



# ***Audit Report***

## **District Inspector General for Audit Northwest/Alaska District**

*Report: 98-SE-107-0002*

*Issued: February 23, 1998*

TO: Kevin E. Marchman, Assistant Secretary, Office of Public and Indian Housing, P

FROM: Robert H. Woodard, Acting District Inspector General for Audit, OAGA

SUBJECT: Secretarial Request  
Office of Native American Programs  
Oversight of Indian Housing Authorities  
Washington, DC

This report summarizes the results of our review of the Office of Native American Program's oversight of Indian housing authorities as requested by the Secretary of HUD on November 29, 1996. It shows a need for better performance by IHAs and the Office of Native American Programs in providing reasonable assurance that HUD programs are operated free from fraud, waste, abuse and mismanagement.

As of October 1, 1997, future Indian housing programs will no longer be governed by the US Housing Act of 1937. Instead, the programs will fall under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). Under this Act, Indian tribes will receive block grant funds for housing and will be given more flexibility in operating their HUD-funded housing programs. The regulations implementing the new Act have not yet been finalized.

With the new legislation and proposed rules, there needs to be an equitable balance between flexibility and accountability for results. This goal is consistent with the 1993 Government Performance and Results Act and the Secretary's 2020

Management Reform Plan and represents a challenge to the Department. We have provided recommendations for all parties to consider in making the transition to NAHASDA, including establishing accountability within the program, and to help restore the public trust in HUD programs.

As provided in HUD Handbook 2000.6 REV-2, within 60 days, please provide us, for each recommendation in this report, a status report on: (1) the corrective action taken; (2) the proposed corrective action and the date to be completed; or (3) why action is considered unnecessary. Also, please furnish us copies of any correspondence or directives issued because of this review.

If you have any questions, please call me at (206) 220-5360.





# *Executive Summary*

The Assessment of American Indian Housing Needs and Programs: Final Report (May 1996) concluded that while progress has been made, the housing needs of Native Americans continue to represent a major and distinctive challenge for public policy. Housing provided under HUD's Indian housing programs has substantially improved living conditions for thousands of Native American families, accommodating about one fourth of all Native American households living in tribal areas.

History has shown that HUD's Indian housing programs and the Office of Native American Programs' (ONAP's) accompanying role have evolved from a rigid regulatory structure to one with an emphasis on flexibility. Program rules have changed to give Indian housing authorities (IHAs) more flexibility in administering their housing programs, but have not provided a control structure that ensures accountability for IHA performance. ONAP has oversight responsibility to ensure IHAs administer HUD-funded Indian housing programs in compliance with the rules, and ONAP's focus has also changed over time. ONAP's focus has shifted from monitoring fiscal integrity and program compliance in the operation of Indian housing programs to a partnership role with IHAs which emphasizes technical assistance.

On November 29, 1996, OIG received a request from the Secretary of HUD to thoroughly review allegations that HUD's Office of Native American Programs oversight of Indian housing programs was inadequate in identifying or resolving potential problems. Program abuse<sup>1</sup> at IHAs across the country was alleged in *The Seattle Times'* December 1996 series of articles entitled "From deregulation to disgrace" which identified 29 instances. OIG reviewed the 29 instances to determine if *The Seattle Times'* allegations of program abuse were accurate and to evaluate the conditions at the IHAs.

On March 12, 1997, before the joint Senate Committees on Indian Affairs and Banking, Housing, and Urban Affairs, the Inspector General testified that the 29 instances reported in *The Seattle Times* were generally

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<sup>1</sup> *Abuse*, as defined by government auditing standards, is distinct from illegal acts and other noncompliance. When abuse occurs, no law, regulation, contract provision, or grant agreement is violated. Rather, the conduct of a government program falls short of societal expectations for prudent behavior.

accurate. OIG had identified that at certain IHAs, IHA officials (Executive Directors and Board members), who are expected to promote economical and effective operations, were abusing their positions for personal gain, were misusing scarce program resources, and were not complying with program requirements. Also, ONAP's decision making contributed to the mismanagement and waste of program funds at the IHAs when it failed to follow up on problems, relied on verbal assurances without follow-up, and did not hold IHA officials accountable for poor performance.

In regard to ONAP's oversight, we wanted to know if ONAP's field offices provided effective oversight to identify and resolve problems for the 29 instances identified in *The Seattle Times*' articles. ONAP's Alaska field office did not have oversight responsibility for any of the instances identified in *The Seattle Times*' articles, so was not included in our review. We also wanted to know whether NAHASDA's proposed final rule contained the necessary safeguards and controls to ensure an equitable balance between flexibility and accountability for results.

### **ONAP'S OVERSIGHT IN 20 OF 29 INSTANCES WAS NOT EFFECTIVE**

We found that ONAP did not fulfill its oversight responsibilities to ensure that IHAs provided housing consistent with program intent and rules for 20 of 29 instances reported in *The Seattle Times*. The majority (16 of 29) and the most troublesome instances occurred where the Eastern Woodlands and the Northwest ONAP field offices had oversight responsibility. The evidence indicated that the Southwest and the Northern Plains ONAP field offices properly identified and attempted to correct deficiencies, but were not always effective at improving IHA performance.

Although ONAP had identified most of the problems at the IHAs reported in *The Seattle Times*, ONAP's identification of problems was not always followed by decisions to take adequate corrective action. ONAP's field offices responsible for overseeing IHA activities:

- did not act or put off taking action to identify and resolve problems which, in some cases, allowed problems to reach crisis stages;
- assumed new IHAs had the administrative capability to develop and manage their own housing programs without determining if the new IHAs had the resources, capacity, and systems necessary to do so; and
- did not always document decisions and actions to show their efforts to help IHAs develop and manage their housing.

In addition, the Northwest ONAP allowed IHAs to implement “innovative” housing programs without understanding how these programs worked and if these programs met program rules and expectations.

As a result, ONAP’s ineffective oversight contributed to IHAs’ misuse of housing funds intended for low-income Native American families; ONAP did not hold IHA officials accountable when evidence existed of poor performance in administering their housing programs; and, ONAP has been the subject of negative publicity which has eroded public confidence and caused Congressional scrutiny of HUD’s Indian housing programs. These instances occurred, in part, because:

- ONAP field staff whose monitoring efforts are intended to ensure program compliance either misinterpreted, misunderstood, or misused guidelines and Headquarters’ instructions;
- ONAP field staff relied on Housing Authority certifications of compliance with requirements, and on personal working relationships with IHA officials without follow up;
- of an over-reliance on contractors, independent public accountants, and the Office of Inspector General to identify problems, their causes, and recommend appropriate enforcement actions;
- the Department’s initiative to develop partnerships with tribes/IHAs emphasized providing technical assistance rather than taking appropriate enforcement actions including holding IHA officials accountable for poor performance; and
- as part of a larger Department initiative, the Office of Public and Indian Housing empowered its field offices, including ONAP field offices, to take on additional responsibility, but until 1997, on-site reviews were not performed to assess field office performance.

Although ONAP has oversight responsibility in these instances, it was IHA officials, not ONAP officials, who had responsibility for housing authority operations including the misuse of housing funds or the abuse of their housing programs. For example:

- Executive Directors and Board members, who are expected to promote economical and effective operations, misused scarce resources and abused their positions for personal gain.

- Contracting practices are so poor that scarce housing dollars have been wasted and/or are unaccounted for.
- Program design and devolution, which transferred more responsibilities, provided the flexibility and opportunity that IHA officials and consultants exploited to assist over-income people to obtain upscale housing at discounted prices.

Available evidence suggests that these conditions occurred because IHAs were either administratively unable or unwilling to follow program rules.

IHAs were:

- administratively incapable of developing their housing programs because of:
  - \* difficulty in hiring, developing, and retaining a staff with the skills, abilities, and knowledge needed to adequately operate an Indian housing program in compliance with program rules.
  - \* management information systems that lacked basic operational, financial, and compliance-related information to make it possible to effectively manage and control a housing operation.
  - \* a lack of meaningful oversight of the Executive Director by the Board of Commissioners.
- unwilling to follow the program rules because:
  - \* Executive Directors and/or Board members allowed tribal politics or family relationships to unduly influence their decision making which directly benefited themselves, family members, relatives, or friends.
  - \* IHA officials followed tribal philosophies and perspectives on how federal housing funds should be used which were contrary to program rules.

The instances reported in *The SeattleTimes'* series probably show some of the worst examples of abuse and mismanagement in Indian housing. We need to be clear that the 20 instances represent about 9 percent of all IHAs receiving housing assistance from HUD. We do not want to suggest that ONAP's oversight in these instances is representative of its oversight for other IHAs. Also, we do not want to imply that the problems illustrated in the 29 instances reported in *The SeattleTimes'* series are a fair representation of how other IHAs perform.



Summaries of the 29 instances are not included in this report, but are included in separate audit-related memoranda for each of the five ONAP field offices involved. Appendix B of this report lists the IHAs reviewed and the five ONAP field offices responsible for their oversight.

## **FLEXIBILITY MUST BE EQUITABLY BALANCED WITH ACCOUNTABILITY FOR RESULTS UNDER THE NAHASDA**

NAHASDA is the culmination of the changes in HUD's Indian housing program. The stated purpose of NAHASDA is to provide federal assistance to tribes in a manner that recognizes the right of self-determination and tribal self-governance. NAHASDA eliminates a number of assistance programs and replaces them with a block grant funding mechanism which will provide increased flexibility for tribes to design their own housing programs with less federal involvement. NAHASDA went into effect on October 1, 1997; and its proposed final rule will be forwarded to the Office of Management and Budget for their clearance and approval.

In addition, NAHASDA apportions accountability for the provision of housing assistance between the tribes and the Department. While NAHASDA provides for tribes to design and administer their own housing programs, we believe that the greater flexibility provided under NAHASDA must be more equitably balanced with tribal accountability for results. Accountability for results, which is mandated under the 1993 Government Performance and Results Act (GPRA), means having clear goals and objectives for government programs, program participants, and employees, measuring their performance, and holding them responsible for the results.

NAHASDA specifies that the Secretary shall carry out this Act through the Office of Native American Programs which is part of HUD's Office of Public and Indian Housing (PIH). Section 106(b) of NAHASDA requires HUD to develop final regulations through negotiated rule-making procedures under subchapter III of Chapter 5 of Title 5, United States Code. NAHASDA's negotiated rule-making committee was comprised of 48 tribal members and 10 HUD employees. NAHASDA's negotiated rule-making process was an approach to bring together the Department and tribal members who participate in the program.

ONAP's Front End Risk Analysis classified NAHASDA as a high risk program, making it particularly vulnerable to fraud, waste, and abuse. This vulnerability coupled with NAHASDA's increased flexibility suggests that the highest priority for this new program is to realistically address the program's control weaknesses and accountability issues through its regulations prior to actual implementation.

However, the proposed final rule developed by the negotiated rule-making committee appears to be less than necessary to address the risks identified in the Department's Risk Analysis or the causes for the problems

discussed in this report. Controls, including soft controls that address attitudes, cultures, and philosophies, need to be developed to have reasonable assurance that past problems will not continue, rather than to only focus on program design and Department oversight.

ONAP field staff must have a clear direction, a thorough understanding of program objectives and expectations, and a specific understanding of what their oversight duties and responsibilities are under NAHASDA. ONAP field staff attitudes must be consistent with legislative intent, and its oversight must be proactive and decisive.

Intense Congressional scrutiny and negative media attention of the Department and its traditional Indian programs make it vital that program performance and accountability improve under NAHASDA. One of the primary goals of the Secretary's 2020 Management Reform Plan is to restore public trust. While NAHASDA was enacted before the Secretary's 2020 Reform Plan was developed, all aspects of its performance will be evaluated on its results. NAHASDA, more than any other new housing program, will be held to a higher level expectation of performance because of GPRA and the Secretary's 2020 Management Reform Plan.

Providing increased flexibility to tribes has been viewed by many as the answer to correct the problems in Indian housing. However, as discussed in this report, we do know the types of problems that can occur or we suspect will occur, and it is not realistic to expect the problems of the past to disappear simply because the Indian housing program has changed.

For NAHASDA to be successful in meeting Congressional and recipient expectations in addressing the housing needs of low-income Native Americans, the flexibility provided to tribes under NAHASDA must be equitably balanced with accountability for results. Realistic performance measures must be developed, the necessary controls and sanctions must be developed, and ONAP must provide adequate oversight to ensure program objectives are met. Without sufficient accountability, the potential for misuse and abuse of scarce federal housing funds will increase under NAHASDA.

As of January 31, 1998, the Department had yet to give final approval to NAHASDA's proposed final rule and implementation of the program is still pending. We developed our recommendations based on what needed to occur to provide an equitable balance of flexibility and accountability for NAHASDA to have a reasonable chance to succeed. We recognize that fraud, waste, and abuse in housing programs cannot be totally eliminated. We also do not want to imply that the report's recommendations will

address every control weakness or accountability issue that may occur under NAHASDA.

Our recommendations for the Department to consider are intended to improve program and oversight performance, increase accountability for program results, and improve enforcement actions to hold people accountable and deter fraud, waste, and abuse. The recommendations are listed on pages 62 to 64 of this report.

The draft report was furnished to the Office of the Assistant Secretary for Public and Indian Housing (PIH) for written comments on November 14, 1997. Formal written comments were received by FAX on December 19, 1997. In their comments, PIH disagreed with several of the negative assertions about the administration of the Native American housing program; but looked forward to OIG's final report and expected it would prove a useful tool in administering the program in the future. PIH also commented that several of the report's specific recommendations were already addressed in the NAHASDA's proposed final rule. An exit conference was held with the Assistant Secretary for Public and Indian Housing and ONAP's Deputy Assistant Secretary on January 29, 1998.

We incorporated PIH's comments into our report as we considered appropriate. A complete copy of his comments is included as Appendix A, including comments on our review of the five field offices. These comments were considered and incorporated as appropriate in the individual audit-related memorandum for each field office

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## Abbreviations:

HUD	Department of Housing and Urban Development
IHA	Indian Housing Authority
ONAP	Office of Native American Programs
NHASDA	Native American Housing Assistance and Self-Determination Act
PIH	Public and Indian Housing
GPRA	Government Performance and Results Act

# ***Introduction***

## ***Evolution of Indian Housing***

Low-income Native Americans, as well as other low-income families, have been eligible for federal housing assistance under the U.S. Housing Act of 1937. In 1961, federal assistance was first provided to specifically meet Native American low-income housing needs under a low rent pilot demonstration project. In 1962, the Mutual Help program for low-income Native American families was implemented. In 1965, HUD was created and assumed responsibility for the Public Housing Administration which had been responsible for overseeing Indian housing programs. Indian housing programs were administered as part of HUD's public housing program until 1976 when the first Indian housing regulations were published. Also, in 1976, HUD's Secretary created the Office of Indian Policy and Programs.

The Department and Congress have separated Indian housing programs from other housing programs through legislative and regulatory changes. The Indian Housing Act of 1988 statutorily separated Indian housing from public housing to encourage flexibility to meet the needs of Native Americans.

While the low rent program for Native American families has remained virtually unchanged, the Mutual Help program has undergone a number of changes since its inception in 1962. The purpose of the Mutual Help Homeownership Opportunity program is to provide opportunities for lower-income Indian families to purchase decent, affordable housing and to participate fully as homeowners. Regulatory changes have made the Mutual Help program more flexible and more accessible to all Native American families.

Prior to 1988 when the Indian Housing Act was passed, no families other than low-income families were eligible for admission to the Mutual Help program. The Indian Housing Act changed the Mutual Help program's admission requirements and provided that an IHA could provide assistance to over-income families if it demonstrated to HUD's satisfaction that there was a need to house over-income families that could not otherwise be met. Other significant changes included permitting the homebuyer rather than the IHA to decide when to purchase the Mutual Help home, and allowing the IHA to set the sales price of the home at any price rather than the amortized cost to construct the home. These changes have allowed IHAs

to provide housing to over-income Native American families at nominal amounts compared to actual construction cost.

***The Native American Housing Assistance and Self-Determination Act of 1996***

A significant change in Indian housing occurred on October 26, 1996 when the President signed into law the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). The stated purpose of NAHASDA is to provide federal assistance for Indian tribes in a manner that recognizes the right of self-determination and tribal self-governance.

NAHASDA eliminates the Indian housing assistance programs under the U.S. Housing Act of 1937 (development, modernization, and Section 8 rental assistance), HOME, Youthbuild, and Homeless assistance, and replaces them with a single block grant program which went into effect on October 1, 1997. Programs that will not be part of NAHASDA include the Indian Community Development Block Grants, the Drug Elimination Grant Program, and the Section 184 Indian Loan Guarantee Program.

NAHASDA completely separates Indian housing programs from the U.S. Housing Act of 1937 which controls the funding for HUD's other assisted housing programs. NAHASDA provides funding through formula-driven block grants to tribes rather than IHAs. The funding level for fiscal year 1998 (October 1, 1997 to September 30, 1998) is estimated at \$590 million (\$600 million dollars less \$5 million for technical assistance and less \$5 million for a demonstration program under Title VI).

Under NAHASDA, each tribe or a tribally designated housing entity (TDHE) on behalf of the tribe will administer the tribe's housing programs instead of an Indian housing authority. A tribe may designate its IHA as its TDHE, but not necessarily.

Section 106(b) of NAHASDA requires HUD to develop final regulations through negotiated rule-making procedures per the Negotiated Rule-making Act of 1990. NAHASDA's negotiated rule-making committee was comprised of 48 tribal members and 10 HUD employees. Tribal members represented geographically diverse small, medium, and large tribes and were chosen based on their experience and knowledge of Indian housing programs or their expertise in the development of funding formulas. Additionally, three individuals from the Federal Mediation and Conciliation Service served as facilitators.



HUD issued the negotiated rule-making committee's Proposed Rule on July 2, 1997 and the committee reached consensus on the proposed final rule on October 29, 1997. The proposed final rule will be forwarded to the Office of Management and Budget for their review and approval.

***ONAP was created as part of HUD's reorganization strategy***

Prior to the creation of the Office of Native American Programs, the Office of Indian Programs (OIP) had oversight (monitoring and technical assistance) responsibility for HUD's Indian housing programs. OIP was a part of HUD's Office of Public and Indian Housing and the Director of OIP reported to the Assistant Secretary for Public and Indian Housing.

The Assistant Secretary for Public and Indian Housing supervises five major public housing programs which include Native American programs, Troubled Agency Recovery, Public Housing Recovery, Public Housing capital programs (including HOPE VI), Public Housing operations, and supportive services programs. The Assistant Secretary relies on the Deputy Assistant Secretaries and Directors of each program office to administer the day-to-day operations of their respective programs.

HUD's reorganization followed the National Performance Review's strategy of reinventing government by downsizing bureaucracy and focusing on empowerment and a "team" approach to solving problems. In January 1993, Price Waterhouse collaborated with HUD to produce a report titled Improved Oversight of Indian Housing Authorities as part of its reorganization work. This report was undertaken to keep abreast of legislative changes and strategic considerations which recognized the changing role, functions, and organization of OIP. In accordance with the Housing and Community Development Act of 1992, OIP's reorganization was approved and OIP became the Office of Native American Programs (ONAP) in December 1993. ONAP remained part of HUD's Office of Public and Indian Housing and ONAP's Deputy Assistant Secretary reported to the Assistant Secretary for Public and Indian Housing.

**HUD provided over \$2.866 billion dollars from 1993 through 1997**

Based on ONAP's records, from fiscal year 1993 through fiscal year 1997, HUD provided annual contributions totaling over \$2.866 billion dollars in financial assistance for its Indian housing programs. According to ONAP's records, for fiscal year 1996, Indian programs received about \$486 million (4.51 percent of Public and Indian Housing's budget) or about 2.3 percent of HUD's total budget authority of approximately \$21 billion.

When *The Seattle Times*' series was published in December 1996, ONAP records showed that ONAP was monitoring 204 IHAs across the country including Alaska. By December 1997, the number of IHAs had increased to 217. The table below shows each ONAP field office, the number of IHAs monitored in December 1996, the change in IHAs during 1997, and the number of instances reported in *The Seattle Times*' series:

ONAP'S FIELD OFFICES	IHAS MONITORED DECEMBER 1996	IHAS MONITORED DECEMBER 1997	NUMBER OF IHAS REPORTED IN SEATTLE TIMES
Southwest	51	58	6
Eastern Woodlands	48	52	8
Southern Plains	31	32	2
Northern Plains	31	32	5*
Northwest	28	29	8
Alaska	15	14	
Totals	204	217	29

\* This number includes a cash probe audit of 12 IHAs performed by Rocky Mountain OIG which was one instance reported in *The Seattle Times*.

**Objectives and scope**

OIG received a request from the Secretary of HUD on November 29, 1996 to thoroughly review allegations of various improprieties in the use of HUD funds by tribal governments and/or Indian housing authorities and inadequate monitoring by HUD's Office

of Native American Programs. The request was based on allegations of various improprieties in the use of HUD funds by tribal governments and/or IHAs.

We wanted to know if ONAP's field offices (excluding Alaska) provided effective oversight to ensure Indian housing authorities provided housing consistent with program intent and rules for the 29 instances identified in *The Seattle Times*' articles published December 1 through 5, 1996. We also wanted to determine whether NAHASDA's proposed final rule contained the necessary safeguards and controls to ensure an equitable balance between flexibility and accountability for results.

### ***Review period***

Our review covered the 29 instances reported in *The Seattle Times* and whatever period of time those instances occurred. The five ONAP field offices which we visited during our review were Southwest (Phoenix), Eastern Woodlands (Chicago), Southern Plains (Oklahoma City), Northern Plains (Denver), and Northwest (Seattle). We performed our field work on-site at the five ONAP field offices from January 1997 through August 1997.

### ***Methodology:***

To accomplish our objectives we reviewed *The Seattle Times*' series on tribal housing that ran from December 1, 1996 through December 5, 1996 to identify the issues and locations included in the series which formed the basis of the request for our review. We then contacted ONAP officials for the locations identified to obtain their perspective and comments on the issues, program requirements, and HUD performance. We reviewed the applicable program requirements, reports and studies on Indian housing programs, IHA operations, ONAP oversight, and the recently enacted Native American Housing Assistance and Self Determination Act of 1996 and proposed regulations. Additional detail on the methodology for each of these areas follows.

Our review of *The Seattle Times*' series on tribal housing that ran December 1, 1996, through December 5, 1996 was accomplished by:

- obtaining a copy of each of the articles included in the series,
- reviewing the articles,

- obtaining an understanding of the articles,
- identifying the specific issues reported in the articles, and
- identifying the IHAs and the ONAP field offices related to the issues reported.

We contacted the ONAP's field office Administrators prior to starting work at the IHAs to obtain:

- the Administrator's perspective and position on the issues reported in *The Seattle Times* series for each IHA,
- a description of the program requirements applicable to each of the IHAs within their jurisdiction which were included in *The Seattle Times*, and
- the Administrator's description of actions taken by the office in relation to the issues reported in the series.

We obtained the program requirements identified by ONAP's Administrators and any other applicable program requirements. We reviewed the requirements and obtained an understanding. The requirements included:

- sections of the US Housing Act applicable to Indian housing programs,
- applicable HUD regulations,
- applicable HUD handbooks, guidebooks, memoranda and other directives,
- applicable Office of Management and Budget Circulars,
- the Native American Housing Assistance and Self Determination Act of 1996,
- the Front End Risk Analysis for the Native American Housing Assistance and Self Determination Act of 1996, and
- the proposed regulations implementing the Native American Housing and Self Determination Act of 1996.

We obtained reports and studies on Indian housing programs. The reports and studies included:

- prior reports by the HUD OIG,
- the Price Waterhouse January 5, 1993 report on improved oversight of Indian housing authorities and
- reports by HUD's Policy Development and Research.

After obtaining the background information on the issues, program requirements, and HUD actions, we contacted the Executive Directors of the IHAs to begin our reviews of those authorities.<sup>2</sup> To accomplish our review of each IHA we:

- met with the Executive Director to obtain his perspective on the issues reported in *The Seattle Times*' articles and position on the IHA's actions.
- contacted appropriate staff named by the Executive Director to obtain documents as well as descriptions of the IHA's management control systems.
- obtained an understanding of the IHA's actions related to issues reported in *The Seattle Times*' articles. This was done through interviews of staff identified as knowledgeable by the Executive Director, and review of available documentation on actions taken. The review of documents included testing of the management control systems to provide an understanding of the systems' actual performance related to the issues under review.
- compared the actions taken by the IHA to the program requirements and intent.
- discussed with the Executive Director instances where actions taken by the IHA were inconsistent with program requirements.

After obtaining the background information on the issues, program requirements, and IHA review results, we contacted the Administrators of the ONAP's field offices to begin our reviews of those offices. To accomplish our review of each ONAP field office, we:

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<sup>2</sup> Where an OIG audit was recently completed, we relied upon the audit report.

- met with the Administrator to obtain his perspective on the issues reported in *The Seattle Times*’ articles, position on the field office’s actions, and to have him identify the requirements for oversight of the program.
- contacted the relevant staff named by the Administrator to obtain documents on as well a descriptions of the field office’s management information and control systems.
- obtained, reviewed, and understood the requirements for oversight identified by the Administrator as well as other applicable requirements.
- obtained an understanding of the field office’s oversight and actions related to issues reported in *The Seattle Times*’ articles. This was done through interviews of staff identified as knowledgeable by the Administrator, and review of available documentation on oversight and actions taken. The review of documents included testing of the management information and control systems to provide an understanding of the systems’ actual performance related to the issues under review.
- compared the oversight and actions taken by the field office to the applicable requirements.
- met with the Administrator to discuss the results of our review, provided him a draft of our findings related to each IHA, and obtained both written and verbal comments on our draft. As appropriate, we then finalized the draft, obtained additional information, and/or made changes.

We met with the field office Administrators and their staff to solicit their comments and observations on the impact that NAHASDA will have. We were interested in their comments including those on:

- guidance for working under the new legislation,
- oversight responsibilities under the new legislation,
- staff needs,
- staff qualifications and training needs,

- the field offices' preparedness to take on the duties that NAHASDA will impose upon them, and
- whether the new program will be a success.

We reviewed the NAHASDA and the proposed regulations and obtained an understanding of their contents. We then evaluated the provisions in the new legislation and proposed regulations to see if they provided an equitable balance between flexibility and accountability.

We contacted ONAP's former Deputy Assistant Secretary and asked that he provide us information on Native American program funding. We also advised him that we would contact ONAP's National office to interview staff and obtain documents on their roles and responsibilities, program requirements, and reporting requirements. Accordingly we interviewed:

- the Deputy Director for Field Operations and Field Coordinator to obtain documentation on Headquarter's monitoring of ONAP's field offices.
- the office directors and obtained documentation on their position descriptions, and guidance provided to the field offices.

We conducted our review in accordance with generally accepted government auditing standards.

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# Results

The Secretary of HUD requested OIG to thoroughly review allegations that ONAP's oversight of Indian housing programs was inadequate in identifying or resolving potential problems. Program abuse at Indian Housing Authorities (IHAs) across the country was alleged in *The Seattle Times'* December 1996 series of articles entitled "From deregulation to disgrace" which identified 29 instances.

*The Seattle Times* identified two patterns in its articles. As quoted in a December 8, 1996 editorial:

“In the guise of deregulation, HUD abandoned its responsibility to ensure that large sums of money were spent as promised. Well-paid federal employees used regulations designed to give tribes more decision-making power as an excuse to suspend all reasonable and prudent business practices.”

*ONAP's oversight efforts were not effective in identifying and resolving problems for 20 of 29 instances.*

Our review of the 29 instances reported in *The Seattle Times* disclosed that ONAP's oversight of its Indian housing programs was not effective in 20 instances. Although ONAP had identified most of the problems at the IHAs reported in *The Seattle Times*, ONAP's identification of problems was not always followed by decisions to take adequate corrective action. ONAP field offices either did not identify or follow up on potential problems or its efforts did not resolve problems or improve IHA performance. ONAP's lack of adequate follow up allowed known problems to continue and reach crisis stages in some cases. In other cases, even when ONAP field offices identified and followed up on known problems, efforts were not always effective in motivating improvement in an IHA's performance.

The majority (16 of 29) and the most troublesome instances occurred where the Eastern Woodlands and the Northwest ONAP field offices had oversight responsibility. Generally, these two ONAP field offices

**misinterpreted monitoring instructions from Headquarters or did not act to resolve problems. However, the evidence indicated that the Southwest and the Northern Plains ONAP field offices properly identified and attempted to correct deficiencies, but were not always effective in improving IHA performance.**

**We need to be clear that the 20 instances represent about 9 percent of all IHAs receiving housing assistance from HUD. We do not want to suggest that ONAP's oversight in these instances is representative of its oversight for other IHAs. Also, we do not want to imply that the problems illustrated in *The SeattleTimes'* series are a fair representation of how other IHAs perform. (See "B.", page 15)**

### ***NAHASDA dramatically changes HUD's Indian Housing Programs***

**On October 26, 1996, the President signed into law the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). With the enactment of NAHASDA, federal assistance for Indian housing will be provided in a manner that recognizes the right of self-determination and tribal self-governance. NAHASDA's block grant funding mechanism will provide increased flexibility for tribes to design their own housing programs with less federal involvement.**

**NAHASDA went into effect October 1, 1997, but as of January 31, 1998, implementation of NAHASDA was still pending because HUD had yet to issue its final rule. On October 29, 1997, the negotiated rule-making committee reached consensus on a proposed final rule which will be forwarded to the Office of Management and Budget for their clearance and approval. While NAHASDA provides for tribes to administer their own housing programs, we believe that the greater flexibility provided under NAHASDA must be more equitably balanced with tribal accountability for results. (See "C.", page 44)**

## **A. DEPARTMENT OVERSIGHT RESPONSIBILITY FOR ITS INDIAN HOUSING PROGRAM**

The instances discussed in this report occurred under housing programs authorized by the U.S. Housing Act of 1937. In addition, as federal managers, ONAP officials still are subject to the Federal Managers' Financial Integrity Act of 1982 and its implementing Circular A-123. Circular A-123, Management Accountability and Control, provides guidance to Federal managers on improving the accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on management controls.

As Federal managers, local ONAP management is charged with ensuring that recipients of HUD housing funds take appropriate actions to provide and manage housing with integrity consistent with program intent and program rules. Also, since about 1986, HUD has been required by regulation to determine an IHA's administrative capability (at least annually) to administer its Indian housing programs in accordance with program rules.

The 1993 Government Performance and Results Act (GPRA) and a series of other management laws now being implemented across the federal government provide a means to obtain systemic, credible information about the operations of the federal government, while holding government accountable to taxpayers. Per GPRA, accountability means having clear goals and objectives for government programs and employees, measuring how they perform, and holding them responsible for the results.

The Secretary's 2020 Management Reform Plan is designed to be results oriented. It focuses on managing HUD's programs and people more efficiently and responsibly, and on restoring the public trust.

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**B. ONAP's OVERSIGHT EFFORTS WERE NOT EFFECTIVE IN 20 OF 29 INSTANCES.**

ONAP did not fulfill its oversight responsibilities to ensure that IHAs provided housing consistent with program intent and rules for 20 of 29 instances reported in *The Seattle Times*. ONAP's field offices responsible for overseeing IHA activities:

- did not act or put off taking action to identify and resolve problems which allowed problems to continue and in some cases, reach crisis stages;
- assumed new IHAs had the administrative capability to develop and manage their own housing programs without determining if the new IHAs had the resources, capacity, and systems necessary to do so; and
- did not always document decisions and actions to show their efforts to help IHAs develop and manage their housing.

In addition, the Northwest ONAP allowed IHAs to implement "innovative" housing programs without understanding how these programs worked and if these programs met program rules and expectations.

As a result, ONAP's ineffective oversight contributed to IHAs' misuse of housing funds intended for low-income Native American families; ONAP did not hold IHA officials accountable when evidence existed of poor performance in administering their housing programs; and ONAP has been the subject of negative publicity which has eroded public confidence and caused Congressional scrutiny of HUD's Indian housing programs. These instances occurred, in part, because:

- ONAP field staff whose monitoring efforts are intended to ensure program compliance either misinterpreted, misunderstood, or misused guidelines and Headquarter's instructions;
- ONAP field staff relied on Housing Authority certifications of compliance with requirements and on personal working relationships with IHA officials without follow up;
- of an over-reliance on contractors, independent public accountants, and the Office of Inspector General to identify problems and their causes, and recommend appropriate enforcement actions;

- the Department's initiative to develop partnerships with tribes/IHAs emphasized providing technical assistance rather than taking appropriate enforcement actions including holding IHA officials accountable for poor performance; and
- as part of a larger Department initiative, the Office of Public and Indian Housing empowered its field offices, including ONAP field offices, to take on additional responsibility but until 1997, on-site reviews were not performed to assess field office performance.

Although ONAP has oversight responsibility in these instances, it was IHA officials, not ONAP officials, who had responsibility for housing authority operations including the misuse of housing funds or the abuse of their housing programs. For example:

- Executive Directors and Board members, who are expected to promote economical and effective operations, misused scarce resources and abused their positions for personal gain.
- Contracting practices are so poor that scarce housing dollars have been wasted and/or unaccounted for.
- Program design and devolution provided the flexibility and opportunity that IHA officials and consultants exploited to assist over-income people to obtain upscale housing at discounted prices.

Available evidence suggests that these conditions occurred because IHAs were either administratively unable or unwilling to follow program rules. IHAs were:

- administratively incapable of developing their housing programs because of:
  - \* difficulty in hiring, developing, and retaining a staff with the skills, abilities, and knowledge needed to adequately operate an Indian housing program in compliance with program rules.
  - \* management information systems that lacked basic operational, financial, and compliance related information to make it possible to effectively manage and control a housing operation.
  - \* a lack of meaningful oversight of the Executive Director by the Board of Commissioners.

- unwilling to follow the program rules because:
  - \* Executive Directors and/or Board members allowed tribal politics or family relationships to unduly influence their decision-making which benefited themselves, family members, relatives, or friends.
  - \* IHA officials followed tribal philosophies and perspectives on how federal housing funds should be used which were contrary to program rules.

The instances reported in *The Seattle Times*’ series probably show some of the worst examples of abuse and mismanagement in Indian housing. Again, we do not want to imply that the problems illustrated in these instances are a fair representation of how other IHAs perform. Similarly, ONAP’s poor oversight in 20 of these instances should not be viewed as representative of its oversight for other IHAs.

***ONAP field offices did not act or put off taking action to identify and resolve problems which allowed problems to continue.***

Since Fiscal Year 1994, ONAP’s oversight efforts have focused on providing assistance to those IHAs determined to be the highest risk to the Department and needing the most assistance. A November 22, 1993 memorandum from the Assistant Secretary for Public and Indian Housing waived all applicable handbook monitoring requirements for Fiscal Year 1994 in an effort to close outstanding deficiencies from previous years. The memorandum also encouraged providing technical assistance to poor performing IHAs.

During our review, we found that certain ONAP field offices did not perform on-site monitoring to identify and/or follow-up on potential problems because ONAP staff believed that the November 1993 memorandum remained in effect indefinitely. Also, based on ONAP’s fiscal year 1995 instructions for Risk Assessment and Determination for Allocation of Resources (RADAR), field offices could only allocate about 15 percent of their travel budget to make on-site monitoring visits to IHAs not rated as “substantial” or “high” risk. Without on-site monitoring, ONAP field office monitoring of IHA performance was limited to reviewing submitted documentation and relying on verbal assurances from IHA officials. Consequently, problems at certain IHAs were not identified and in some cases, were allowed to continue to crisis stages.

For example:

- From 1992 to 1996, the Eastern Woodlands ONAP (Chicago) did not thoroughly evaluate and resolve administrative problems at the **White Earth Reservation Housing Authority**<sup>3</sup> even though complaints concerning preferential selection of participants off the waiting list were received in April and May 1992, November 1995, and February 1996. Also, annual audit reports indicated a lack of Board oversight of the Executive Director's actions. To resolve the complaints, Eastern Woodlands ONAP staff relied on verbal assurances from Housing Authority officials which assured the Eastern Woodlands ONAP that the problems had been addressed. In addition, Eastern Woodlands ONAP's lack of follow up on these problem indicators allowed the Housing Authority to apply for and receive a subsequent development grant in May 1996.

Eastern Woodlands ONAP staff did not go on-site until September 1996 after receiving a request from the new tribal chairman regarding problems at the Housing Authority. Their on-site visit disclosed that the Housing Authority's administration of two developments, totaling \$4.4 million for 50 units, had serious deficiencies. In addition, contracts to build units at these projects were awarded to the Tribal Chairman's aide (sentenced in November 1996 for a felony conviction on charges related to tribal operations) without using a bidding process and no contract was signed. Specifically, only 8 of the houses were complete and livable while the remaining 42 were partially completed and not livable. Yet, as of September 1996, 89 percent of the \$4.4 million provided under the 2 development grants had been drawn down.

As a result, low-income families have been denied the housing yet to be completed, and funds from the subsequent development grant must be used to complete 35 of the 42 partially completed houses. In total, although HUD provided three development grants totaling \$7.1 million to build 75 units, only 54 units will be completed.

- The Eastern Woodlands ONAP (Chicago) did not take effective action on known land use problems which allowed the **Narragansett Housing Authority**<sup>4</sup> to draw down over seventy-five percent

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<sup>3</sup> A summary of this instance is included in Audit-Related Memorandum #98-SE-107-0801 on Eastern Woodlands ONAP.

<sup>4</sup> A summary of this instance is included in Audit-Related Memorandum #98-SE-107-0801 on Eastern Woodlands ONAP.



(\$2,875,000) of its development grant and build only 12 of 50 planned houses which still sit vacant. This was the Housing Authority's first development grant from HUD.

Two months after final site approval in August 1993, the Eastern Woodlands ONAP became aware that the land which was purchased for the construction of the 50 units was not in trust. This situation was due to litigation involving the Tribe and Housing Authority against the local township over construction of a radio tower on the property which violated local zoning requirements and compliance with other local zoning ordinances. From October 1993 to May 1997, the Eastern Woodlands ONAP relied on verbal assurances from Housing Authority officials that the problems were being resolved and continued to allow the Housing Authority to draw down funds to pay for administrative and legal costs. As of December 1997, the property was still not in trust, the radio tower was still on the property, and no cooperation agreement had been executed with the local township to obtain essential utility services.

The Eastern Woodlands ONAP did not hold the Housing Authority and its management accountable for resolving the land use problems prior to allowing the Housing Authority to draw down funds. As a result, there are not sufficient funds available to complete the 50 unit low-income housing development; the 12 units constructed on the property still sit vacant; and low-income families are being denied housing.

While ONAP's guidance emphasized providing technical assistance to poor-performing IHAs, ONAP remained responsible for ensuring program funds were adequately safeguarded and properly used. In a June 26, 1996 memorandum to Administrators and staff, ONAP's former Deputy Assistant Secretary commented that there is a significant amount of discretion available to the field offices in performing program oversight. In our opinion, it is essential that ONAP staff follow-up on indications of problems to identify abuse, misuse, and mismanagement and take appropriate enforcement action to ensure program funds are protected and not misused.

***ONAP assumed new IHAs had the administrative capability to develop and manage their own housing programs.***

Program requirements state that an IHA must maintain administrative capability at all times, and is eligible for new development funding as long as it has not been determined to be administratively incapable. Regulations

(24 CFR 950.135 (b)) state that to be administratively capable, an IHA shall administer its Indian housing program in accordance with applicable statutory requirements with no serious deficiencies. According to officials at two ONAP field offices, ONAP staff assumed new IHAs were administratively capable if there was no information to the contrary. As a result, new IHAs with no demonstrated administrative capability were awarded development funds which were subsequently mismanaged.

Even after funds were awarded, ONAP field staff did not ensure that new IHAs had the information systems and resources to maintain the minimal capability to properly administer their housing programs. On the contrary, ONAP field offices allowed new IHAs without demonstrated administrative capability to draw down funds and receive additional grants.

For example,

- The Eastern Woodlands ONAP (Chicago) did not determine if the newly formed **MOWA Choctaw Housing Authority**<sup>5</sup> had the administrative capability to administer its Indian housing program in compliance with program rules. Instead, Eastern Woodlands ONAP assumed the Housing Authority had administrative capability when it awarded the Housing Authority its first development grant in 1991. As a result, the Housing Authority was awarded HUD development funds without having the minimal capacity to properly administer an Indian housing program. In addition, Eastern Woodlands ONAP's monitoring from 1992 to 1994 did not indicate the Housing Authority lacked administrative capability, and the Housing Authority was awarded two additional development grants in 1994.

It was not until December 1994, due to a letter from the Housing Authority's Board Chairman on possible conflicts of interest, that Eastern Woodlands ONAP performed an on-site review at the Housing Authority. The subsequent on-site reviews in January and March 1995 identified severe administrative problems in six functional areas indicating the Housing Authority lacked administrative capability.

It was not until April 1997 that the Housing Authority was determined to be administratively capable after over two years of technical assistance at a cost of approximately \$50,000 in consulting fees.

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<sup>5</sup> A summary of this instance is included in Audit-Related Memorandum #98-SE-107-0801 on Eastern Woodlands ONAP.

- The Northwest ONAP (Seattle) did not determine if the newly established **Coquille Indian Housing Authority**<sup>6</sup> had the administrative capability to develop and operate its Indian housing program in compliance with program rules. Instead, the Housing Authority was assumed to be administratively capable and was awarded two low-rent housing grants totaling approximately \$7.8 million in August 1994. The Northwest ONAP had no assurance that the Housing Authority was administratively capable to operate the programs.

We found no documented evidence that Northwest ONAP ever performed an assessment of the newly established Housing Authority's administrative capability. Even though Northwest ONAP knew that the Tribe's Development Corporation oversaw the Housing Authority's activities and that the Housing Authority had no track record, Northwest ONAP relied on the Housing Authority's representation of its business strategies, planning, computer systems, and staff. When Northwest ONAP staff did identify administrative problems and alleged misuses of funds, Northwest ONAP management did not reassess the Housing Authority's administrative capability or exercise their authority to declare the Housing Authority high risk and require HUD approval for all development grant fund draws.

As a result, \$814,510 of the grant funds were used for unnecessary costs and costs unrelated to the Housing Authority's low-rent housing developments.

When providing limited funding to meet the need for low-income housing, the IHA/tribes' capability to administer these funds is crucial. Unless recipients possess the minimal skills, financial and management systems, and capability to properly administer their housing programs, ONAP has no assurance that funds will not be wasted through mismanagement and abuse.

PIH officials commented that ONAP now enrolls new IHAs in Partners in Progress, a substantive technical assistance program and designate new IHAs as "higher risk". While we recognize that this may be ONAP's practice since the program started in 1995, this practice was either not in effect or not followed for several IHAs in our review.

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<sup>6</sup> A summary of this instance is included in Audit-Related Memorandum #98-SE-107-0805 on Northwest ONAP.

***ONAP did not always document decisions and actions to show its efforts to help IHAs develop and manage their housing***

Without documentation, there is no accounting for the contribution, value, and expertise that ONAP staff contribute to IHA performance. For IHAs not in ONAP's Operation Recovery/Partners-in-Progress program, we found that ONAP staff did not sufficiently document their monitoring and technical assistance decisions and actions to show what they did to help IHAs develop and manage their housing. ONAP field staff commented that they have discussions by telephone with IHA staff, but these contacts were usually not reflected in ONAP's historical records. In addition, documentation showing ONAP's actions were not always available for evaluation. Consequently, evidence of decision-making was not available for us to determine who was accountable for decisions and on what information the decisions were based.

For example:

- The Northwest ONAP's (Seattle) technical assistance and monitoring of the **Chehalis Tribal Housing Authority**<sup>7</sup> were not sufficient to ensure that an emergency 1993 Comprehensive Improvement Assistance Program (CIAP) grant was used as intended. The Housing Authority was permitted to change the purpose of its CIAP project from emergency sewer system repairs to modernizing Mutual Help homes, mismanaged its modernization project, and was left with 15 of 25 homes with minimal work done and a sewer system that was only temporarily repaired.

We were unable to determine what actions and decisions Northwest ONAP staff made because there was no available documentation even though both the Housing Authority and the Northwest ONAP acknowledge contact with each other. There was also no documentation in Northwest ONAP's files to show if Northwest ONAP followed up when the Housing Authority did not correct the emergency situation within one year of the award as required. In fact, the next documented communication after the Housing Authority was awarded the grant on September 10, 1993 was not until January 10, 1995, when Northwest ONAP notified the Housing Authority that the CIAP funds were recaptured due to a lack of activity.

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<sup>7</sup> A summary of this instance is included in Audit-Related Memorandum #98-SE-107-0805 on Northwest ONAP.

- The Eastern Woodlands ONAP (Chicago) did not provide the needed oversight to ensure that the **Mashantucket Pequot Housing Authority**<sup>8</sup> used its development funds to provide appropriate housing assistance to low income tribal members. As a result, the Housing Authority used the \$1.5 million grant to help finance construction of 15 units which exceeded moderate design standards and cost an average of \$428,000. (The tribe provided the additional funding.) The Housing Authority then placed 14 families into these units, 12 of which were either over-income or whose incomes were not determined at the time of occupancy.

The Eastern Woodlands ONAP's travel records show that development staff visited the Housing Authority twice during construction, in September 1993 and October 1994, before the funds were drawn down. We were unable to determine what the two staff members reviewed during their visits, what decisions were made, and what actions were taken (if any), because there was no documentation available. Although the development specialist said he prepared trip reports for these visits, the reports were not in Eastern Woodlands ONAP's files and he did not know where the reports were.

Maintaining a clear and precise paper trail is essential to show accountability for decisions that were made, who made those decisions, and under what conditions those decisions were made. ONAP's former Deputy Assistant Secretary's comments in his June 26, 1996 memorandum emphasized this point:

"Please bear in mind that the process of developing an appropriate course of action with a proper justification in a well documented manner is as important as the action itself...At times, the ONAP Administrator may be called upon by a Secretary's Representative, the Office of Inspector General or the Secretary himself to explain an action."

***Northwest ONAP allowed IHAs to administer "innovative" housing programs without understanding how these programs worked.***

As illustrated in *The Seattle Times*, the abuse and mismanagement that can occur at IHAs make it vital that ONAP provide adequate oversight,

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<sup>8</sup> A summary of this instance is included in Audit-Related Memorandum #98-SE-107-0801 on Eastern Woodlands ONAP.

especially with new, “innovative” programs, to understand and identify any potential problems. With the regulatory environment changing under NAHASDA to provide tribes/TDHEs increased flexibility to design their own housing programs, it is critical that ONAP field staff obtain a good understanding of these programs. This understanding will enable ONAP field staff to identify program abuse and take prompt, necessary action.

In several instances, IHA officials have used regulatory flexibility and a lack of oversight as an opportunity to design their own programs. These programs resulted in the misuse of funds and gave undue benefit to over-income families. In designing the programs, IHA officials have taken advantage of what they believe is allowed under program rules and the Northwest ONAP staff’s lack of understanding of the IHA’s housing program to provide housing for themselves, family members, relatives, and friends. When identified and publicized, these instances of abuse have resulted in negative publicity giving the impression that HUD cannot manage its Indian housing programs.

For example:

- Northwest ONAP's (Seattle) oversight of the **Tulalip Tribes Housing Authority**<sup>9</sup> was not effective in taking action on known, potential problems which resulted in program abuse by the Housing Authority's Executive Director and her husband, the Housing Authority's Contracting Officer. Specifically, Northwest ONAP:
  - \* did not require the Housing Authority to demonstrate a need for over-income families in the Mutual Help Homeownership program. The Housing Authority allowed eight over-income families to participate in its program even though the participation of over-income families must be approved by HUD and only a maximum of five families or ten percent of the number of units in a project, whichever is larger, is allowed by statute.
  - \* did not take prompt action on indications that large homes (exceeding moderate design) were being built. Northwest ONAP officials made two on-site visits in September 1995 and saw foundations and homes in various stages of completion indicating large homes were being built. However, the Northwest ONAP office took no follow up action until the largest home was substantially completed.
  - \* did not follow-up to ensure the Executive Director's and her husband's participation in the Housing Authority's Mutual Help program was consistent with Housing Authority policies. This is particularly important since the Executive Director and her husband helped design the Housing Authority's program which favored over-income families like themselves.

As a result, the Executive Director and her husband participated in the Housing Authority's Mutual Help program and built a 5,268 square foot home. Although Northwest ONAP officials later determined that the Executive Director's home was ineligible for the Mutual Help program, this home has become a symbol of HUD's inability to administer its Indian Housing program and was prominently displayed at Congressional hearings held in March 1997.

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<sup>9</sup> A summary of this instance is included in Audit-Related Memorandum #98-SE-107-0805 on Northwest ONAP.

- The Northwest ONAP (Seattle) ignored program requirements and allowed the misuse of Low Rent development funds by the **Southern Puget Sound Inter-Tribal Housing Authority**<sup>10</sup> (the **Shoalwater Tribe's** umbrella Housing Authority). In fact, the Northwest ONAP Administrator suggested the Housing Authority treat a Low Rent project as a Mutual Help project even though this action was not authorized.

Northwest ONAP's lack of understanding of this development project resulted in **Shoalwater's** tribal Chairman, who was over-income and not eligible for the Low Rent program, receiving a \$176,405 custom home that he has lived in without making a payment for the first eleven months. In addition, the Housing Authority provided at least \$471,826 of Low Rent development funds to seven **Shoalwater** tribal members (including the tribal Chairman) in the form of buy-down grants, an ineligible use of funds.

Northwest ONAP's Administrator and his staff contributed to the misuse of program funds by allowing the Housing Authority to be "innovative" in implementing its Low Rent development program even though program requirements were violated in the process. During the development process, Northwest ONAP relied on verbal assurances from the Housing Authority that nothing was wrong and program requirements were being met.

While flexibility is necessary and has been encouraged within Indian housing programs, it is essential that ONAP have a thorough understanding of a recipient's housing program to ensure program rules and expectations are met. We believe ONAP staff need to be aware of the entire scope of a housing program, especially when an IHA intends to leverage program funds or use program funds in conjunction with other programs. Otherwise, the likelihood that program funds will be misused and/or the program will be abused dramatically increases.

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<sup>10</sup> A summary of this instance is included in Audit-Related Memorandum #98-SE-107-0805 on Northwest ONAP.



***ONAP's ineffective oversight in these instances contributed to the negative publicity HUD's Indian housing programs have received***

For the instances discussed in the examples above, ONAP field office oversight was not effective in identifying and resolving problems at IHAs which adversely affected HUD's Indian housing program. As a result, ineffective oversight contributed to the misuse of scarce housing funds intended for low-income Native American families; ONAP field staff did not hold IHA officials accountable when evidence existed of poor performance in administering their housing programs; and ONAP has been the subject of negative publicity which has eroded public confidence and caused Congressional scrutiny of HUD's Indian housing programs. Considering ONAP's role to protect the investment of federal dollars in Indian housing by ensuring IHAs perform well and use funds wisely, ONAP's poor performance in these instances casts doubt on its ability to fulfill its oversight responsibilities in the future.

ONAP's ineffective oversight of IHA performance was associated with program abuse in *The Seattle Times*' series entitled "From deregulation to disgrace" published December 1 to December 5, 1996. The series' symbol of abuse within HUD's Indian programs was the 5,268 square foot house constructed with HUD Mutual Help development funds for the **Tulalip Tribes Housing Authority's** Executive Director and her family. This negative publicity added to the public's perception that HUD's Indian housing program is another program HUD cannot properly manage, and precipitated Congressional scrutiny of HUD's Indian housing program which resulted in a joint Senate Committee hearing (the Committee on Indian Affairs and the Committee on Banking, Housing, and Urban Affairs) on March 12, 1997.

***Since 1992, the Department has emphasized partnerships and technical assistance.***

Since 1992, the Department has encouraged ONAP to give IHAs and tribes as much local flexibility and decision-making as possible within statutory limitations. PIH officials commented that this policy is consistent with an April 29, 1994 Presidential Memorandum that encouraged the Heads of Executive Departments and Agencies, which includes HUD, to foster government-to-government relations with Native American tribal governments. The Department has also worked toward reducing regulatory requirements to do away with unnecessary rules and processes. Based on the memoranda and instructions from Public and Indian Housing and ONAP Headquarters, ONAP staff were encouraged to develop

partnerships with IHAs and to be proactive in assisting IHAs by providing technical assistance to address performance problems.

However, ONAP's clients (IHAs and tribes) have diverse philosophies and perspectives on how federal housing funds should be used. Coupled with the Department's emphasis on cooperation and developing partnerships with IHAs, this environment has caused some confusion within ONAP regarding accountability and enforcement.

***ONAP field staff's monitoring efforts did not ensure program compliance.***

Our review found that ONAP field staff, whose monitoring efforts are intended to ensure program compliance, either misinterpreted, misunderstood, or misused guidelines and Headquarters' instructions which contributed to program abuse and/or misuse of funds. Specifically, ONAP field management officials told us that the Assistant Secretary for Public and Indian Housing's November 22, 1993 memorandum suspended on-site monitoring to follow up on indications of problems. However, the memorandum only waived monitoring requirements for fiscal year 1994 and emphasized targeting resources to providing technical assistance to correct known problems and to monitoring high risk IHAs.

Subsequently, in January 1995, the Assistant Secretary for Public and Indian Housing canceled 17 handbooks including ONAP's monitoring handbook (7440.03) which left ONAP field staff with only the regulations and statutes as guidance. We found that the lack of guidance caused confusion on the part of ONAP field staff as to what their oversight duties and responsibilities actually were.

For example:

Eastern Woodlands ONAP (Chicago) received complaints which indicated preferential selection of participants in the housing program and annual audit reports which indicated a lack of Board oversight at the **White Earth Reservation Housing Authority**, but did not perform onsite monitoring visits. An Eastern Woodlands ONAP Director explained that it was the office's general perception that the November 1993 memorandum from the Assistant Secretary for Public and Indian Housing which waived all monitoring requirements for Fiscal Year 1994 remained in effect indefinitely. The Director was not aware of any instructions countermanding the Assistant Secretary's memorandum.

The Director told us that it was the staffs' understanding that ONAP Headquarters' policy had been to not do on-site monitoring at high-performing IHAs and only travel to IHAs rated as substantial or high risk. However, without going on-site to independently confirm how the Housing Authority was spending its development funds, Eastern Woodlands ONAP staff had no way of confirming what the Housing Authority was actually doing or achieving. Because of their long standing relationship with the Executive Director (who had been the Executive Director for over 15 years), Eastern Woodlands ONAP staff relied on the Housing Authority's certifications and verbal assurances that there were no problems.

We also found that Northwest ONAP staff did not provide adequate technical assistance about how IHAs could use their development funds under current regulations. One example was **Shoalwater Tribe** which was previously discussed. Another example is the **Puyallup Housing Authority**:

When the **Puyallup Housing Authority**<sup>11</sup> decided to use an acquisition method to speed up its Mutual Help development process, Northwest ONAP officials did not provide adequate technical assistance and guidance to ensure the Housing Authority complied with program requirements. The project (approved on August 30, 1989) to build 25 houses extended over a seven year period and the Housing Authority needed an additional \$592,676 but ultimately produced five fewer units than planned. Also, the Housing Authority did not treat the units as Mutual Help, and allowed all participants to move into homes without the Housing Authority determining income eligibility. The Housing Authority also did not obtain the minimum Mutual Help contribution or create the proper financial documents for conveyance for all but one participant.

Northwest ONAP staff were not aware of how such a program should work and permitted the Housing Authority to develop its own program. While the Housing Authority had only recently achieved administrative capability, Northwest ONAP still allowed the Housing Authority to implement its own financing program.

The lack of specific guidance, in regard to ONAP's monitoring and providing technical assistance, created confusion for ONAP field staff. This confusion was caused by ONAP field staff misinterpreting or

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<sup>11</sup> A summary of this instance is included in Audit-Related Memorandum #98-SE-107-0805 on Northwest ONAP.

misunderstanding Headquarters instructions, and was not adequately addressed by ONAP Administrators or ONAP Headquarters. Without a sufficient understanding of their roles and responsibilities, ONAP field staff provided oversight in an undefined, inconsistent manner which was ineffective and counterproductive to its mission of ensuring program integrity.

***ONAP field offices relied on Housing Authority certifications and on personal working relationships with IHA officials without follow up***

As directed by the Office of Public and Indian Housing, ONAP field offices did not closely monitor high-performing IHAs in accordance with a risk assessment methodology used to allocate its limited oversight resources. The Department's policy encouraged ONAP field offices to not micromanage the activities of competent IHAs.

We found that these high performing IHAs received little, if any, oversight. Under ONAP's risk-based monitoring, ONAP relied on written certifications and verbal assurances to resolve any problems, particularly at high performing IHAs. As a result, the officials at several of these IHAs (Executive Directors and/or Board members) took advantage of this lack of oversight and used their positions for personal benefit (**Tulalip Tribes Housing Authority** was previously discussed on page 25).

For example:

- The Eastern Woodlands ONAP's (Chicago) oversight was not effective in promptly identifying most of the ways the former Executive Director of the **Pleasant Point Passamaquoddy Housing Authority**<sup>12</sup> repeatedly misused her position to enrich herself and her family between 1991 and 1996. The former Executive Director was held in high regard within ONAP as indicated by the former Deputy Assistant Secretary. In August 1995, he informed the Housing Authority Board that the Executive Director had long been recognized as a national voice and advocate for Indian housing.

Monitoring records showed that Eastern Woodlands ONAP officials had not performed on-site monitoring of the Housing Authority from at least 1992 to October 1996 when it was considered a high performing IHA. Finally, in October 1996, after the Eastern

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<sup>12</sup> A summary of this instance is included in Audit-Related Memorandum #98-SE-107-0801 on Eastern Woodlands ONAP.

Woodlands ONAP Administrator received complaints about the Executive Director's misuse of her position, staff went on-site and found a number of instances where the Executive Director misused her position. Those instances included:

- \* housing her father and herself when neither was eligible for the assisted housing;
- \* violating the conflict of interest prohibition in the procurement regulations by having the Housing Authority purchase homes, goods, and services from herself and two family members;
- \* requesting and receiving an ineligible payment of \$15,588 from the Housing Authority for relocating her horses while at least one family who was displaced received nothing,
- \* having the Housing Authority pledge its assets to secure a construction loan for her brother-in-law, and
- \* having the Housing Authority use about \$700,000 in development and CIAP funds to expand the Housing Authority office in excess of its needs.

As a result of the Executive Director's actions, Housing Authority assets were misused and low-income families were denied housing and modernization funding. The misuses occurred because Eastern Woodlands ONAP did not do any on-site monitoring, did not adequately address general complaints about the Executive Director and did not question the funding for excessive office space.

***Certifications by recipient officials are the first level of program control.***

In this time of empowerment and program flexibility, the officials who have the responsibility for federal housing funds must have the opportunity to administer those funds properly. Certifications by those officials serve as the first level of control to ensure federal housing funds are used consistent with program rules and program intent. We recognize that to do its job ONAP must rely on IHA certifications and its working relationships with IHA officials. However, ONAP must maintain a reasonable degree of skepticism and confirm that the certified information and verbal assurances from IHA officials are reliable. Without periodically confirming this information independently, ONAP lacks assurance that the information is reliable and that the program is being properly managed.

***ONAP over-relied on third parties to identify and resolve problems***

We found instances where ONAP field offices relied on third parties to identify problems, their causes, and recommend appropriate action, rather than taking necessary action. With fewer resources, ONAP has had to rely on other entities such as contractors, Independent Public Accountants (IPAs), and the OIG to identify and correct problems. Even so, ONAP field offices are still responsible for ensuring IHAs meet program expectations, comply with program rules, and are held accountable for their performance.

In an effort to help poor performing IHAs, ONAP implemented the Operation Recovery/Partners-in-Progress program to provide intensive technical assistance and training to IHAs who had systemic management deficiencies. Under this program, the Department has contracted with three independent contractors (who also use subcontractors) to provide these services. Since 1995, HUD has spent a total of over \$5,639,000 to provide technical assistance and training to 39 different IHAs (or about 18% of all IHAs). Eleven have been removed from the program and have been deemed administratively capable. The Department also contracts with the Native American Indian Housing Council (NAIHC) to provide technical assistance and training to IHAs based on a direct appropriation from Congress. NAIHC received \$2.5 million in the last two years to perform these duties.

These statistics indicate, to some extent, the degree of problems ONAP has with poor performing IHAs. These activities also represent a huge resource commitment. Although the ONAP officials overseeing the Partners-in-Progress program and NAIHC's efforts believe the programs

are effective and beneficial, ONAP has performed no formal, documented reviews to assess their performance. According to ONAP records, of the 28<sup>13</sup> IHAs that we reviewed, 12 were in the Partners-in-Progress program in late 1996.

Also, the Department, as a whole, depends on IPAs, as an independent control, to perform annual audits to identify compliance issues and problems at IHAs. These audits provide an independent source of information that ONAP field staff can use in their monitoring of IHA operations. However, at three IHAs (Pleasant Point, White Earth, Pascua Yaqui) that we reviewed, IPAs did not report known deficiencies in their annual audit reports. One ONAP Administrator also questioned the value of IPA audits as an independent control.

Finally, ONAP refers cases to the OIG for review, especially when fraud or a misuse of funds is suspected. As of March 1997, OIG had completed or ongoing work at 17 IHAs involved in these 29 instances. While we value a good working relationship with ONAP, OIG also has limited resources and does not respond to every ONAP request for assistance. For example, the Eastern Woodlands ONAP suggested that the Midwest OIG may want to do a review of the **White Earth Reservation Housing Authority** in 1995; and in March 1996, ONAP's former Deputy Assistant Secretary asked for an investigation. However, OIG was not able to respond to those requests until April 1997, and ONAP field staff did not perform an on-site review. As a result, program abuse continued until September 1996 when an on-site review was prompted by a request from the new tribal Chairman. Subsequently, ONAP took over the Housing Authority in November 1996.

ONAP's use of outside entities to supplement its oversight efforts should not delay or defer taking action when program abuse or misuse of funds is suspected or identified. Specifically, ONAP must take swift, decisive action to correct problems and not wait for possible actions that may be taken by third parties.

***The Department emphasized developing partnerships and providing technical assistance.***

As early as 1992, HUD Headquarters instructed OIP (ONAP's predecessor) field offices to develop partnership relationships with IHAs. In a February 21, 1992 memorandum titled Eliminating the "Mother, May I?" Syndrome, the Assistant Secretary for Public and Indian Housing encouraged Indian program Administrators to provide greater discretion to

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<sup>13</sup> One instance was an OIG audit of cash controls for 12 IHAs which is not included.

well-performing IHAs and not “second guess every decision made or approach taken by a housing authority”.

HUD’s Secretary reinforced this concept in an August 6, 1992 memorandum to all OIP Directors and Field Office Managers. The Secretary emphasized that the Department’s role did not include “micromanagement” of the activities of competent IHAs; and the Secretary gave his personal assurance to tribal leaders that when there was difficulty allowing flexibility in the field, tribal leaders were free to contact HUD Headquarters for his personal and expeditious assistance.

Subsequently, ONAP field staff devoted a significant amount of time providing extensive technical assistance to improve IHA performance rather than monitoring IHA performance. ONAP commented that the purpose of technical assistance was to improve an IHA's skills and systems to ensure compliance with program rules. While we agree with ONAP’s explanation, we found that ONAP’s technical assistance efforts were not always effective. As a result, technical assistance efforts were possibly wasted, and in some instances, additional program funds were provided to correct problems. In several instances, ONAP did not hold IHA management accountable for poor performance in fulfilling their responsibilities.

For example:

- The Southwest ONAP’s (Phoenix) efforts were not effective in improving administrative capability or correcting development problems at the **All Indian Pueblos Housing Authority**<sup>14</sup>. As early as 1991, Southwest ONAP officials were aware of serious administrative deficiencies related to accounting, collections, maintenance of dwellings, and travel at the Housing Authority. In response, Southwest ONAP made at least **50 technical assistance visits** in the next three years to resolve these deficiencies. (It should be noted that the Housing Authority was located within a few blocks of the Southwest ONAP office.)

During this period, the Housing Authority’s Administrative Capability Assessment review ratings were all below the 70 percent threshold (highest rating was 69.7 percent) for satisfactory performance. Southwest ONAP officials commented that the Housing Authority’s Board was not responsive and it was difficult to work with the Executive Director. In addition, OIG performed an audit of the

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<sup>14</sup> A summary of this instance is included in Audit-Related Memorandum #98-SE-107-0803 on Southwest ONAP.



Housing Authority's 1995 operations in response to a complaint and identified significant deficiencies in the modernization program and housing management.

Even though the Housing Authority's Board and management are responsible for ensuring the Housing Authority is properly administered, the Southwest ONAP did not hold management accountable for the Housing Authority's poor performance. Without a strong commitment from the Housing Authority's Board and Executive Director to improve performance, the Southwest ONAP's technical assistance efforts were not successful.

- The Eastern Woodlands ONAP's (Chicago) oversight efforts at the **Bois Forte Housing Authority**<sup>15</sup> were not effective in resolving severe management deficiencies and ensuring administrative capability was obtained. From at least 1990 through 1996, the Eastern Woodlands ONAP continued to identify recurring management deficiencies at the Housing Authority. Project files showed that Eastern Woodlands ONAP staff and outside consultants continually worked with the Housing Authority to get management deficiencies resolved, but those efforts were not successful.

Also, the Eastern Woodlands ONAP was unsuccessful in getting Housing Authority management to accept responsibility and make a genuine commitment to improve the Housing Authority's performance. Despite the lack of administrative capability, the Eastern Woodlands ONAP continued to provide development and modernization funds totaling \$3,524,523 from 1992 through 1996.

The evidence suggests that the prior Eastern Woodlands ONAP Administrator and staff placed a higher priority on providing funding than on ensuring federal funds were safeguarded and used properly. Also, the Executive Director turnover at the Housing Authority contributed to chronic management problems which we believe made technical assistance efforts unsuccessful.

As illustrated above, there is a direct relationship between a commitment from an IHA's management to improve its performance and the success of ONAP's technical assistance efforts. This conclusion is supported by Price Waterhouse's Improved Oversight of Indian Housing Authorities report

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<sup>15</sup> A summary of this instance is included in Audit-Related Memorandum #98-SE-107-0801 on Eastern Woodlands ONAP.

(January 1993) which identified critical functions that IHAs must perform well to enable ONAP to be successful in its technical assistance efforts.

The report states that the administrative and leadership capability of an IHA's Executive Director and Board of Commissioners determine to a large extent the success of Indian housing programs. In our opinion, without a commitment from IHA management to improve and achieve administrative capability, ONAP's technical assistance efforts and related resources will be wasted.

Similarly, the Office of Policy Development and Research's 1996 Assessment of American Indian Housing Needs and Programs: Final Report noted that the stability and effectiveness of tribal government is important. Stability and effectiveness seem to have a positive impact on a tribe's ability to hire and retain qualified executive directors which help create a positive environment for IHA management. In regard to the importance of qualified staff at IHAs, ONAP Administrators also commented that having competent IHA managers was critical to program success, and technical assistance gains could vanish when qualified IHA staff leave.

***The Office of Public and Indian Housing empowered ONAP field offices, but on-site reviews were not performed to assess field office performance until 1997***

Price Waterhouse's January 1993 report, Improved Oversight of IHAs, was a collaborative effort with HUD to implement its vision for improved Indian housing. This endeavor was prompted by legislative changes and strategic considerations. The report recognized the changing role, functions, and organization of the Office of Indian Programs (OIP, ONAP's predecessor). The Price Waterhouse report emphasized the following:

- a partnership relationship between OIP and the IHAs,
- the use of the Administrative Capability Assessment (ACA) as a remote monitoring tool,
- a risk assessment approach to allocating resources,
- a "team" approach to problem-solving,
- the increased need for technical assistance as IHAs receive less monitoring, and

- a reorganization of OIP, designed to support the new approach to oversight.

As required by the Housing and Community Development Act of 1992, OIP was reorganized in December 1993 and its name was changed to the Office of Native American Programs (ONAP) consisting of two components, Headquarters Operations and Field Coordination. Reflecting the statutory and regulatory changes in Indian programs, ONAP's oversight approach also changed. While ONAP field offices still had oversight responsibility for HUD's Indian housing programs, their focus shifted from enforcement and accountability to a partnership relationship with IHAs which encouraged flexibility.

ONAP is part of HUD's Office of Public and Indian Housing and is supervised by the Assistant Secretary for Public and Indian Housing. The Assistant Secretary's supervision of public and Indian housing programs and initiatives is supported by the General Deputy Assistant Secretary, the Deputy Assistant Secretaries, and the Directors of each program office. In regard to ONAP, the Assistant Secretary relies on the Deputy Assistant Secretary and the Administrators of each field office to administer the day-to-day operations of HUD's Indian housing programs.

ONAP Headquarters became responsible for monitoring the performance of its field offices in the spring of 1994. Prior to that time, HUD's Regional Administrators had oversight responsibility for ONAP's field offices.

However, ONAP Headquarters did not perform any on-site reviews to assess how well each field office was providing oversight. The last time an on-site review was performed to assess ONAP field office performance was in 1992 or 1993 when OIP (ONAP's predecessor) was under HUD's Public Housing Program.

Also, ONAP field office Administrators and management staff commented that field staff did not receive the training that was supposed to accompany the Price Waterhouse reorganization. In a July 10, 1996 memorandum to the Acting Assistant Secretary for Public and Indian Housing, ONAP's former Deputy Assistant Secretary acknowledged related factors which contributed to problems within ONAP. In that memorandum, he commented that:

- the promised resources for training, education, team-building, and system development for a new automated risk system were not forthcoming. As a result, ONAP staff were left questioning their

roles, as well as management's commitment to them, and staff morale was very low.

- coupled with the natural loss of staff through attrition, ONAP long ago lost its ability to monitor grantees at a level at which they feel comfortable and, at times, to carry out its fiduciary responsibility.
- the most vexing issue confronting ONAP has been the idea of empowerment. Exactly what empowerment means to an ONAP staff member, especially at a time when grantees are also empowered, is a mystery. The resulting clash of philosophies has been the root cause of almost every controversy in Native American programs the past year.

While limited resources for travel and training may be a factor that affected ONAP's performance, we found that poor decision-making by ONAP officials was the primary cause of the problems with ONAP's oversight.

We also found that even though internal problems within ONAP had been identified, ONAP Headquarters did not perform on-site reviews to assess field office performance until 1997. While ONAP Headquarters officials insisted that they monitored field office performance through written correspondence and frequent telephone contacts, we found that ONAP field offices received no written feedback from Headquarters about their performance.

ONAP's National Office did provide written feedback when it conducted on-site operational reviews of the Northwest ONAP and the Eastern Woodlands ONAP in May 1997 and June 1997, respectively. The reviews included the following areas:

- Staffing allocation and workload,
- General office administration and operations,
- Facilities, planning, and development responsibilities,
- Finance and budget responsibilities, and
- General program administration.

Both reviews reported numerous deficiencies including the need for greater attention and focus by the field office staff on areas of regulatory compliance, employee accountability, and thoroughness of work products.

According to ONAP's former Deputy Assistant Secretary, ONAP field office Administrators were empowered to manage their offices which included developing their own risk factors when rating IHAs as either high, substantial, medium, or low risk. He commented that he repeatedly asked the Assistant Secretary for additional funds for travel and training but his requests were ignored. Consequently, travel funds were limited and would be allocated for on-site monitoring or technical assistance based on risk, with the majority of travel funds to be expended on high and substantial risk IHAs.

***IHA officials were responsible for housing authority operations including the misuse of housing funds or abuse of their housing programs.***

While ONAP's oversight was ineffective in identifying and resolving problems, IHA officials were responsible for housing authority operations including the misuses and abuses that occurred. As ONAP Administrators told us, the most critical element to program success was the competence and integrity of the people administering the IHAs' housing programs. In the July 10, 1996 memorandum, ONAP's former Deputy Assistant Secretary commented about internal and

external factors which could adversely affect the administration of an IHA's housing program. External factors included the following:

- Native Americans have a long-standing, deep mistrust of the federal government. This mistrust is historical and understandable but significantly inhibits a partnership relationship between HUD and its Indian clients.
- There are still a large number of Native Americans and some tribal governments who believe the federal government owes them certain benefits such as housing.
- Tribal rights, sovereignty, and self-determination are serious issues that must be addressed. There are many examples where IHAs or tribes simply refuse to comply with statutes and regulations because of this unique status.

The types of problems that we found at IHAs during our review are listed below. Summaries of the 29 instances are not included in this report, but are included in separate audit-related memoranda for each of the five ONAP field offices involved. Appendix B of this report lists the IHAs reviewed and the five ONAP field offices responsible for their oversight.

- Executive Directors and Board members who are expected to promote economical and effective operations, misused scarce resources and abused their positions for personal gain. For example, the Executive Director at **Pleasant Point Passamaquoddy Housing Authority** misused her position for personal gain (discussed on pages 30 - 31 of this report).
- Contracting practices are so poor that scarce federal housing funds have been wasted and/or unaccounted for. For example, the **White Earth Reservation Housing Authority** (discussed on page 18 of this report) awarded contracts to the Tribal Chairman's aide without using a bidding process and no contract was signed; only 8 of 50 planned units were completed.
- Program design and devolution provided the flexibility and opportunity that IHA officials and consultants exploited to assist over-income people to obtain upscale housing at discounted prices. For example, the **Tulalip Tribes Housing Authority** (discussed on page 25 of this report) built upscale houses, one was the Executive Director's which was over 5,268 square feet.

In several instances, IHA officials and consultants used their positions to take advantage of the opportunities in the Indian housing programs for personal gain.

For example:

Prior to June 1996 the Southern Plains ONAP (Oklahoma City) oversight of the **Housing Authority of the Otoe-Missouria Tribe**<sup>16</sup> was not effective at addressing deficiencies in occupancy management and conflicts of interest. A former Southern Plains ONAP official, acting as a consultant to the Housing Authority of the Otoe-Missouria Tribe, informed the Housing Authority of regulatory loopholes that encouraged the Housing Authority to sell homes for the minimal contribution of \$1,500. The former ONAP official signed a \$101,376 two-year contract with the Housing Authority two days after he retired from ONAP.

The Board determined that the Housing Authority's waiting list contained errors, and updated the list on December 12, 1995. The errors included failure to give preference to enrolled tribal members and inclusion of applicants that owed money to the Housing Authority. Accordingly, the Board selected participants from the corrected waiting list, resulting in 13 of the original participants losing their homeownership opportunities. These 13 included at least three that had already executed Mutual Help Occupancy Agreements.

Updating the waiting list allowed the Executive Director and family members of the Board to be selected as participants and receive Mutual Help homes. The Board Chairman and Executive Director received the largest houses in the program. The Board then set the sales price of homes at the \$1,500 minimum Mutual Help Contribution which represented the participants' "sweat equity". The homes were then sold to the participants (including the Housing Authority's Board Chairman and Executive Director) for the minimum contribution with no funds changing hands.

Available evidence suggests that these conditions occurred because IHAs were either administratively unable or unwilling to follow program rules.

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<sup>16</sup> A summary of this instance is included in Audit-Related Memorandum #98-SE-107-0804 on Southern Plains ONAP.

IHAs were administratively incapable of developing their housing programs because of:

- difficulty in hiring, developing, and retaining a staff with the skills, abilities, and knowledge needed to adequately operate an Indian housing program in compliance with program rules.
- management information systems that lacked basic operational, financial, and compliance related information to make it possible to effectively manage and control a housing operation.
- a lack of meaningful oversight of the Executive Director by the Board of Commissioners.

IHAs were unwilling to follow the program rules because:

- Executive Directors and/or Board members allowed tribal politics or family relationships to unduly influence their decision-making which then directly benefited themselves, their family members, relatives, or friends.
- IHA officials followed tribal philosophies and perspectives on how federal housing funds should be used which were contrary to program rules.

***Effective oversight is essential to ensure IHAs are performing well and properly using funds.***

The Price Waterhouse report points out that ONAP's role is to ensure IHAs are performing well and properly using funds by choosing the option of intervening in IHA operations when IHAs are poorly performing. The report includes the following comments:

- When IHAs are not performing well and are unable to properly manage their operations, leading to a wasted investment and in some cases fraud and abuse, ONAP field offices have a responsibility to "intervene" in IHA operations.
- The importance of intervention should not be minimized since it is the means by which HUD ultimately protects the taxpayers' investment in Indian housing.



Equally significant was the report's comments on ONAP's accountability for poor performing IHAs. The report pointed out that OIP field offices were not held accountable for poor and declining IHA performance. As a result, performance of some high risk IHAs continued to decline. The report comments that OIP field offices need to be held accountable for poor performing IHAs, so that OIP field offices have some incentive to intervene more strongly in IHA activities.

**C. UNDER NAHASDA, FLEXIBILITY MUST BE EQUITABLY BALANCED WITH TRIBAL ACCOUNTABILITY FOR RESULTS.**

On October 26, 1996, the President signed into law the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) which will dramatically change HUD's Indian housing programs. With the enactment of NAHASDA, federal assistance for Indian housing will be provided in a manner that recognizes the right of self-determination and tribal self-governance. NAHASDA's block grant funding mechanism will provide increased flexibility for tribes to design their own housing programs with less federal involvement. NAHASDA went into effect October 1, 1997; and its proposed final rule will be forwarded to the Office of Management and Budget for final clearance and approval.

Significant changes under NAHASDA include:

- The tribe will be the recipient or can designate a tribally designated housing entity (TDHE) as the recipient, if it desires, to carry out a housing program. Existing IHAs will automatically be retained as TDHEs, unless the tribe makes a change.
- Funding will be provided to the tribe (or TDHE) rather than an IHA, as in the past. ONAP expects the number of recipients to more than double from the current number of IHAs (217) that were in HUD's Indian housing programs in 1997.
- All regulations under NAHASDA are to be issued in accordance with negotiated rule making between tribal representatives and HUD representatives.
- Grant funds will be allocated using a formula based on factors that reflect the need of the Indian tribes and other objectively measurable conditions.
- As recipients of the grant funds, tribes/TDHEs are responsible for ensuring compliance with program rules and for ensuring performance is at an acceptable level.

***NAHASDA presents new challenges to improve performance and to provide better accountability***

History has shown that HUD's Indian housing programs and ONAP's accompanying role have evolved from a rigid regulatory structure to one with an emphasis on flexibility. Program rules have changed to give IHAs more flexibility in administering their housing programs. However, these same changes have not provided a control structure to ensure accountability for IHA performance. ONAP has oversight responsibility to ensure IHAs administer HUD-funded Indian housing programs in compliance with program rules. However, since 1992, ONAP's focus has shifted from assuring fiscal integrity and program compliance in the operation of Indian housing programs to a partnership role with IHAs which emphasized providing technical assistance.

NAHASDA is the most recent and significant change in Indian housing, providing increased flexibility and shifting even more responsibilities to the tribes. NAHASDA specifies that the Secretary shall carry out this Act through the Office of Native American Programs which is part of HUD's Office of Public and Indian Housing (PIH).

According to the Assistant Secretary for PIH, ONAP's resources have not grown, and in fact will probably continue to decrease as the federal government continues to downsize. However, the Assistant Secretary believes that with the NAHASDA legislation and ONAP's pending reorganization that ONAP will be able to effectively monitor program participants, and staff resources will be allocated as the reorganization proceeds in a manner to address this very important function. As of February 9, 1998, ONAP was developing its own reorganization plan specifically designed to ensure that NAHASDA will be properly implemented and that ONAP field staff will provide adequate oversight.

***Tribal members played an integral role in the negotiated rule-making process to develop NAHASDA's proposed final rule.***

Section 106(b) of NAHASDA requires HUD to develop final regulations through negotiated rule-making procedures under subchapter III of Chapter 5 of title 5, United States Code. NAHASDA's negotiated rule-making committee was comprised of 48 tribal members and 10 HUD employees. Tribal members represented geographically diverse small, medium, and large tribes and were chosen based on their experience and knowledge of Indian housing programs. Additionally, three individuals from the Federal Mediation and Conciliation Service served as facilitators.

The negotiated rule-making committee established a charter outlining their advisory roles and responsibilities to the Department. Tribal members recommended and the Committee agreed to operate based on consensus rule making. The protocols adopted by the Committee define "consensus" as general agreement demonstrated by the absence of expressed disagreement by a Committee member in regards to a particular issue. To the maximum extent feasible consistent with the Department's legal obligations, all consensus decisions were used as the basis for the proposed rules.

The negotiated rule-making committee's Proposed Rule was issued on July 2, 1997. OIG was asked for and provided its comments and recommendations on the Proposed Rule to OGC's Regulations Division via memorandum dated July 25, 1997. OIG wanted all of its comments given the type of review normally afforded nonconcurring comments. To avoid a policy-making role and to maintain its independence, OIG's involvement in the NAHASDA's rule-making process was limited to providing written comments and recommendations and not to actively participate in meetings of the negotiated rule-making committee. Other than minor wording changes, OIG recommended changes were not included in NAHASDA's proposed final rule dated October 29, 1997.

### ***ONAP's Risk Analysis gave NAHASDA an overall rating of High Risk***

ONAP's Front End Risk Analysis (Risk Analysis) gave the program an overall rating of High Risk as it has the potential for significant control weaknesses. The High Risk rating was based primarily on criteria that it is a new program which generates a large dollar volume which will receive media exposure and strong Congressional interest. The Risk Analysis also points out that the language in NAHASDA is ambiguous which caused differing interpretations between HUD and tribal representatives on the negotiated rule-making committee. ONAP's High Risk factors in the general control environment which are consistent with the issues identified in this report included:

- Program participants - Risks include: inexperienced grant beneficiaries and recipients who may not fully understand their roles and responsibilities, and creating non-compliance concerns which may cost HUD staff time to correct or to provide detailed technical assistance.
- Organizational structure - Risks include: inadequate administrative capacity, grant funds being used for ineligible purposes, grantees

may not understand or do not follow the eligible expenditure regulations, lack of HUD designed devices to measure program and administrative performance of recipients, and potential for abuse of program funds.

- Monitoring and personnel adequacy- Risks include: remote monitoring has its limitations and the new program is not fully understood by HUD review staff. Staffing resources may be insufficient to process and administer the new program since the number of customers served by ONAP will more than triple.<sup>17</sup> Also, time frames for implementation are unrealistic.
- Automated information systems - Risks include: software reporting system may not be ready in sufficient time to implement program reporting.
- Management attitude - Risks include: potential for additional negative media attention, self-governing program may create opportunities for fraud, waste, and abuse by clients, and with minimal reporting requirements at one year intervals, a beneficiary or recipient may abuse program funds and it would be over a year before ONAP could determine a significant loss.
- Segregation of duties - Risks include: establishing accountability to prevent or discourage the diversion or extortion of NAHASDA funds for activities involving cash receipts.

The control techniques suggested by ONAP to mitigate these risks included additional training for recipients on Indian housing plans and for field office staff on program requirements, providing increased technical assistance to recipients by field office staff, and increased monitoring by field office staff.

In a December 11, 1997 letter to HUD's Chief Financial Officer, the Assistant Secretary for Public and Indian Housing's identifies problems within the Department's environment which adversely affect NAHASDA. He stated:

"Given the present transition environment in which the Department is functioning: the fact that full human and other resource plans and allocations are in question and not finalized, the lack of an integrated Departmental information and financial system, and the absence of

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<sup>17</sup> Although ONAP's Risk Analysis states that the number of customers will more than triple, PIH commented that for the record, it is their position that the number of recipients will more than double.

integral statutory constraints, the FERA<sup>18</sup> conducted by ONAP represents a major effort and is certified as completed. The risks identified and the controls in place or planned reflect the best that is possible given the present Departmental environment.

As the Departmental environment improves and finalizes the Office of Public and Indian Housing will continue its efforts to identify and create additional internal controls to further reduce the risks inherent in the NAHASDA program.”

On January 16, 1998, ONAP’s Risk Analysis was approved by HUD’s Chief Financial Officer.

***Poor performance and lack of accountability in the past raise concerns about providing funding using a block grant program like NAHASDA.***

As illustrated by the 29 instances, not all IHAs have consistently demonstrated the capability to administer federally funded housing programs consistent with program intent and program rules. Poor performance by some IHAs in the past is significant considering the increased flexibility recipients will receive to develop and administer their housing programs under NAHASDA. Without realistic performance measures and enforcement provisions to ensure accountability for program results, we envision similar problems in the future.

Similar concerns about the capability of IHAs to administer housing programs under a block grant mechanism were raised in the Office of Policy Development and Research’s Assessment of American Indian Housing Needs and Programs: Final Report (May 1996). The report’s policy recommendations for Indian housing programs included the following:

- In a new block grant program, substantially fewer strings should be attached, which makes it essential that certain requirements remain to focus resources on basic national objectives. Probably most important is requiring that the bulk of the funding address the housing problems of low-income households most in need, and that some quantitative constraints be imposed to direct local decisions away from spending very large amounts on a small number of families while the majority of those in need remain unassisted, or dispersing funds too widely to meet anyone’s housing needs.

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<sup>18</sup> Front-End Risk Analysis

Serious penalties should be imposed for failure to comply with requirements.

- Granting all tribes full authority and responsibility for housing development immediately would be dangerous. There is a substantial diversity in the administrative capacity of IHAs which may be an important constraint on changing to a block grant program. A phased strategy for implementing a block grant program seems appropriate, as capacity expands authority to fund activities will increase.

Even in the Indian community, there is concern about the past performance of many IHAs. The Chief of the Mississippi Band of Choctaw Indians made the following points in a paper discussing his concerns about NAHASDA:

- *Many tribal housing programs with past performance records that are unsteady at best will receive funding simply because a formula determines they should.*
- *Many people do not want their funding tied to performance. I do not understand why. Federal housing dollars exist to house people. Under NAHASDA, tribal governments inherit two measures of success to which they will be held accountable. First and foremost, people must be put in decent housing. Second, tribal governments will be accountable and must assure Congress that they are better stewards of these federal funds than has been demonstrated in the past.*
- *Non-performance by a few hurts everyone. NAHASDA funding is not management training money and should not be used to fund on-the-job training for those who cannot perform.*
- *To succeed under NAHASDA, we must do it ourselves and insist on high performance, excellence in our programs, and the people we trust to administer them.*

***The Department's primary challenge is to ensure NAHASDA's regulations maintain an equitable balance between accountability and flexibility.***

According to *Monitoring Government*<sup>19</sup> by Paul Light, the concept of accountability has its roots in tightly drawn rules and regulations which limit management discretion. This concept conflicts at times with originality, innovation, and risk taking - the direction that Congress is heading with NAHASDA which provides increased flexibility for tribes to develop their own housing programs. However, accountability and innovation are not mutually exclusive and there is a place for each in NAHASDA with effective communication between the Department and the recipients being an important link between accountability and performance.

We reviewed the proposed final rule to identify and evaluate whether it addressed ONAP's high risk factors and the patterns of problems concerning oversight and accountability identified in this report. Specifically, we wanted to see if the issues identified in our review were adequately addressed and what criteria and guidelines the proposed final rule prescribed for recipients and ONAP staff to enable them to carry out their duties and responsibilities as prescribed under NAHASDA. While the proposed final rule identified the numerous duties and responsibilities needed to implement NAHASDA, it did not specify what criteria and guidelines recipients or ONAP staff were to use in the performance of their oversight duties. Specifically:

- Accountability and Enforcement

Section 1000.530 of the proposed final rule specifies corrective and remedial actions that HUD will request or recommend to address performance problems prior to taking any sanctions. The proposed final rule also provides for a notification and hearing process prior to taking any sanction. Section 1000.534 explains what constitutes substantial noncompliance. First, there must be noncompliance with NAHASDA or the regulations; secondly, the noncompliance must be substantial for HUD to take action. Substantial noncompliance includes noncompliance that has a material effect on the recipient meeting the major goals and objectives in its Indian housing plan. Section 1000.538 explains what remedies are available to HUD for substantial noncompliance.

As discussed in this report, one reason that the reported abuses and mismanagement continued was that ONAP field offices did not take prompt action or hold IHA officials accountable for their actions. Although enforcement actions were available to ONAP, either no

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<sup>19</sup> Paul C. Light, *Monitoring Government*, (Washington, D.C: The Brookings Institution, 1993):12-13



action was taken or extensive technical assistance was provided which did not always provide positive results. Although the lack of enforcement actions did not cause the problems, we believe the inaction created an environment in which IHA officials could continue to abuse HUD's Indian housing program and not be held accountable for their actions.

Based on the proposed final rule, the determination of substantial noncompliance is a judgment call by ONAP field staff since no specific criteria or procedures are cited. ONAP's Risk Analysis recognized that NAHASDA was not fully understood by ONAP staff and that ONAP lacked the devices to measure recipients' program and administrative performance. Also, due to the reporting requirements, a recipient may misuse program funds for at least a year before ONAP could determine the loss. In addition, the proposed final rule did not include the requirement that HUD be promptly informed of problems, delays, or any adverse activities.

ONAP officials told us that training for ONAP staff has already taken place and will continue. PIH commented that ONAP's National Office has also begun a newsletter for ONAP staff which will further enhance communication to staff on various issues relating to ONAP programs. In addition, guidebooks and notices are forthcoming. However, considering the Assistant Secretary's comments (December 11, 1997 letter on the Risk Analysis) on the uncertainty of human and resource allocations, we question whether ONAP field staff will receive sufficient training in their new duties and responsibilities to have an adequate understanding of NAHASDA to determine what constitutes substantial noncompliance. Also, based on ONAP's past performance as discussed in this report, we have concerns whether ONAP field staff will take prompt, decisive action to impose sanctions and hold recipients accountable for abuse, waste, and mismanagement.

- Administrative Capability

Section 1000.6 of the proposed final rule states that recipients must have the administrative capacity to undertake affordable housing activities, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement. Section 1000.520(a) refers to HUD reviewing each recipient's performance to determine whether the recipient has the continuing capacity to carry out eligible activities in a timely manner. The proposed final rule is silent on HUD making a

determination of a recipient's administrative capability or obtaining a certification that a recipient has the capacity to carry out eligible activities prior to undertaking affordable housing activities.

As illustrated in this report, the lack of administrative capability was a major cause of program abuse and misuse of funds. Also, ONAP recognizes administrative capability as a significant risk in its Risk Analysis. However, under NAHASDA, ONAP has not established the necessary criteria or procedures to determine if a recipient has the capacity to adequately administer an Indian housing program.

- Compliance Monitoring

Per Section 1000.502 of the proposed final rule, the tribe is responsible for monitoring grant activities to ensure compliance with applicable federal requirements and monitoring performance goals under the Indian housing plan. The recipient performs self-monitoring and the tribe and HUD monitor the recipient's performance. The recipient's monitoring should also include an evaluation of the recipient's performance in accordance with performance objectives and measures. The proposed final rule does not specify what criteria the recipients should use to monitor their activities, what monitoring should be done, or how recipients should monitor.

PIH commented that extensive training will be conducted for all NAHASDA participants. Also, ONAP will be publishing a transition notice to inform participants on various issues and ONAP's National Office has begun mailing a newsletter which will address various issues regarding NAHASDA. While training will help develop the needed expertise, we question how recipients or tribal members who may not have previous experience, training, and specific guidance can be expected to immediately provide adequate self-monitoring of activities under this program.

As identified in this report, tribal members, who can include IHA Board members and Executive Directors, have caused problems in the past due to an unwillingness or inability to follow program rules. Similarly, ONAP's Risk Analysis identified the grant beneficiaries' and recipients' inexperience and lack of understanding as risk factors which would adversely affect the implementation of NAHASDA.

PIH commented that ONAP is developing guidance for all staff which will be issued prior to the commencement of the staff's NAHASDA monitoring responsibilities. Their duties and responsibilities will dramatically change under NAHASDA and focus primarily on reviewing Indian housing plans and annual performance reports. Considering the oversight problems identified in this report, we have concerns whether ONAP field staff can be immediately successful in meeting their new oversight duties and responsibilities under NAHASDA.

- Performance Measures

Section 1000.512 of the proposed final rule requires the recipient to submit an annual performance report to HUD and the tribe in a format acceptable to HUD. Annual performance reports shall contain a comparison of actual accomplishments to the Indian housing plan objectives for that period and an explanation if objectives were not met. Section 1000.524 identifies the performance measures developed which the recipient must meet as a condition of compliance. These performance measures are not based on results such as the outputs or outcomes of a recipient's housing program.

We reviewed the proposed final rule to identify the specific criteria that would be used to measure program performance. Per NAHASDA, the primary tool ONAP field staff will use to measure recipient performance is the annual performance report which will compare the goals and objectives in the Indian housing plan with the recipient's accomplishments for the year. PIH commented that ONAP has been developing a prescribed format for the annual performance report and will train recipients on its preparation. In our opinion, a recipient's performance should be measured in terms of outputs and outcomes, as prescribed in the Office of Management and Budget's March 28, 1995 Memorandum for the Heads of Executive Departments and Agencies. This memorandum is consistent with GPRA and is specific to performance partnerships providing more flexibility to States and localities to solve their problems in return for accountability for results.

- Conflict of Interest

Section 1000.30 of the proposed final rule states that for all conflict of interest cases not covered by 24 CFR 85.36, the following provisions apply: No person who participates in the decision-making

process or who gains inside information with regard to NAHASDA-assisted activities may obtain a personal or financial interest or benefit from such activities, except for the use of NAHASDA funds to pay salaries or other related administrative costs. The conflict of interest provisions do not apply in instances where a person is low income and is selected for assistance in accordance with the recipient's written policies for eligibility, admission and occupancy of families for housing assistance with NAHASDA funds, provided that there is no conflict of interest under applicable tribal or state law. The recipient must make limited public disclosure of the nature of assistance to be provided and the specific basis for the selection of the person.

Our review of the 29 instances showed that, in some instances (which include **Housing Authority of the Otoe-Missouria Tribe, Coquille Indian Housing Authority and White Earth Reservation Housing Authority**), tribal influences allowed the appearance or existence of conflicts of interest which resulted in the perception of unfair preferential treatment in the selection of program participants and/or personal benefit for those individuals who made decisions and controlled funding. In its Risk Analysis, ONAP identified the potential for additional negative media attention and a self-governing program that may create opportunities for fraud, waste, and abuse by clients as a high risk.

As illustrated in this report, there is a wide variety of cultural and philosophical points of view that exist within the many IHAs/tribes who receive housing assistance from the Department. We believe that the prohibition regarding conflicts of interest should be strengthened with some type of ethical code of conduct which would be common to all program recipients. The code of conduct would be designed to mitigate influences inherent within the tribal communities and provide a standard set of values that all individuals involved in administering NAHASDA funds would agree to follow.

- Abuse

Although referred to in the proposed final rule, abuse is not specifically defined. Government auditing standards define abuse as distinct from illegal acts and other noncompliance. When abuse occurs, no law, regulation, contract provision, or grant agreement is violated. Rather, the conduct of a government program falls short of societal expectations for prudent behavior.

As discussed in this report, the Department's assisted housing programs were abused in several ways which included:

- homes built with federal housing funds were given to program participants for a discounted or minimal amount. Examples include the **Housing Authority of the Otoe-Missouria Tribe (page 41)**, and **Southern Puget Sound Inter-Tribal Housing Authority (Shoalwater Tribe) (page 26)**.
- large homes were built with expensive upgrades for over-income participants. Examples include **Tulalip Tribes Housing Authority (page 25)** and **Mashantucket Housing Authority (page 23)**.

As previously stated, NAHASDA provides increased flexibility for recipients to design model or innovative housing programs. Abuses, such as the ones described above, could continue to occur under NAHASDA and cause unwanted results and negative media attention for this new program. Since abuse is not an illegal act and can occur within program rules, we believe ONAP needs to establish criteria that specifies what constitutes program abuse and take appropriate action to prevent or stop abuse when it is identified.

- **Grant Agreements**

Under NAHASDA's proposed final rule, there is no requirement for a grant agreement between the Department and the tribes. In our opinion, a grant agreement which defines the roles and responsibilities of both parties should be required by regulation and used, similar to other block grant programs, such as Community Development Block Grant. Also, the Indian housing plan should be a binding part of the grant agreement since it specifies how the tribe/TDHE intends to use its NAHASDA funds. ONAP is currently developing a draft grant agreement that could be used under NAHASDA.

Another major concern is how recipients would be authorized to draw down their housing block grant funds under NAHASDA. Tribal recipients contend federal policy specific to self-determination and self-governance allows tribes to receive lump-sum distributions and to retain any interest earned on such funds before expending the funds for program purposes. The negotiated rule-making committee added Section 1000.56 to the proposed final rule which allows for lump-sum draw downs.

Our position is the same as it was in our comments to the proposed rule: that standard U.S. Treasury Department policies should be applied to any draw downs of NAHASDA funds. Briefly, Treasury's policy is that cash advances to a recipient are to be limited to the minimum amounts needed to meet the immediate cash needs of the recipient in carrying out the approved program or project. We believe that these requirements are found in virtually every policy pronouncement dealing with the Federal Government's provision of grant assistance, and are further supported by numerous Comptroller General decisions.

We do not believe that federal grant programs were intended to be used for investments. Consequently, we believe that HUD should refer the matter to the U.S. Department of Treasury for advice and guidance.

***Distinct differences between Indian and public housing programs suggest separating their administration.***

The Department's Indian housing program has been in constant evolution since its inception over 30 years ago. Initially, the Indian housing program was adapted from existing public housing programs intended for large cities, with special rules to address housing issues unique to Native Americans. As previously stated, the Department and the Congress have used legislative and regulatory changes to separate Indian housing programs from public housing programs.

HUD's Indian housing programs receive approximately five percent of PIH's annual budget. The Assistant Secretary for PIH commented that prior to the publication of *The Seattle Times*' series in December 1996, he spent approximately 10 to 15 percent of his supervisory time overseeing Native American programmatic issues and conferring with ONAP's Deputy Assistant Secretary. *The Seattle Times*' series demanded response from the Assistant Secretary and his staff which resulted in the Assistant Secretary spending approximately 30 to 40 percent of his supervisory time on Indian programs immediately after the publication of the articles.

From a programmatic point of view, the differences between the Department's public housing and Indian housing programs have widened as NAHASDA exemplifies by specifically recognizing the unique relationship between the Department and the tribes. Also, we believe the small funding level for Indian programs (as compared to public housing) and limited supervision by PIH officials may indicate an inefficient and ineffective administrative structure. The Assistant Secretary's primary focus is public housing, as it should be, and departures from public housing issues may be more of a distraction than a constructive use of time. These distinct differences suggest that it may be appropriate for the Department to consider separating the administration of Indian housing from PIH.

## D. CONCLUSION

People, rather than new legislation, bring about positive change in government performance. A quote from *Public Dollars, Common Sense*<sup>20</sup> emphasizes that point:

“New laws and initiatives provide the impetus for accelerated government reform, but they do not tame frontiers. Pioneers do, people willing to take on new risks and roles to make change happen.”

The Secretary’s 2020 Management Reform Plan outlines a reform process intended to:

“accomplish HUD’s core mission, improve HUD’s services to communities, and restore the public trust. The Management Reform Plan, which is results oriented, focuses on managing our programs and people more efficiently and responsibly.”

The Management Reform Plan strives to gain credibility with and be more responsible to Congress, the taxpayers, and its customers. To gain credibility, the Department needs to first change within by changing the way it does business. This change requires the Department to demonstrate new competencies and a new business structure that separates program delivery, monitoring, and enforcement functions. The Department must emphasize accountability for results rather than a hollow paper-driven process. The people monitoring the program must be more accountable for their performance.

NAHASDA is the basis for Indian housing reform, and provides greater flexibility to tribes in designing, building, and managing their housing programs in exchange for more accountability for their performance. To meet the Secretary’s goal under 2020, NAHASDA provides tremendous challenges not only to the tribes but to ONAP’s managers and staff as well. Traditionally, accountability was “the product of limits on bureaucratic discretion - limits that flow from clear rules (commands), and the formal procedures, monitoring, and enforcement that make them stick (controls).”<sup>21</sup> However, accountability for performance as mandated by GPRA requires the Department to develop clear goals and objectives and realistic performance measures for its managers and staff, as well as

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<sup>20</sup> William R. Phillips, Bonnie L. Brown, C. Morgan Kinghorn, Andrew C. West, *Public Dollars, Common Sense*, (Coopers & Lybrand L.L.P., Washington, D.C., 1997):8

<sup>21</sup> Paul C. Light, *Monitoring Government*, (The Brookings Institute, Washington, D.C. 1993): 12



quantifiable outputs and outcomes to measure the performance of program recipients. Measures should evaluate performance based on cost efficiencies and program effectiveness rather than on how much money is expended.

As discussed in this report, the decision making by ONAP officials was the primary cause of ineffective oversight. Performance measures by themselves will not improve government or program performance. As *Using Performance Measurement in Local Government*<sup>22</sup> states:

“People make decisions to take *actions* to improve performance. Measurement helps people make better decisions. Measurement then lets them know how good those decisions were or how well they were executed.”

The Department’s Risk Analysis classified NAHASDA as a high risk program, making it particularly vulnerable to fraud, waste, and abuse. In a December 11, 1997 letter to HUD’s Chief Financial Officer, the Assistant Secretary for PIH stated the following:

“Given the present transition environment in which the Department is functioning...The risks identified and the controls in place or planned reflect the best that is possible given the present Departmental environment.

As the Departmental environment improves and finalizes the Office of Public and Indian Housing will continue its efforts to identify and create additional internal controls to further reduce the risks inherent in the NAHASDA program.”

We believe this vulnerability coupled with NAHASDA’s increased flexibility suggests that the highest priority for this new program is to realistically address the program’s control weaknesses and accountability issues through its regulations prior to actual implementation. In addition, the Department may consider providing incentives for program recipients and ONAP managers/staff which emphasize results and accountability while providing specific sanctions for noncompliance and poor performance.

The culture which has developed within ONAP over the past years needs to change from one of confusion and complacency to one that is proactive and positively directed. ONAP field staff must have a clear direction, a

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<sup>22</sup> Paul D. Epstein, *Using Performance Measurement in Local Government*, (National Civic League Press, New York, New York, 1984, 1988): 30

thorough understanding of program objectives and expectations, and a specific understanding of what their oversight duties and responsibilities are under NAHASDA. To improve decision making, ONAP field staff attitudes must be consistent with legislative intent, and its oversight must be proactive and decisive.

NAHASDA's negotiated rule-making process was an approach to bring together the Department and tribal members who participate in the program. However, the proposed final rule developed by the negotiated rule-making committee appear to be less than necessary to address the risks identified in the Department's Risk Analysis or the causes for the problems discussed in this report. Controls, including soft controls that address attitudes, cultures, and philosophies, need to be developed to have reasonable assurance that past problems will not continue, rather than to only focus on program design and Department oversight.

Intense Congressional scrutiny and negative media attention of the Department and its traditional Indian programs make it vital that program performance and accountability improve under NAHASDA. One of the primary goals of the Secretary's 2020 Management Reform Plan is to restore public trust. While NAHASDA was enacted before the Secretary's 2020 Management Reform Plan was developed, all aspects of its performance will be evaluated on its results. NAHASDA, more than any other new housing program, will be held to a higher level of expectation of performance because of GPRA and the Secretary's 2020 Management Reform Plan. GPRA and a series of other management laws now being implemented across the federal government were designed to obtain systemic, credible information about the operations of the federal government, while holding government accountable to the taxpayers. Establishing the right goals and measures is the first step.

Providing increased flexibility to tribes has been viewed by many as the answer to correct the problems in Indian housing. However, as discussed in this report, we do know the types of problems that can occur or we suspect will occur, and it is not realistic to expect the problems of the past to disappear simply because the Indian housing program has changed.

For NAHASDA to be successful in meeting Congressional, Departmental, taxpayer, and recipient expectations in addressing the housing needs of low-income Native Americans, accountability for results must be equitably balanced with the flexibility provided to tribes under NAHASDA. Realistic performance measures must be developed, the necessary controls and sanctions must be developed, and ONAP must provide adequate oversight to ensure program objectives are met.

As of January 31, 1998, the Department had yet to give final approval to NAHASDA's proposed final rule, and implementation of the program was still pending. We developed our recommendations based on what should be considered for NAHASDA to be balanced and have a reasonable chance to succeed. We recognize that fraud, waste, and abuse in housing programs cannot be totally eliminated. The Department needs to develop and implement reasonable management controls - controls that adequately address program weaknesses involving accountability and performance, but that do not act as barriers which impede NAHASDA's flexibility in providing housing assistance to low-income Native Americans.

**E: RECOMMENDATIONS:**

**We recommend that you consider the following to:**

**improve program performance:**

- 1A. Develop quantifiable measures to evaluate recipient/tribal performance based on outputs and outcomes rather than on inputs.
- 1B. Develop specific criteria and procedures to enable ONAP staff to determine whether a recipient lacks administrative capability to ensure consistent treatment of recipients, and document ONAP's understanding of the recipient's capability to administer a housing program.
- 1C. Require Indian housing plans to include goals and objectives that are quantifiable to ensure each recipient's performance can be measured, including any NAHASDA program activities which the recipient subsequently changes with ONAP approval.
- 1D. Require recipients to provide performance or surety bonds for housing developments and modernization work funded with NAHASDA funds.
- 1E. Change ONAP job descriptions to reflect the staff's new roles, duties, and responsibilities under NAHASDA; and consider evaluating the staff's performance based on the performance of the recipients for whom they are responsible.

**improve program accountability:**

- 1F. Require recipients to certify that they have the legal capacity to implement the planned activities funded under NAHASDA and that a judicial process exists to take action to adjudicate participants who do not meet their program responsibilities.
- 1G. Require a grant agreement with the tribes/TDHEs which spells out their responsibilities subject to receiving funding under NAHASDA and incorporates the Indian housing plan as a binding part of the agreement.

- 1H. Separate the administration of Indian programs and the Office of Native American Programs from the Office of Public and Indian Housing because of the distinct differences between public and Indian housing programs.
- 1I. Require ONAP Headquarters or its National Office to perform periodic on-site reviews of ONAP field offices to assess performance and provide written feedback to the field offices; consider evaluating the field office's performance based on the performance of the recipients for whom the field office is responsible.
- 1J. Develop adequate management information systems to document decisions and actions taken by recipients and ONAP staff to measure performance, identify decision-makers, and establish accountability.
- 1K. Require that ONAP staff responsible for oversight to understand recipients' HUD-funded housing programs, particularly model housing programs, to determine if the program meets program rules and intent; and document that understanding.
- 1L. Re-emphasize that ONAP staff must document actions and decisions related to oversight (monitoring and technical assistance) of recipient and tribal activities related to using federal housing funds.
- 1M. Re-emphasize that ONAP field staff must document all decisions and communications regarding approval, changes, and waivers related to a recipient's Indian housing plan.
- 1N. Require ONAP field staff to document justification for approving the participation of non low-income families.

**improve enforcement actions to hold people accountable and deter fraud, waste, and abuse:**

- 1O. Separate the technical assistance function from the monitoring/enforcement function within each field office.
- 1P. Establish specific actions ONAP is required to take when a recipient is in substantial noncompliance to include: (1) egregious acts involving misuse of funds or abuse of the housing program, as defined by HUD, (2) poor performance which includes lacking

minimal administrative capability to administer housing programs, and (3) conflicts of interest, contrary to program rules and/or a code of conduct.

- 1Q. Establish a Code of Conduct including a fraud policy that tribal members, who administer NAHASDA funded programs, must certify they will follow, and establish specific administrative sanctions if the Code is violated, including sanctions where:
- a recipient misuses program funds and/or abuses a NAHASDA funded housing program.
  - tribal members (who administer program funds) misuse their positions for personal benefit or the benefit of others.
- 1R. Establish specific administrative sanctions for self-governance Indian tribes who falsely certify that their administrative requirements, standards, and systems meet or exceed the comparable administrative requirements identified in Section 1000.26 of NAHASDA's regulations.

**address other issues:**

- 1S. Refer the issue of lump-sum draw downs to the U.S. Department of Treasury for advice and guidance.
- 1T. Establish a clearinghouse using an independent organization to collect and control information which can be provided to recipients to help inform them of how other recipients are using their funds innovatively and effectively.

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# *Management Controls*

In planning and performing our review, we considered ONAP's management controls relating to our objectives to determine our procedures and not to provide assurance on internal controls.

Management controls over program operations include policies and procedures that management has implemented to reasonably ensure that a program meets its objectives. The components of internal control are interrelated and include integrity, ethical values, competence, and the control environment which includes establishing objectives, risk assessment, information systems, control procedures, communication, managing change, and monitoring. The entity's management is responsible for establishing and maintaining adequate systems of management controls.

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## **Relevant controls**

For the purpose of our review, we determined the management controls relevant to our objective were ONAP's policies, procedures, and practices relative to:

- program operations by ensuring IHAs provided housing consistent with program intent and rules; and assets were adequately safeguarded against fraud, waste, and abuse,
- compliance by adequately monitoring and providing technical assistance,
- obtaining, maintaining, and reporting valid and reliable data, and
- management's philosophy and strategies.

## **Scope of work**

We evaluated the categories listed above by assessing control design, implementation, and effectiveness.

A significant control weakness exists if the controls do not give reasonable assurance that resource use is consistent with laws, regulations, and policies; that resources are safeguarded against waste, loss, and misuse; and that reliable data is obtained, maintained, and fairly disclosed in reports.

**Assessment Results**

Based on our review, we identified the following significant control weaknesses in ONAP's management controls:

- ONAP field staff either misinterpreted, misunderstood, or misused guidelines and Headquarters instructions when performing monitoring;
- ONAP field staff relied on IHA certifications of compliance and on working relationships with IHA officials without follow up;
- An over-reliance on contractors, independent public accountants, and the Office of Inspector General to identify problems, their causes, and recommend appropriate enforcement actions;
- The Department's initiative to develop partnerships with Tribes/IHAs emphasized providing technical assistance rather than enforcing program rules and holding IHA officials accountable for poor performance; and
- The Office of Public and Indian Housing empowered its field offices, including ONAP field offices, but on-site reviews were not performed to assess field office performance until 1997.



# ***Follow-up on Prior Audits***

We conducted a multi-regional audit of the monitoring activities of the Offices of Indian Housing in Chicago, Denver, and San Francisco Regions and at 13 Indian Housing Authorities. Our audit report (93-HQ-107-0009) was issued April 30, 1993 and contained two findings and eight recommendations. All audit recommendations were closed by March 30, 1994.

We conducted an audit on developing and managing Indian housing in 1986. Our report (86-TS-101-0018) was issued on June 19, 1986 and contained 2 findings and 19 recommendations. All recommendations in that audit were closed by September 26, 1989.

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# Appendices

## Appendix A - Auditee Comments




U. S. Department of Housing and Urban Development  
Washington, D.C. 20410-5000

December 20, 1997

OFFICE OF THE ASSISTANT SECRETARY  
FOR PUBLIC AND INDIAN HOUSING

MEMORANDUM FOR: Robert H. Woodward, Assistant District Inspector General  
for Audit, OAGA

FROM: Kevin E. Marchman, Assistant Secretary, Office of Public and Indian  
Housing, P 

SUBJECT: Response to Draft Audit Report

Attached is the response from the Office of Public and Indian Housing's Office of Native American Program to the draft audit report on the "Office of Native American Programs Oversight Responsibilities for 29 Alleged Instances of Reported Abuse and Mismanagement". We appreciate the opportunity to comment on the draft report.

While you will find disagreement with several of the sweeping negative assertions made in the audit about the administration of the Native American housing program, you will also discover that several of the specific recommendations made by the OIG are already addressed in the Native American Housing and Self-Determination Act's proposed final rule.

Please feel free to contact me with any questions you may have regarding this response.

## INTRODUCTION

The Office of Public and Indian Housing's Office of Native American Programs (ONAP) has reviewed the Office of Inspector General's (OIG) Draft Audit Report, "Office of Native American Programs Oversight Responsibility for 29 Alleged Instances of Reported Abuse and Mismanagement". ONAP has identified areas of disagreement and would like to offer suggestions to insure the accuracy of the information contained in the audit. This introduction presents information that will serve as a backdrop for the accompanying detailed response which suggests technical corrections and specific comments on the issues raised in this report. We look forward to receipt of the OIG's final report and expect that it will prove a useful tool in administering the program in the future.

ONAP currently oversees the administration of housing assistance in 217 Indian housing authorities (IHAs) throughout the United States. The Office has six field offices which cover the Eastern/Woodlands, Southern Plains, Northern Plains, Southwest, Northwest, and Alaska<sup>23</sup> areas. Each of the field offices has responsibility for the following number of IHAs:

Eastern/Woodlands	52
Southern Plains	32
Northern Plains	32
Southwest	58
Northwest	29
<u>Alaska</u>	<u>14</u>
Total <sup>24</sup>	217

The instances of problems targeted in the Seattle Times series represent 13% of the IHAs overseen by ONAP now and at the time of the reporting.

ONAP exercises its oversight authority using a variety of methodology, e.g., on-site monitoring, remote monitoring, and training. Each method is designed to uncover problem areas, thus enabling ONAP to effectively resolve the problem. When issues are identified, the Office targets the troubled area and intervenes. In many instances, this requires the provision of technical assistance which provides recipients with guidance on program rules and builds administrative capacity. In other situations, ONAP may issue directives to the IHAs or refer the matter to a different department for appropriate action. For example, during a monitoring review the Southwest ONAP (SWONAP) was able to identify procurement and

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<sup>23</sup> The Audit Report specifically excludes Alaska from its analysis. However, for statistical purposes it should be noted that the Alaska area office oversees 14 IHAs.

<sup>24</sup> The numbers of IHAs within each ONAP offices purview has changed over the last year; Eastern/ Woodlands 52 (Audit Report 50), Southern Plains 32 (Audit Report 34), Northern Plains 32 (Audit Report 31) and Southwest 58 (Audit Report 57).

financial management problems. SWONAP issued a Notice of Deficiency and ultimately the IHA's operating subsidy was reduced. An example of an effective referral can be found in the case where the Northern Plains ONAP identified a problem with the Executive Director of the Omaha IHA. The Office of General Counsel determined that there was insufficient evidence to take administrative action. Since the OIG had an audit scheduled for that IHA, NPONAP referred the matter to it reasoning that an audit would uncover the additional information necessary. To exercise effective oversight, ONAP must creatively make use of all resources available to it. This includes OIG, OGC, and the use of independent contractors to assist with training.

Consistently, through its varying monitoring processes, ONAP has identified problems within IHAs. Most of the deficiencies reported in the December, 1996 Seattle Times series of articles were uncovered by ONAP through such processes before the Seattle Times initiated its investigation.

For example, the lead story in the series featured a large house built by the Executive Director of the Tulalip Housing Authority. In February of 1996, the Northwest ONAP Administrator informed the IHA that the home exceeded moderate design standards and directed it to repay program costs. A few months later, the NWONAP, IHA and the Tribe came to the agreement that the IHA would sell the house to the Executive Director, thereby reimbursing the program for costs.

Another example is the actions taken by ONAP in identifying problems and enforcing program rules at the Pascua Yaqui Housing Authority. Through monitoring reviews of the IHA, the SWONAP identified problems with the IHA's procurement and financial management procedures. Within a month of that review, a Notice of Deficiency was issued by the SWONAP and the IHA's operating subsidy was reduced. The SWONAP then began to provide technical assistance to the IHA and through that process uncovered additional problems with the administration of the IHA's Drug Elimination and Comprehensive Grant programs. Again, within a short period of time, the SWONAP provided the IHA with a Notice of the Deficiencies on these findings.

One other example is the action taken against the Hopi Tribal Housing Authority when SWONAP discovered that the IHA lacked administrative capacity. SWONAP took action to restrict the IHA from receiving new housing development funds, modernization funds and resident initiative grant funds. The SWONAP advised the IHA Board and the Tribe of the problems at the IHA and action was taken, based on this advice, to remove the Executive Director.

With the implementation of the Native American Housing and Self-Determination Act (NAHASDA), accountability for the provision of housing assistance to Native Americans is apportioned between the tribes and ONAP. The Congress mandated that HUD and Tribal representatives develop the rule to implement the new Indian housing legislation. If the negotiated rule-making

process is any indication of the ability for these institutions to effectively work together then the success of the program is guaranteed.

The Negotiated Rulemaking Committee formally consisted of 48 persons from IHAs, Tribal governments and HUD, including the Office of Public and Indian Housing and the Office of General Counsel. In addition to this core group, many tribal officials participated at their own expense to ensure that the implementing rule would address the needs of low-income Native American families. NAHASDA was created to strengthen HUD's Native American program and at the same time recognize tribal self-determination. The proposed final rule that was completed by the Committee on October 29, 1997 incorporates several policies that will increase program accountability and effectiveness, and address many of the concerns that have been raised regarding the program's administration. Of the OIG's 17 recommendations included in the audit (page 47), seven have already been addressed in NAHASDA's proposed final rule and an additional five recommendations are actually existing practices of ONAP or will be implemented shortly.

ONAP will take under consideration OIG's concerns with respect to the successful implementation of NAHASDA. ONAP is dedicated to making HUD's Native American program even more effective, efficient and accountable. Extensive training of both staff and program participants is already planned to ensure this end. Additionally, in those discrete instances where staff may have erred in the past, actions have been taken to minimize any chances that similar actions will be repeated.

Once again, ONAP is pleased to have this opportunity to respond to the concerns raised by the OIG. The Office looks forward to receipt of the final recommendations and to working with OIG in the effective provision of housing and services to low-income Native Americans.

## Technical corrections

page 2, ¶ 2: The Emergency Shelter Grant program is one of the existing programs for which tribes are no longer eligible applicants. Specific reference to the ESG program should be removed from the paragraph.

page 2, ¶ 3: The FY1998 appropriation for Indian Housing Block Grants is \$600 million less \$5 million for technical assistance and less \$5 million for a demonstration program for Title VI.

page 2, ¶ 4: Either a tribe or a TDHE will be the grant recipient. Not just TDHEs.

page 3 first ¶ & page 10, first ¶: On October 29, 1997, the Negotiated Rulemaking Committee reached consensus on the final rule. The rule was not actually signed by HUD on that date.

page 3, ¶ 3: The paragraph infers that the Office of Indian Programs was reorganized into the ONAP as a result of the National Performance Review. ONAP's creation was required by statutory language in the Housing and Community Development Act of 1992, Sec. 902.

page 8, second bullet: The interviews referred to were with Office directors, not division directors.

page 13, second bullet: It might provide clarification to specify that there are more than 550 tribes eligible to participate in the new program of which it is estimated nearly 400 tribes will participate during the first few years of program implementation.

page 21, second bullet: The maximum over-income families allowed by statute is ten percent of the dwelling units in the project **or** five dwelling units, whichever is greater.

## **ONAP Comments**

page v, ¶ 1, again on page 10, ¶ 2, page 47 ¶ 1: PIH takes strong exception to the comment, "...whether the Tribes (sic) or ONAP have the commitment or wherewithal to make NAHASDA successful." The audit results fail to make a case and does not substantiate the OIG's concerns that the ONAP staff and the tribes, as a group, will be unsuccessful in the implementation of NAHASDA. The audit report covers 29 IHAs which represent about 35 tribes...only 8.7% of the anticipated participants in the new program. The commitment and wherewithal of NAHASDA's participants should not be measured against the past poor performance of this small group. Similarly, the corrective actions taken by ONAP staff in most of the 29 instances prior to their highly publicized publication demonstrates ONAP's ability to identify and repair deficiencies in the program.

page v, second bullet: The OIG's assertion that ONAP assumed that new IHAs had administrative capability to develop and manage their housing programs is incorrect. All new IHAs were enrolled in Partners in Progress, a substantive technical assistance program, and ONAP staff increased their oversight efforts to assist with developing capacity at these new agencies.

page vi, first bullet: The OIG's assertion that the Department "provide(d) technical assistance rather than enforc(e) program rules" is faulty. The purpose of ONAP's provision of technical assistance was to improve IHAs' skills and systems to ensure compliance with program rules. Technical assistance was provided to IHAs when deficiencies were identified. The ultimate objective of technical assistance is to assure that program rules are comprehended and implemented properly.

page viii, first bullet: OIG recommends that the implementation of NAHASDA be delayed. The implementation date is statutory and therefore, can only be modified by Congress. Additionally, the implementation of the new program also provides for operating subsidies to entities who are managing '37 Act housing programs. Delaying the provision of these funds would significantly and adversely impact housing provided to tribes.

page ix, last bullet: The OIG recommends that ONAP discontinue technical assistance and contract out for those services. First, the recommendation to hire contractors is inconsistent with the OIG's other position in the audit where it notes that ONAP had an "over-reliance on contractors" (note page v, last bullet). Additionally, the audit does not provide evidence that technical assistance is generally ineffective nor is there evidence that it does not provide a valuable service to tribes or IHAs. The audit does not contain evidence that the technical assistance given by ONAP staff was either incorrect or ineffective.



page 2, fourth paragraph: It is an inaccurate statement that under the new program's rule, each tribe will have a TDHE, instead of an IHA. A tribe can elect to run the new program and not appoint a TDHE.

page 3, first paragraph: OIP was a part of HUD's Office of Public and Indian Housing, not the public housing division.

page 12, ¶ 2: Conclusions that misuse of funds and program abuse by IHA officials is systemic is an overly broad assertion that contradicts the OIG's own earlier position in the audit, and is not supported by the OIG's audit. As previously mentioned, the OIG's scope of review was limited to just 29 IHAs. The OIG's audit states on page 9 that "We do not want to suggest that ONAPs oversight in these instances be viewed as representative of its oversight for other IHAs. Also, we do not want to imply that the problems illustrated in these instances are a fair representation of how other IHAs perform."

page 17, second paragraph: Part of ONAP's oversight procedure was to automatically designate new IHAs as "higher risk" and provide these agencies with increased technical assistance on program rules and systems.

page 23, ¶ 1: It states that "...ONAP have a thorough understanding of any housing program to ensure program rules and expectations are met. Otherwise, the likelihood that program funds will be misused and/or the program will be abused dramatically increases." This paragraph follows the discussion relative to the NWONAP's lack of understanding of an 'innovative' Low Rent program developed by the Southern Puget Sound Inter-Tribal Housing Authority which resulted in seven tribal members receiving unallowable buy-down grants and the over-income tribal chairman receiving a custom home. Since a number of federal agencies also administer some type of housing or housing related programs (Veterans Administration, Rural Develop and Department of the Interior), it seems appropriate to reword this to state that ONAP staff have a thorough understanding of HUD's Native American Housing programs and not hold staff accountable for knowledge beyond the scope of their own agency.

page 23, last ¶: This paragraph notes the Department's encouragement of ONAP in giving tribes local flexibility. It should be noted that this policy is supported by a Presidential Memorandum issued on April 29, 1994 by the President requiring the executive branch to foster Government-to-Government Relationships with Indian tribes. Included in this mandate is the requirement that each executive branch take steps to remove any procedural impediments to working directly and effectively with tribal governments.

page 28, last ¶: This paragraph discusses the use of Independent Public Accountants (IPAs) as a means of identifying compliance issues and problems at IHAs. It notes that the Indian housing authority hires the IPA even though the audit is required by HUD. It further states that because of this, the value of the entire

audit is in question. As evidence of this the audit provides only one instance of a housing authority audit where the IPA reported no findings for two years while the SWONAP was aware that there were problems at the authority. This ‘finding’ is not reflective of the use of IPAs, but of poor professional behavior on the part of the IPA in that instance who did not adequately perform their duties in reporting the findings. The use of IPAs, hired by program participants as a requisite for participation in a Federal program, is a common and accepted practice among agencies. Within HUD, the Office of Housing requires audits on an annual basis from all non-supervised lenders (approximately 5,000). For the IG to imply that the Office eliminate a source of valuable information is inappropriate, and, in some cases, contrary to statutory and/or regulatory requirements. But given HUD and ONAP’s limited resources, this suggestion is misguided. In fact, it is OIG’s responsibility to identify and follow-up on violations of GAAP and GAS completed by IHAs.

page 40, third bullet: There is a statement that ONAP’s customers will more than triple under the new legislation. In other parts of the audit, it is noted that the recipients will double. For the record, it is ONAP’s position that the number of recipients will more than double.

Additionally, the audit notes that time frames for implementation are unrealistic. ONAP wishes to point out that the effective date for the statute was set by Congress.

page 41, ¶ 2: The audit notes that the IG for Audit provided written comments to the published proposed rule, which, for the most part, were not included in the final rule. ONAP wishes to note that as mandated by the statute, the regulations were completed via a Negotiated Rulemaking Committee. Therefore, participation as either a Committee member, or as a public participant, was imperative to this process. On many occasions, the ONAP invited the Office of Inspector General to participate in this process. The tribal Committee members also made this request. The OIG’s office declined these requests to participate.

Nonetheless, the Department did make an effort to consider the OIG’s recommendations. During the negotiated rulemaking, the OIG was contacted extensively by phone and email to reach agreement on such issues as conflict of interest, substantial noncompliance and the appeal process. Meetings were also held between Headquarters OIG, OGC and ONAP representatives to consider concerns provided by the OIG in the final rule.

page 42, ¶ 1: The paragraph states that abuses and mismanagement occurred because ONAP did not take prompt action or hold IHA officials accountable for their actions. This is an incorrect statement. The problems occurred, as the audit notes (page 11), because IHA officials misused housing funds or they abused their programs. Enforcement actions take place after-the-fact; ONAP disagrees with the assertion that it was the cause of the abuse in the first place.

page 42, ¶ 3: The audit questions whether ONAP staff had adequate understanding of NAHASDA, noncompliance issues, sanctions and nonperformance. As noted previously, the audit appears to make the assumption that ONAP staff will receive no training in these areas. This is incorrect. Training related to the Act itself and various transition issues has already taken place. In addition to upcoming training, the National ONAP has begun a newsletter for ONAP staff which will further enhance communication to staff on various issues relating to ONAP programs. The information on our training efforts, as well as, plans for guidebooks and notices were presented to the OIG during their interviews with the Office directors.

page 42, fourth ¶ and 43, second ¶: Before a recipient can be determined to be lacking administrative capability, they have to be recipients. The statement in the paragraph implies that recipients have had the opportunity to succeed and have failed. NAHASDA does not provide for imputing administrative capability based on a prior organization's performance. The OIG legal opinion on this topic was provided to the OIG.

page 42, Administrative Capability: After consultation with the Office of General Counsel, it was determined that action could not be taken by ONAP to withhold, suspend or withdraw funds for lack of administrative capability prior to implementation of the program.

page 43, last ¶: The paragraph assumes that tribes and/or TDHEs who are new recipients to HUD programs will receive no training or guidance from HUD, and therefore they cannot perform adequate self-monitoring. ONAP will conduct extensive training for all NAHASDA participants. Additionally, ONAP will be publishing a Transition Notice to inform participants on various issues and the National Office has begun mailing a newsletter which will address various issues raised by ONAP staff and tribes or TDHE staff with respect to NAHASDA.

page 44, ¶ 2: The audit notes that as of 10/1/97, ONAP staff had not received any training or guidance in regard to their monitoring duties and responsibilities. ONAP is now developing monitoring guidance for all staff which will be issued prior to the commencement of the staff's NAHASDA monitoring responsibilities.

page 44, ¶ 4: This paragraph notes that as of 10/1/97, no prescribed format for the annual performance report had been developed and approved by ONAP. ONAP has been developing such a format. Once development of the format is complete, ONAP will train grant recipients on its preparation.

## **ONAP Response to Recommendations**

page 47, recommendation 1A: *Delay the implementation of NAHASDA until staff have been trained and management information systems implemented.* Congress established the effective date (10/1/97) of NAHASDA. It is not within the

Department's authority to delay. Additionally, IHAs managing housing programs under the 1937 Act require operating subsidy to administer their programs. The only source for such subsidy are grants under NAHASDA. To further delay implementation as the IG suggests may cause unnecessary hardship on program participants and the low-income clients they serve. Furthermore, staff have already begun to undergo some training and will be proficient in the new program once the final rule has been issued.

1B: *Establish guidance for ONAP actions when abuses occur.* The proposed final regulations for NAHASDA already contain guidance for ONAP actions. In addition, ONAP plans to develop a staff training program and internal notices which contain procedures to be followed in the event participants do not follow program guidelines.

1C: *Develop performance measures based on outcomes and outputs.* Section 1000.504 of the proposed final regulations require performance objectives which are based on outcomes and outputs. Annual reports are required under Section 1000.512.

1D: *Develop job descriptions.* ONAP's new Deputy Assistant Secretary will assume her position early next year. At that time, a proposed ONAP reorganization will be developed in accordance with HUD's overall 2020 management reform. A part of that process will be the development of position descriptions which reflect the staff's new duties.

1E: *The National Office should conduct on-site field office reviews.* The IG does note in this audit that these reviews already occur. However, ONAP does concur with the necessity for these reviews and they will continue. For FY1998, two additional field office reviews are planned as well as follow-up site visits to the two offices reviewed in FY1997.

1F: *Develop administrative capability criteria for tribes and TDHEs.* Criteria has been included in the proposed final regulation at Section 1000.524.

1G: *Develop procedures for ONAP staff to use to evaluate administrative capability.* The basic requirements for HUD review of recipients is contained in the proposed final regulation. Additionally, monitoring guidelines currently under development will contain administrative capability review criteria.

1H: *Develop procedures for ONAP staff concerning substantial noncompliance.* Substantial noncompliance is defined in the proposed final regulation along with remedial action that can be taken to correct them. Procedures will be developed to guide staff in the detection and subsequent actions to be taken for substantial noncompliance.

1I: *Require ONAP staff to understand 'innovative' housing programs.* Under NAHASDA, recipients may use grant funds for model activities. The program regulations require approval for these activities by the Assistant Secretary. Recommendations to the Assistant Secretary for approval of such activities will be made only after ONAP staff have fully explored the proposal.

1J: *Require that the Indian Housing Plan include cost and moderate design standards.* The regulations prescribe the maximum amount of grant funds that may be used for a unit of affordable housing.

1K: *Require ONAP staff to document decisions and communications related to oversight.* It has always been the policy of ONAP to require such documentation of its staff. This policy will be reemphasized and will be verified during on-site office reviews.

1L: *Require ONAP staff to document justification for approving non low-income family participation.* ONAP plans to require such documentation of its staff. A notice will be issued to ONAP staff on the review and approval of non low-income family participation in the program. Initially, all such requests will require Assistant Secretary approval.

1M: *Develop adequate management information systems.* ONAP has already begun development of an information system such as the audit recommends. However, FY1998 funding for the continuation of its development, staff training and full implementation, was significantly below the amount needed and requested. As of this time, PIH is reevaluating systemwide requirements with plans to reallocate systems funding to allow the Office to continue with this project.

1N: *Refer the issue of lump-sum drawdown to the US Treasury.* ONAP will take this recommendation under consideration.

1O: *Establish a clearinghouse with an independent organization to collect information to provide recipients on what others are doing with their funds.* ONAP will take this recommendation into consideration. Additionally, ONAP is currently planning to post such information on its well-utilized Web site on the Internet.

1P: *Have ONAP discontinue providing technical assistance and contract out those services. Make monitoring and enforcement ONAP's main priorities.* It is ONAP's position that technical assistance is most effectively provided by a combination of ONAP staff and contractors. ONAP will continue to exercise its oversight authority via on-site monitoring, remote monitoring and training to ensure program compliance. The administration of an effective and efficient program remains ONAP's primary priority.

1Q: Ensure recommendations for each field office listed in the appendices are implemented. Where such recommendations remain valid and viable under NAHASDA, strong consideration will be given to their implementation.

### **Appendix B: Northern Plains ONAP**

Page 65, NPONAP responsibility: The NPONAP is cited for a delay in taking prompt action to address the issues until an OIG audit was completed. ONAP feels strongly that this sentence should be either deleted or at a minimum, reworded. Based upon the NPONAP's response (page 77), the Office of General Counsel had advised that office that insufficient evidence existed to support an administrative action. Therefore, NPONAP had no choice but to wait for the OIG to complete its audit.

### **Appendix C: Southern Plains ONAP**

No further comments.

### **Appendix D: Southwest ONAP**

Page 97, recommendations for Pascua Yaqui: The first recommendation is to hold the HA Board accountable for its performance and to take administrative actions, as deemed necessary. The SWONAP has already made this IHA ineligible for future funding as noted by the IG on page 95 of this audit.

Page 97, recommendations for Hopi Tribal Housing Authority: This audit contains a recommendation to hold Board management responsible and consider administrative action as deemed necessary. The SWONAP has already restricted the HAs access to funds as also noted by the IG on page 95 of the audit.

Page 98 (under Fort McDowell MohaveApache), Recommendation for ONAP #1: Recommends development of policy on the disposition of low rent housing units and the dissolution of a housing authority. Under NAHASDA, HUD is much less involved in the relationships between a tribe and its housing entity. The disposition of housing and the process of dissolution of a housing authority are governed by local laws rather than Federal laws or requirements.

Page 98, under Owens Valley Housing Authority are two recommendations for ONAP: #1 is to review program provisions allowing IHAs to reduce payment terms, forgive debts and refund payments make by program participants. The references here are to program requirements which are associated with programs that no longer exist but were eliminated with the effective date of NAHASDA. #2 states that ONAP should determine whether programs provisions can be changed to prevent negative public perceptions over IHA activities. ONAP feels strongly that

the programs which it oversees are not the cause of any negative perceptions. Rather, as this audit notes, it has been the violation of programs requirements by IHAs and/or individual IHA members, that have caused negative perceptions. ONAP recommends that both #1 and #2 be deleted from the final report.

## **Appendix E: Eastern/Woodlands ONAP**

Page 121, under Mashentucket Pequot Housing Authority, Recommendation #1 for ONAP: Ensure all staff are aware of the actions that can be taken when HUD funds are misused. ONAP will assure that this is included in all staff training as the NAHASDA final rule is implemented.

Page 121, under Pleasant Point Passamaquoddy Housing Authority, Recommendation #1 States that ONAP should review monitoring requirements to ensure they include an adequate review of Board oversight responsibilities. The NAHASDA Final Rule, as drafted but not yet published, requires that the Indian Housing Block Grant recipient must submit an Indian Housing Plan to HUD, reporting on one year and five year activities. Then annually, a performance report is required, noting compliance with provisions of the Plan. If a TDHE is the recipient, the Rule requires not only their performance plan submission, but also a compliance review by their tribe. Therefore, we believe the new draft rule meets this recommendation.

Page 122, under White Earth Reservation, Recommendation #1 is for ONAP to understand remote monitoring of IHA's development activities to confirm proper use of development funds. Under NAHASDA, ONAP's development program was terminated. ONAP does, however, plan to monitor on-site for compliance with NAHASDA requirements. Additionally, grant recipients are required to self-report on an annual basis, their use of NAHASDA funds and their compliance with their Indian Housing Plan.

Page 122, under MOWA Choctaw Housing Authority. The audit states under #1 that ONAP should ensure monitoring and oversight techniques exist to identify the status of projects and alert staff to potential deficiencies. Under NAHASDA, this will be addressed through annual reports and periodic monitoring visits.

Recommendation #3 is to take administrative actions against one of ONAP's former administrators to prevent participation in HUD programs. It is unclear from this audit why this one individual is being singled-out for a sanction. ONAP is requesting further discussion with OIG on this recommendation.

Page 122 under Keweenaw Bay Ojibwa Housing Authority, Recommendation #1 states that all FONAPs should approve all land use not included in a project plan. Under NAHASDA, ONAP will not be reviewing individual project plans as was done under the prior development programs. The tribe/TDHE's Indian Housing Plan will provide us with the proposed usage of grant funds and it will be the responsibility of ONAP to monitor the performance in accordance with the Plan. There are no requirements (even under the "old" Indian housing programs, for



HUD/ONAP to approve leases. That is solely the responsibility of the Bureau of Indian Affairs (BIA). ONAP believes that this recommendation should be deleted as it suggests authority for reviews which are not HUD's responsibility but rather are the responsibility of the BIA.

#### **Appendix F: Northwest ONAP**

Page 159, Under Tulalip Tribes Housing Authority. #2 notes that ONAP should establish criteria for moderate housing design. While the NAHASDA final rule does not contain a specific definition for moderate housing design, it does address this issue in Section 1000.156 of the rule where limitations on grant funds for construction purposes are established.

# 3 recommends that ONAP establish enforceable policies for conflict of interest situations. This has been completed in Sections 1000.30-1000.36 in the NAHASDA final rule.

Page 159 under Coquille Indian Housing Authority, recommendation #1 states that ONAP should pursue a regulation change requiring all new IHAs to be classified as high risk. This recommendation would not conform to changes made by NAHASDA as the statute has eliminated IHAs as the primary recipients of HUD Indian housing program funds. Instead, tribes will become the grant recipient and/or appoint a TDHE to be the recipient upon its behalf. Because of this statutory change, ONAP recommends that this recommendation be deleted.

Page 160 under Puyallup Housing Authority the first recommendation is for ONAP to seek programmatic changes which would allow HUD to recapture unused funds. The NAHASDA Final Rule, under Sections 1000.530 - 1000.538, addresses remedies available to HUD in the event of noncompliance. Among the remedies are provisions for adjustment, reduction of, and withdrawal of grant amounts.

## Appendix B

### Effectiveness of ONAP Field Office Oversight by Field Office and Housing Authority Reviewed

<i>Northwest Office of Native American Programs Seattle, Washington</i>	
<u>Effective Oversight of IHA</u>	<u>Ineffective Oversight of IHA</u> Chehalis Coquille Muckleshoot Nez Perce Puyallup Southern Puget Sound Inter-Tribal (Shoalwater Bay) Tulalip Tribes Yakama Nation

<i>Eastern Woodlands Office of Native American Programs Chicago, Illinois</i>	
<u>Effective Oversight of IHA</u> Keweenaw Bay St. Croix Chippewa	<u>Ineffective Oversight of IHA</u> Bois Forte Mashantucket Mowa Choctaw Narragansett Pleasant Point Passamaquoddy White Earth Reservation

<i>Southwest Office of Native American Programs Phoenix, Arizona</i>	
<u>Effective Oversight of IHA</u> Fort McDowell Northern Pueblos Owens Valley	<u>Ineffective Oversight of IHA</u> All Indian Pueblos Hopi Pascua Yaqui

<i>Northern Plains Office of Native American Programs Denver, Colorado</i>	
<u>Effective Oversight of IHA</u> Sisseton-Wahpeton Southern Ute Rocky Mountain <sup>25</sup>	<u>Ineffective Oversight of IHA</u> Northern Cheyenne Omaha

<i>Southern Plains Office of Native American Programs Oklahoma City, Oklahoma</i>	
<u>Effective Oversight of IHA</u> Absentee Shawnee	<u>Ineffective Oversight of IHA</u> Otoe-Missouria

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<sup>25</sup> Rocky Mountain is not an IHA but was an instance reported in The Seattle Times which was a cash probe of 12 IHAs performed by Rocky Mountain OIG. We did not classify this instance.

## ***Appendix C***

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