initiative, USDA will make improvements in program delivery to make the congressionally-directed funding intended for Colonias more effective by not only building water systems, roads and community centers, but also providing tools for the communities to develop economically and to become sustainable. We are committed to improving the quality of life and providing economic opportunity for all of Rural America, including the U.S.-Mexico border region.

Thank you for the opportunity to comment on the report. If you have any questions, please contact John Purcell, Director, Financial Management Division, at (202) 692-0080.

Sincerely,



Dallas Tonsager  
Under Secretary

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The following are GAO's comments to the Department of Agriculture's letter dated December 8, 2009.

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## GAO Comments

1. We agree with USDA that local knowledge of local needs is an important element that can help federal agencies identify the water and wastewater needs of the border region. However, while local officials can play a key role and assist federal agencies, without a comprehensive assessment of needs of the regions federal agencies will continue to lack necessary information on the magnitude of the problem and will not have the information they need to prioritize assistance and target limited federal resources. We made no modifications to the report in response to this comment.
2. We disagree with USDA's characterization of the examples cited in our report. Throughout the review we contacted various officials in the border region—including local, state, and tribal officials; engineers and other consultants; nonprofit representatives; water and wastewater utility representatives; and residents—and these officials provided us with numerous examples of the types of concerns they have experienced as a result of ineffective coordination among federal agencies. The examples cited in the report were not intended to be inclusive of all of the instances shared with us by officials and instead were only used to provide more specifics of certain types of concerns expressed by the officials we spoke with. We have not modified the report in response to this comment.
3. We believe the report accurately reflects that USDA provides funds to eligible entities, rather than directly to colonias. We have not modified the report in response to this comment.
4. We disagree with USDA's comment that it is providing Section 306C colonia funds in compliance with the existing statutory requirements. Specifically, we disagree with the agency's comment that preference can be provided to entities proposing to serve a colonia, regardless of whether the area meets the characteristics outlined in the statute. As stated in the report, we believe that USDA's current practice of awarding preference to applications without independent verification that the colonia meets all statutory requirements fails to ensure compliance with statutory requirements. In addition, while USDA states that the definition of adequate is determined through compliance with the Safe Drinking Water Act or Clean Water Act, it was unable to provide evidence that this interpretation has ever been formally communicated to staff in guidance or other direction. Without

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guidance explaining USDA's interpretation of this term, as well as what support is required, we believe that this threshold requirement is open to interpretation by USDA field offices. We made no changes to the report in response to this comment.

# Appendix X: Comments from the Department of Housing and Urban Development

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-7000

DEC 10 2009

MEMORANDUM FOR: Anu Mittal, Director, Natural Resources and Environment, United States Government Accountability Office, GAO

FROM: Yolanda Chávez, Deputy Assistant Secretary for Grant Programs  
DG

SUBJECT: U.S. Government Accountability Office Report to the Committee on Agriculture, House of Representatives - "Rural Water Infrastructure: Improved Coordination and Funding Processes Could Enhance Federal Efforts to Meet Needs in the U.S.-Mexico Border Region."

This memorandum provides the response of HUD's Office of Community Planning and Development (CPD) to the recommendations for executive action made in the Government Accountability Office's (GAO) draft report entitled "Rural Water Infrastructure: Improved Coordination and Funding Processes Could Enhance Federal Efforts to Meet Needs in the U.S.-Mexico Border Region" (GAO-10-126). The Department appreciates the opportunity to provide this response.

## I. OBGA's general responses to interpretations of federal statute:

The GAO draft report addressing the Office of Block Grant Assistance (OBGA) Community Development Block Grant (CDBG) program's colonias set-aside makes a few recommendations for executive action by the Secretary of Housing and Urban Development. Prior to responding to the specific recommendations, OBGA will clarify its interpretations of Section 916 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA) as indicated below:

### a. Ensuring compliance with statutory requirements: Maximum Feasible Deference

The GAO draft report indicates that HUD is not ensuring compliance with eligibility requirements because the CDBG program allows states to interpret the regulations (GAO draft report pages 26-27, 49-50). The GAO suggests that it is problematic to allow individual states to interpret the legislation for their state-specific situations.

The GAO disagrees with HUD's granting of "maximum feasible deference" to the states in the interpretation of statutory requirements related to the colonias set-aside. "Maximum feasible deference" per 24 CFR 570.480(c), means that HUD will:

*"give maximum feasible deference to the state's interpretation of the statutory requirements and the requirements of this regulation provided that these interpretations are not plainly inconsistent with the Act and the Secretary's obligation to enforce compliance with the intent of the Congress as declared in the Act."*

www.hud.gov      espanol.hud.gov

Now on pages 25-26 and 44-45.

See comment 1.

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The "Act" referred to by 24 CFR 570.480(c) is the Housing and Community Development Act of 1974 (HCDA), and not the NAHA, as the GAO points out in the draft report. It is for this reason that the GAO indicates that it is inappropriate to give states maximum feasible deference in the interpretation of the statutory requirements related to the colonias set-aside. The colonias set-aside is created by the NAHA, while, according to the GAO, the concept of maximum feasible deference is only applicable to the statutory requirements of the HCDA.

HUD disagrees with the GAO's interpretation of maximum feasible deference. Section 916(d) of the NAHA clearly states that:

*"Except to the extent inconsistent with this section, assistance provided pursuant to this section shall be subject to the provisions of title I of the Housing and Community Development Act of 1974."*

Therefore, it would follow that any regulations established pursuant to title I of the HCDA would also apply to the colonias set-aside, except to the extent inconsistent. Accordingly, the principle of maximum feasible deference is applicable to the colonias set-aside, so long as the state's interpretation are not plainly inconsistent with the HCDA, including section 916 of the NAHA, which is codified at 42 USC 5306 note.

**b. Ensuring compliance with statutory requirements: Eligible Activities**

The GAO draft report indicates that HUD is not ensuring compliance with eligibility requirements because the CDBG program allows colonias set-aside funds to be used for any eligible CDBG activity pursuant to 42 U.S.C. 5305. The GAO interprets the NAHA as limiting the eligible uses of colonias set-aside funds to those activities addressing water, sewage, and housing (GAO draft report pages 27 and 49). The GAO cites section 916(a) of the NAHA, which introduces the section as follows:

*"(a) Set-Aside for Colonias. - The States of Arizona, California, New Mexico, and Texas shall each make available, for activities designed to meet the needs of the residents of colonias in the State relating to water, sewage, and housing..."*

The GAO draft report states that section 916(a) limits the eligible activities to those activities relating to water, sewage, and housing. However, section 916(b) is more explicative regarding eligible activities. Section 916(b)(3) states:

*"(b) Eligible Activities. - Assistance distributed pursuant to this section may be used only to carry out the following activities: ..."*

*"(3) Other improvements. - Other activities eligible under section 105 of the Housing and Community Development Act of 1974 [42 U.S.C. 5305] designed to meet the needs of residents of colonias."*

The GAO interprets section 916(a) as limiting section 916(b)(3), stating that the eligible activities are those CDBG eligible activities per section 916(b)(3) which are related to water, sewage, and housing per section 916(a).

HUD interprets the relationship between section 916(a) and section 916(b)(3) differently. The legislative history of Public Law 102-550 (H.R.5334), which added section 916(b)(3) to the NAHA, shows that one proposed amendment of section 916(b) (in the House version of the bill) would have required that the colonias set-aside "be used only for the acquisition, construction,

See comment 2.

Now on pages 24-25  
and 48.

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reconstruction, rehabilitation, or installation of public water projects and public sewage projects, including any activities necessary to furnish water and sewage services to persons of low- or moderate-income." Although limiting in nature, this language was actually considered by the House Banking, Finance, and Urban Affairs Committee in order to expand the eligible activities, which were previously limited to only planning, so that "real improvements" could be made in the colonias (House Report No. 102-760, July 30, 1992). The Senate version of the bill, which included the language currently found in section 916(b)(3) of the NAHA, expanded the eligible activities even further. The Senate Banking, Finance, and Urban Affairs Committee noted that the amendment would:

*"allow grants to be made for any CDBG-eligible activity that serves the needs of the residents of the colonias-particularly those related to housing and water and sewage facilities" (Senate Report No. 102-332, July 23, 1992).*

Therefore, it is reasonable to interpret section 916(b)(3) as allowing grantees to undertake any eligible activity listed in section 105 of the HCDA, rather than a subset of activities related only to water, sewer, and housing. No limiting language is provided in section 916(b)(3) and in addition, pursuant to section 916(b)(1), grantees are allowed to expend funds for community development planning costs which could potentially cover a wide range of activities, not just those relating to water, sewage and housing.

**c. Ensuring compliance with statutory requirements: Prioritization of Need**

The GAO draft report indicates that HUD is not ensuring compliance with eligibility requirements because HUD has not ensured that state distribution plans are designed to give priority to colonias having the greatest need for such assistance per section 916(c). The GAO draft report also noted that HUD believes that states are distributing the colonias set-aside funds on a greatest needs basis. (GAO draft report pages 30, 48-49) In July of 2008, an audit report by the Office of the Inspector General asserts that cases exist where colonias set-aside funds were not being distributed on a greatest needs basis. In response, HUD has conducted monitoring and is in the process of releasing guidance that will address the proper administration of the colonias set-aside.

**d. Clarification: Objective Criteria**

The GAO apparently disagreed with HUD's interpretation of section 916(e)(1)(C) on pages 47-48 of appendix II of the draft report. Section 916(e)(1)(C) states that a colonia is an identifiable community that...

*"is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing..."*

HUD allows states to interpret section 916(e)(1)(C) to mean that only one of the three criteria be met to be determined a colonia. The GAO draft report footnote on page 47 implies that it would be more appropriate to define a colonia as a community with a lack of decent housing and a lack of basic services (water and/or sewer). However, HUD does not consider the language of section 916(e)(1)(C) to be limiting. HUD considers the inclusion of "objective criteria" to be requiring an unbiased determination of the needs of the residents of the colonias. Lack of water, lack of sewage, and lack of decent housing would have been listed as separate items under section 916(e)(1) had the

See comment 3.

Now on pages 28-29 and  
48.

See comment 4.

Now on pages 44-45.

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intent been to specifically require all three.

Now on pages 44-45.

The GAO draft report also suggests that HUD has been inconsistent with its interpretation of section 916(e)(1)(C). The report refers to HUD notice CPD-03-10 as "HUD's sole interpretation of the definition (of a colonia)," wherein HUD "asserts that all three criteria must be met" (GAO draft report pages 47-48). However, Notice CPD-03-10 does not specifically address or "assert" a definition of a colonia outside of a paraphrased definition in the "background" section of the notice. The purpose of that notice is to address best practices for helping the residents of colonias, which include: Contract for Deed conversion, alternative building technologies, needed infrastructure, individual development accounts and Self-Help/One Stop service centers.

See comment 5.

Furthermore, the draft report addresses the varying interpretations of section 916(e)(1)(C) by California, New Mexico, Arizona, and Texas. HUD would like to note that it does not appear that the GAO has given the corresponding states the opportunity to respond to the GAO's draft report, and further explain their interpretations of section 916(e)(1)(C) per local housing markets, development patterns, socio-economic conditions, etc. HUD contacted the Texas Department of Rural Affairs regarding the GAO's implication that Texas only funds colonias in unincorporated areas, which is a criteria not found in the NAHA. The Texas Department of Rural Affairs reported that their state CDBG program utilizes 100% of the colonia set-aside in colonias located in unincorporated areas, and uses additional Community Development Funds to address colonias located within corporate limits.

See comment 6.

**e. Clarification: Funding Amounts**

Now on pages 14-15.

The GAO draft report states on page 14 that HUD obligated about \$218 million to the border region. GAO's methodology notes that they identified county information for activities in HUD's database, the Integrated Disbursement and Information System (IDIS), and extracted those data for their review. Lacking this extract, HUD cannot reconcile our original data with the GAO's draft report. The \$218 million referenced on page 14 does not correspond to the \$213.9 million reported in Appendix III. It is unclear if the \$2.6 million of Indian CDBG funds (GAO draft report page 14 and Appendix VIII) are added to the \$213.9 million (Appendix III), thus making the total \$216.6 million, or approximately \$217 million. This is unclear due to a lack of explanation, and because the draft report suggests that the \$2.6 million of Indian CDBG funds are "in addition" to the \$218 million reported on page 14. Furthermore, page 38, paragraph 1, references "state CDBG" funding, but table in Appendix III apparently includes all CDBG funds for water and wastewater projects in the 97 border region counties, without distinction between the State CDBG and Entitlement CDBG program.

Now on page 36.

See comment 7.

HUD would also like to add to the last paragraph on page 38 of the "Scope and Methodology" section of the draft report, regarding the amounts of funding in IDIS. In the future, States will be able to indicate in the database if a project was funded with the colonias set-aside, in addition to indicating if a project occurred in a colonia. This is an important distinction because HUD will be able to verify that all projects that are funded with the set-aside are located in a colonia. Additionally, it will allow HUD to track the additional CDBG funds, beyond the set-aside, that states have been known to give to projects in colonias.

Now footnote 17 on  
page 13.

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See comment 8.

Now on pages 44-45.

**f. Clarification: Formal Colonia Designation**

The GAO draft report indicates on pages 47-48 that HUD still requires colonias to have a formal designation from the state. In 1992, Public law 102-550 (H.R. 5334) removed the requirement that colonias be formally designated by the state or county. Consequently, HUD does not require a formal designation by the state. HUD relies upon states to administer CDBG funds, including the use of colonias set-aside funds for projects in communities determined to be colonias according to section 916(e). States, counties, local governments, and others, such as community groups, could all theoretically determine that a community meets the criteria of section 916(e) and "designate" that community as a colonia. In practice, states and units of general local government usually make the determinations because states administer the funds, and units of general local government have jurisdiction over the colonias, which most often occur in unincorporated areas. HUD is not in the best position to make such local determinations. In the end, it is the state that reports to HUD on its use of CDBG funds, including the use of the colonias set-aside. HUD is only concerned that the colonias set-aside is used in communities determined to meet the criteria of section 916(e).

**g. Clarification: Anecdotes**

The GAO draft report indicates anecdotal examples of projects funded with the colonias set-aside, including Hudspeth County, Texas (GAO draft report page 23). As this project was administered by the State of Texas, HUD contacted the Texas Department of Rural Affairs to obtain information about these projects. The Texas Department of Rural Affairs reported that due to complications with the project's water quality, additional funding was required. Furthermore, the project has not been closed and will not be closed until all issues have been addressed.

See comment 9.

Now on page 22.

**II. OBGA's responses to GAO's recommendations for executive action:**

The GAO draft report makes several recommendations for executive action by the Secretary of Housing and Urban Development:

**a. Ensure that state agencies only provide colonias set-aside funds for projects that benefit colonias, as defined by federal statute**

HUD is committed to assisting the residents of colonias by ensuring that state agencies are providing the colonias set-aside funds to communities that are, in fact, colonias. HUD will continue to rely upon local expertise in the determination of which communities meet the criteria in the federal statute. Local and state officials have the best understanding of the myriad of factors influencing a lack of affordable housing that can manifest itself as colonias. HUD will continue its monitoring efforts to ensure that states are appropriately administering the colonias set-aside. To assist in these efforts, HUD recently developed a new monitoring exhibit specifically to assist in the review of the colonias set-aside. Additionally, HUD will soon release guidance for the State CDBG program that will address the proper administration of the colonias set-aside.

**b. Promptly establish guidance to ensure states follow a method of distribution that results in the prioritization of colonias set-aside funds to those colonias with the greatest need**

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As recommended previously by the Inspector General's Office, HUD is currently finalizing the guidance to states which addresses the GAO's recommendation that states have a method of distribution giving priority to the colonias with the greatest need.

**c. Monitor the states' uses of all colonias set-aside funds as a distinct component of CDBG monitoring**

HUD already monitors distinct components of the State CDBG Program that present high risk, including the colonias set-aside. The Office of Community Planning and Development (CPD) uses a risk analysis process to identify those grantees and activities that represent the greatest vulnerability for fraud, waste, and mismanagement to the Department. Based on this information, CPD's field offices determine the grantees that will be monitored on-site and remotely, the program areas to be covered (or portions thereof, such as the colonias set-aside), and the depth of the review. In FY2009, OBGA and HUD Field Staff conducted on-site monitoring of the colonias set-aside in Arizona and New Mexico.

HUD appreciates the opportunity to comment on GAO's draft report. Should you have any questions about the Department's comments, please contact Diane Lobasso at 202-402-2191.

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The following are GAO's comments to the Department of Housing and Urban Development's letter dated December 10, 2009.

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## GAO Comments

1. We disagree with HUD's granting of "maximum feasible deference" to the states in the interpretation of statutory requirements related to the colonia set-aside. As stated in our report, we do not believe the maximum feasible deference regulation—which does not appear in statute—applies to the colonia set-aside program. This is because the regulation itself does not refer to the codified law concerning the CDBG program, but only to the Housing and Community Development Act (HCDA). In its comments, HUD cites section 916(d) of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA), which is the statute that established the colonia set-aside program, to support its position that the agency's regulations pursuant to Title I of the HCDA also apply to the colonia set-aside program. However, the relevant passage cited by HUD only subjects the colonia set-aside program to the provisions of Title I of the Act to the extent consistent with NAHA, and applying them in this context is inconsistent. We did not revise our report in response to this comment.
2. We continue to believe that HUD does not have a process to ensure that Colonia Set-aside funds are limited to those activities authorized by statute. HUD has not provided guidance to states on this topic and we disagree with HUD's interpretation of the law with respect to allowed set-aside activities. We believe that HUD's interpretation does not give full recognition to all sections of the law and that HUD is neglecting the overall requirement for Colonia Set-aside funds to be limited to activities related to water, sewage, and housing. We believe the logical interpretation of the law is that funds are to be used for various activities—e.g., planning, construction, etc.—relating to water, sewage, and housing. HUD notes that when Congress amended the relevant section to incorporate by reference another section which lists the types of activities allowed under CDBG, that one proposed amendment would have expressly limited activities to those related to public water and sewage. HUD also stated that because the enacted law featured a different version of this provision that did not contain the express language, the limitation should be understood as having been rejected. However, the history supports another conclusion—that because the limitation already existed in the law, the water and sewage language in the failed amendment was simply not needed. Thus, we believe that the Senate committee clearly articulated that the new activities were to be those that "specifically" or "especially" related to

water, sewage, and housing. We did not make any change to our report in response to HUD's further explanation.

3. Our report recognizes that HUD has stated its intent to issue guidance to assist states to more clearly articulate the priorities in developing their method of distribution. However, during the course of the engagement, we asked HUD for a draft version of the guidance or other documentation so that we could review the contents of the guidance and assess whether it would adequately address our concerns. Because HUD did not provide us with any documentation, we have made no modifications to the report in response to this comment.
4. We disagree with HUD's characterization of our discussion regarding the interpretation of the colonia definition. As stated in our report, HUD has failed to provide guidance on the interpretation of colonia. During our review, the only documented definition we found that HUD issued in relation to the Colonia Set-aside is in a HUD Office of Community Planning and Development Notice, which as HUD indicates in its response, is not followed by the agency, and is not considered to be an official interpretation of the statute. We continue to believe that to ensure compliance with statutory guidance; HUD should undertake a review of the statute and issue clear guidance to states concerning its interpretation of the definition. We did not revise the report in response to this comment.
5. During our review, we conducted interviews with numerous state and local officials throughout the border region—including officials representing the state agencies that administer HUD's CDBG funds. However, our review focused on the federal efforts to meet needs in the U.S.-Mexico border region and not the state efforts. We made no changes in response to this comment.
6. We have modified the report and clarified that the total funding HUD obligated (about \$218 million) is a combination of CDBG funds (about \$214 million), Indian CDBG funds (about \$3 million), and funds provided through the Economic Development Initiative Special Account (about \$1 million).
7. Our report already recognizes the changes HUD intends to make to its data system. However, we have added an additional statement to our discussion that the change will allow HUD to verify that all projects funded with Colonia Set-aside funds are located within a colonia.

8. We disagree with HUD's characterization that our report suggests that HUD still requires the states to formally designate colonias, or that HUD should be the party to designate colonias. Our report clearly states that we believe that HUD should be conducting activities as necessary to ensure that the states' use of funds is compliant with the law. As stated in the report, soon after the enactment of the law that established the Colonia Set-aside requirement, Congress amended the law to remove a requirement that a colonia be designated by the state or county, and as a result we recognize that no formal designation is required. Yet, in implementing the program, states are informally designating colonias, HUD is deferring to the state determinations as though they were formal designations, and HUD has not provided guidance concerning state implementation of the Colonia Set-aside as to how eligible colonias are to be identified. We have made no revisions to the report in response to this comment.
  
9. The report does not include any information that would indicate that the project in Hudspeth County, Texas has been closed. The report clearly states that HUD provided a utility over \$860,000 in grant funds from 2004 to 2006 to extend water distribution lines and waste collection lines for residents of a colonia; and that as of September 2009, the distribution lines remain unused because the utility does not have enough water to serve the additional households and the utility has not been able to obtain the funding needed to construct a new well. We made no changes to the report in response to this comment.

# Appendix XI: Comments from the U.S. Army Corps of Engineers

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108

DEC 1 0 2009

Ms. Anu Mittal  
Director, Natural Resources and Environment  
U.S. General Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Ms. Mittal:

This is the Department of Defense (DoD) response to the Government Accountability Office (GAO) draft report "RURAL WATER INFRASTRUCTURE: Improved Coordination and Funding Processes Could Enhance Federal Efforts to Meet Needs in the U.S.-Mexico Border Region," dated November 24 2009, (GAO-10-126/Code 361034). GAO recommended that, if the Army Corps of Engineers continues to assist communities through the colonias program, the Corps should develop eligibility criteria and a standard process to review and select activities for funding that target the assistance to those with the greatest need.

Section 219 of the Water Resources Development Act of 1992, as amended, authorizes the Corps to provide planning, design, technical, and construction assistance for wastewater treatment facilities, water systems and related structures for colonias in the United States along the United States and the United States-Mexico border. As water systems and wastewater treatment are not within the Corps' primary mission areas, the budget for the Civil Works program of the Corps does not include funds for Section 219 assistance. However, using funds added by the Congress through the appropriations process, the Corps has undertaken Section 219 assistance for colonias in the Lower Rio Grande Basin along the U.S. border between Texas and Mexico. In those cases, the Corps consulted with the State of Texas for assistance in determining which colonias lacked water and wastewater infrastructure and could satisfy the requirements of local cooperation. The Corps developed Letter Reports to confirm whether proposed projects and localities were appropriate for assistance under the colonias program.

The DoD believes that this method of determining which communities received Corps assistance is appropriate, because the Corps is providing individualized assistance to produce planning, engineering and design products (such as facility plans, environmental compliance documents and permits, plans and specifications, land surveys, and real estate ownership searches) that will assist colonias, based on their specific needs, in developing water connections and services to those communities. The DoD concurs with formalizing the process through the development of written guidance on eligibility criteria and selection of activities for funding when additional Section 219 funding for colonias is provided.

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See comment.

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**Appendix XI: Comments from the U.S. Army  
Corps of Engineers**

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The draft GAO report, at pages 10, 12, 39, and 50, refers to the Corps providing "grants." Please note that under the Section 219 colonias program, the Corps provides planning, design, technical, and construction assistance. Section 219 does not authorize the Corps to provide grants.

Very truly yours,

  
Jo-Ellen Darcy  
Assistant Secretary of the Army  
(Civil Works)

Enclosure

GAO DRAFT REPORT – DATED NOVEMBER 24 2009  
GAO-10-126 (GAO CODE 361034)

RURAL WATER INFRASTRUCTURE – IMPROVED COORDINATION  
AND FUNDING PROCESSES COULD ENHANCE FEDERAL  
EFFORTS TO MEET NEEDS IN THE U.S. – MEXICO  
BORDER REGION

DEPARTMENT OF THE DEFENSE COMMENTS TO THE  
RECOMMENDATIONS

**RECOMMENDATION:** If the Corps continues to assist communities with water and wastewater related activities through the colonia program, the Secretary of Defense direct the Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers to develop eligibility criteria and a standard process to review and select activities for funding that target the assistance to those with greatest need. The process should comply with all applicable regulations and include verification of eligibility.

**DOD RESPONSE:** Partially Concur. At such time as the Congress appropriates additional funding for colonias assistance pursuant to Section 219 of the Water Resources Development Act of 1992, as amended, the Corps will formalize its existing process through the development of written guidance on eligibility criteria and selection of activities for funding. In those cases where funds were provided previously for colonias in the State of Texas, the Corps consulted with the State to determine which colonias lacked water and wastewater infrastructure and could satisfy the items of local cooperation. In addition, the Corps developed Letter Reports to verify whether proposed projects and localities were appropriate for assistance under the colonias program. The DoD believes that this method of determining which communities received Corps assistance is appropriate, because the Corps is providing individualized assistance to produce planning, engineering and design products (such as facility plans, environmental compliance documents and permits, plans and specifications, land surveys, and real estate ownership searches) that will assist colonias, based on their specific needs, in developing water connections and services to those communities. Further, the DoD believes that this approach is consistent with and meets the requirements of the law, which does not require a competitive ranking of communities to target "those with the greatest need."

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The following is GAO's comment to the U.S. Army Corps of Engineer's letter dated December 10, 2009.

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## **GAO Comment**

Our report recognized that the Corps had prepared letter reports, which are brief project reports that the Corps prepares before providing assistance to an entity, prior to undertaking each project. However, our report clearly states that the Corps does not have criteria for identifying eligible colonias. Therefore, while these letter reports are prepared, it is unclear by what basis the Corps has verified they are colonias as meant in the authorizing statute. We made no changes to the report in response to this comment.

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# Appendix XII: GAO Contact and Staff Acknowledgments

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## GAO Contact

Anu K. Mittal, (202) 512-3841, or [mittala@gao.gov](mailto:mittala@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Sherry L. McDonald, Assistant Director; Elizabeth Beardsley; Virginia Chanley; Bernice Dawson; Teague Lyons; Benjamin Shouse; and Jay Spaan made significant contributions to this report.

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