



SHARED VISIONS: THE NATIVE AMERICAN HOMOWNERSHIP, LEGAL AND ECONOMIC DEVELOPMENT SUMMIT I REPORT

**Chicago, Illinois
March 30 – April 1, 1999**

Introduction

Last month, 750 participants gathered at the Hyatt Regency Hotel in Chicago, Illinois for the Fourth Annual Native American Homeownership and Legal conference sponsored by HUD. This year, the conference focused on HUD Secretary Andrew Cuomo's *Shared Visions* initiative and is the first in a series of two Summits to be held in 1999 addressing homeownership, legal and economic development issues throughout Indian country. To kick off the Summit, Secretary Cuomo announced new legislative initiatives to increase homeownership among Native Americans and stressed HUD's commitment to these new initiatives.

Opening statements were also presented by Keller George, President of the United South and Eastern Tribes, Joe Garcia, representative of the National Congress of American Indians and Chester Carl, President of the National American Indian Housing Council.

The Summit began on March 29th with an informal Welcome Reception for all participants. The informal atmosphere allowed for old friends to get reacquainted and new friendships to form. A second reception on March 30th recognized the dedication and contributions of all those who participated in the negotiated rulemaking process and was also a chance for participants to take advantage of the valuable information the twenty-eight public and private Resource Room exhibitors had to offer.

On March 31st, HUD hosted a luncheon where the Assistant Secretary of Public and Indian Housing Harold Lucas spoke on the issues facing Native Americans today and reiterated HUD's continuing dedication in addressing these issues. Highlighted at this luncheon were twelve tribes and Indian housing authorities(IHA) who received the "Program Initiative Recognition Award" for their initiative in designing homeownership, rental housing, homebuyer counseling and economic development programs to address housing, legal and economic development issues facing them.

During this two and a half-day event, participants attended intensive training sessions focusing on economic development, homeownership, legal issues, rental housing, organizational development and homebuyer counseling. In addition to the scheduled training sessions, many participants met with HUD staff during the Native American Housing Assistance and Self-Determination Act of 1996(NAHASDA) Listening sessions to discuss their concerns and offer suggestions for change. Whether meeting in a training

session or individually, participants shared their own “secrets to success” and gained new ideas to improve their existing programs.

Overall, Summit participants were pleased with the valuable information they received in the training sessions and the contacts they made through networking at the receptions and breaks. The structure of the training sessions was more popular with participants than the panel workshops of previous years. Participants left the final day of the Summit feeling like their time in Chicago was well spent. They were going back to their organizations with tips and advice they had gained at the Summit to improve their homeownership and economic development programs.

Although most had only positive remarks about the structure of the Summit, there were some suggestions on how to improve conferences in the future. While many participants stated that the sessions were full of valuable information, they thought there was not enough time to absorb all the knowledge the presenters had to offer. Thus, the sessions were not as productive as they could have been given the session length. In the future, session length should be extended. Also, some sessions were so popular that participants suggested these be offered twice to avoid conflicts with other popular sessions. Everyone wanted to see more copies of the materials, as well as a hard copy of the speakers’ slide presentations. Finally, participants proposed that although Chicago was a convenient location, they would like to see the conference moved out west. Some suggestions for next year’s conference were Seattle, Santa Fe, Phoenix, Albuquerque and San Diego.

The following sections of this report highlight:

- ✘ Key points raised in the various training sessions;
- ✘ Issues discussed during the NAHASDA Listening Sessions;
- ✘ Results of final day consultation; and
- ✘ New HUD technical assistance products available to tribes.

Track Overview

This section of the report emphasizes some of the key points addressed during the training sessions.

Rental Housing Track

Sessions – The Basics; Finance; Incorporating LIHTC in Your Rental Housing Program; Designing an Effective Special Needs Rental Program; LIHTC in Action; Rental Alternative

Facilitators – Paul Caouette, HUD Community Builder and Luke Toyebo, National American Indian Housing Council

Speakers – Frank Pertrovich, Jr., Cook Inlet Housing Authority; David Southerland, Cherokee Nation Housing; Bill Picotte, Oti Kaga, Inc.; Brenda Bouthot, Kodiak Island Housing Authority; Curtis Cook, AARP; Jane Barrett, Red Lake Reservation Housing Authority; Don Fancher, Executive Director, AVCP Housing Authority

Rental housing is an important part of many tribes' housing portfolios. This track provided in-depth information on creating and managing rental housing. With topics ranging from how to set up rental assistance programs, such as Low-Income Housing Tax Credits (LIHTC), to designing and funding special needs programs, the sessions focused on building partnerships and researching various funding sources. Participants agreed that the key to a successful program was reliable investors, leveraging money and a solid plan. Some other key issues and comments that were a result of participant discussions during the sessions are listed below.

Investment: While investment by private, public and nonprofit entities is important for the development of rental housing, finding these investors can be difficult. Session participants and trainers suggested pooling investors and leveraging outside resources as much as possible to obtain the program money needed. Participants warned, though, that with more money comes more administrative burdens.

Alternative Rental Housing Programs: Although homeownership is popular among tribes, not all families are ready for it. Session participants and trainers suggested that tribes should think about alternatives to the traditional rental housing programs by creating programs such as elderly housing and student voucher programs. To successfully implement such programs, some participants suggested developing eligibility criteria and a leasing policy early during the program planning.

Economic Development Track

Sessions – Assessing Economic Development Options; Creating and Maintaining an Environment for Business; Resources for Financing Economic and Business Development; Tribal Business Development; Microenterprise Development; Business Diversification

Facilitator – Robert Barth, Office of Native American Programs, HUD

Speakers – Ken Webster, NAIHC; Jonathan Taylor, Harvard Project on American Indian Economic Development; Craig Nolte, Federal Reserve Bank of San Francisco; JoAnne Lewellen, Federal Reserve Bank of Minneapolis; Thomas Fredericks, Pelcyger, Hester, and White; Michael LaPointe, Sicangu Enterprise Center; Dolly Lane, Navajo Nation; Sue Shaffer, Cow Creek Band of Umpqua Tribe; Mark Brodziski, U.S. Department of Agriculture

Knowing that tribes are facing many fundamental obstacles concerning economic development, this track was established to address these problems and discuss options to creating economic development programs. Sessions focused on a variety of topics from the importance of community participation and community involvement in tribal economic development to the "Nation-Building" concept, where tribes focus first and foremost on the establishment of governing institutions that match contemporary indigenous cultures and exercise their sovereignty. There were at-length discussions during these sessions that resulted in the following key points concerning economic development.

Politics and Economic Development: Throughout Indian country, economic development can be challenging due to the influence of political environments. Participants indicated that honest governments and strong relationships with the local community and business partners can be determining factors in the success of a tribe's economic and business development goals.

Planning for Economic Development: Planning for economic development can be difficult because of all the unknown variables related to the needs of a community. To address this challenge, participants suggested that economic development practitioners begin with three simple steps:

- (1) Gain community input by asking tribal elders to share their knowledge of the community and its needs;
- (2) Look for previous assessments and plans that have been done in the area – whether by states, local governments, or the tribe itself – in order to learn lessons and reduce the amount of research necessary; and
- (3) Develop internal controls for departmental and individual responsibilities, including clear guidelines on how each entity will be held accountable for the planning process and its outcomes.

Financing Options: As the physical distance between Indian country, financing resources, and technical assistance grows, the ability to act quickly and take maximum advantage of financial opportunities is diminished. In addition, as agencies are forced to downsize and consolidate their operations, access to funding programs also becomes more challenging. Participants and trainers said that the key to overcoming these obstacles was to address the concerns of the lenders and investors by adopting existing state commercial laws in order to “level the field” for investment. They stated that banks are the “gateways” to many lending programs and their participation can make or break a small business or micro-lending program. To gain this support from area lenders, it is critical to have a compassionate, but firm, collections process.

Homeownership Track

Sessions – The Basics; Homebuyer Finance;

Capacity-Building: Using the Title VI Demonstration Program to Finance Homeownership; Self-Help; Addressing Infrastructure; Setting Up Your Homeownership Program; Moderate Income FHA Guaranteed Mortgage Demonstration

Facilitators – Bob Gauthier, Salish & Kootenai Housing Authority, and Mercedes Márquez, Office of Civil Rights and Fair Housing, HUD

Speakers – Charlie E. Eiseman, Jr., Western Security Bank; Jay Marcus, The Enterprise Foundation; Scott Stewart, Federal Home Loan Bank of Chicago; Chuck Merritt, Valerie Harris & Jim Hamilton, IHA Management Systems, Inc.; Chris Manion, Office of Native American Programs, HUD; Peter N. Carey, Self-Help Enterprises; Leslie Newman, Proyecto AZTECA; John Romano, Rural Utilities Service, USDA; Ken Stocks, Coeur d’Alene Tribal Planning and

**Development Corporation; Richard Smith, Jr., Minnesota
Chippewa Housing Corporation**

The seven sessions under the Homeownership Track focused on the key issues involved in striving for homeownership in Indian country, including offering tips and techniques for tribes and tribally designated housing entities(TDHE) creating new homeownership programs. Facilitators, trainers, and participants shared ideas about attracting and working with lenders to take advantage of programs such as NAHASDA, the Section 184 Loan Guarantee Program, self-help programs, and the newly-implemented Title VI Demonstration Program. Speakers also discussed with participants other considerations involving infrastructure and homebuyer counseling. Two real-life case studies ended the Homeownership Track by offering insights into how tribes, TDHEs, and lenders can work together to leverage resources and provide homeownership opportunities for more families than ever before. Key issues and comments that were a result of participant discussions during the sessions are listed below.

Borrowing and Lending: Although NAHASDA targets families at or below 80% of median income, many families above this limit do not have ready access to mortgage financing in Indian country. One suggestion that was repeated throughout the sessions by participants was the need for tribes to leverage all available resources. This means looking beyond federal subsidy and working with lenders. Resources to access include tax-credit programs such as the LIHTC Program, mortgage financing program, and revolving rehabilitation loan programs. Some participants suggested even using income from mixed use housing, commercial housing and market housing to subsidize affordable housing programs.

Infrastructure: Setting up infrastructure now involves more than consulting Bureau of Indian Affairs(BIA) and Indian Health Services(IHS). Participants stated that tribes should look into accessing programs such as the U.S. Department of Agriculture's(USDA) Water and Waste Disposal Loan and Grant Program to help finance their systems. It would also be helpful to tribes if Congress approved a set-aside of up to 3% of national funds to finance infrastructure for Indian areas.

Homeownership Assistance: In order to avoid a "bleeding affect" in which valuable persons and resources leave the tribe, downpayment assistance and homebuyer counseling should be made available for all families.

Homebuyer Counseling & Education Track

Sessions – Defining Counseling Needs and Types of Counseling Programs; Pre-Occupancy Counseling; Purchasing a Home; Post Occupancy and Default Counseling; Implementing a One-On-One Counseling Program; Developing a Counseling Program for Prospective Homebuyers
Facilitator – Donna Fairbanks, Indian Housing Programs, Minnesota Housing Finance Agency



Speakers – Jeffery Koleski, Neighborhood Housing Services/Oklahoma City, Inc.; Terrie Paredes, Norwest Mortgage HomeBuyers Club; Carol Wiklund, ABODE Consulting; Deborah Moffitt, Ronan Housing Authority; Robert Skjonsberg, Norwest Mortgage; Michael LaPointe, Sicangu Enterprise Center; Robert Cheadle, Housing Administrator, Chickasaw Nation.

Mortgage lending in Indian country is a relatively new concept - and because many tribes continue to operate in cash-in-hand economies, the idea and importance of credit is unfamiliar. As a result, education and counseling is an essential first-step in the homeownership process. The sessions brought participants through the various stages of the counseling process and gave participants ideas on how to design and develop a program. Key issues and comments resulting from the sessions are listed below.

Credit: The two biggest obstacles for Native American homebuyers are poor (or no) credit history and fear. Mortgage lending has a special jargon just like any other field or profession. This is one reason why people are fearful – they do not understand the process, terminology and what is required of them. Counselors can help homebuyers overcome this fear by creating an environment where people feel comfortable asking questions. Demystifying technical subject matter for potential homebuyers is essential to their success as homeowners.

Types of Counseling Programs: The key to a successful counseling program is to conduct a needs assessment and then tailor programs to clients' needs. Participants and trainers stated that the needs of homeowners vary and so should counseling programs. Some programs may require comprehensive education or extensive credit counseling, while for others fast-track counseling may be sufficient. One important point that participants made was that no matter what "type" of program is implemented, it should be continuous. Ongoing counseling allows counselors the opportunity to identify and circumvent potential problems early on and gives new homeowners an opportunity to get together periodically to talk about their experiences.

Delinquency Counseling: This particular counseling is essential to the well-being of tribes. As participants pointed out, one foreclosure can affect the opportunities available for other tribal members. Some stressed the importance to counsel individuals that some problems are inevitable (due to death or divorce, for example) and that if confronted early, they can be dealt with much more efficiently and effectively.

Building an Effective Housing Organization Track

Sessions – Developing Your Business Plan; Implementing Your Business Plan; Developing a One-Stop Mortgage Center; Setting Up a Non-Profit; Pine Ridge; Developing Your Organizational Vision

Facilitator – Trish Roberts, ICF Consulting

Speakers – Dick La Fever, Crossroads Leadership Institute; Frank Petrovich, Jr., Cook Inlet Housing Authority; Joanna Donohoe, HUD Community Builder; La Charla Figs, The Enterprise Foundation; Paul Iron Cloud, Oglala Sioux Lakota Housing Authority; Shana Soldswisch and Nerissa Alexis, PriceWaterhouseCoopers; Blake Chambliss, Rural Community Assistance Corporation, Nancy Warneke, Salish Kootenai College

In the wake of NAHASDA, Tribes, IHAs, and TDHEs, are afforded a tremendous new range of opportunities to define their own visions, plans, and goals. However, while self-determination means freedom to choose, it also means a greater degree of responsibility, and the whole range of urgent problems facing these organizations must be addressed with a limited amount of public funds. With topics ranging from the most basic elements of defining an organization's mission to such specific business lines as a one-stop mortgage center, these sessions focused on reinforcing the capacities of organizations to identify and focus their resources in a culturally appropriate manner. Participants agreed that the keys to successful organizational development was good planning, building systems to incorporate the interests of all stakeholders, and developing systems to allow for the monitoring and evaluation of plans and a built-in capacity for change. Some other key issues and comments that were a result of participant discussions during the sessions are listed below.

Organizational Development: Developing and implementing successful business plans is not always easy. Participants suggested that the process for developing each of these plans should include systems to foster and solicit the input of all stakeholders in the process to ensure success. Such systems should include outreach campaigns, periodic meetings, or public forums. They also stated that vision, strategic plans and individual business plans should be part of a wholly integrated system. This means ensuring that the vision is culturally appropriate and speaks to the true needs and desires of the constituent population as well as the organization's staff. The focus should be on the organization's goals, rather than procedures.

Communication: Communication within an organization is key to the success of the organization. Participants stated that organizations must work to build communication among its staff, as well as with the customers it serves. They suggested that built-in systems to ensure communication between levels of management are essential to an organization's success. Another key to success that was emphasized throughout the sessions was the organization's openness to change.

Legal Issues Track

Sessions – Legislative and Litigation Update; Selected Legal Aspects of Housing Finance; Construction Law Issues; Equal Housing and Civil Rights in Indian Country; Ethics; Labor Law Issues; U.S. Housing Act to NAHASDA Transition; Indian Land Issues; Tribal Housing Legal Infrastructure.

Facilitators – Randall Akers, Southwest Office of Native American Programs, HUD; Jerry Gardner, Tribal Law and Policy Institute; Raphael Mecham, Southwest Office of Native American Programs, HUD; Barbara Gallegos, Southwest Office of Native American Programs, HUD; Ken Bowring, Northwest Office of Native American Programs, HUD.

Speakers – Patricia Zell, U.S. Senate Committee on Indian Affairs; Curtis Burkey, Law firm of Alexander and Karshmer; Ann Sherman, Ater, Wynne, LLP; Thomas Fredericks, Fredericks, Pelcyger & Hester, LLC; Art Bunce, Law Offices of Art Bunce; James Wulfsberg, Wulfsberg, Reese, Ferris and Sykes P.C.; Diana Ortiz, Office of Human Resource Law, HUD; John Vandermolen, Private attorney; David Heisterkamp, Wagenlander & Associates, LLC; Robert Miller, Private attorney; Catherine Baker Stetson, Stetson Law Offices, P.C.; David Rapport, Rapport & Marston; Leah Harjo Ware, Indian Country Lawyers; Denise Chee, Chee Law Offices; Genni Denetsonie, BIA.

The legal tracks provided a wide range of sessions relating to housing issues in Indian country. The sessions allowed attorneys from all over the country to come together and share knowledge and experiences in their given area of expertise. Most sessions included recent relevant cases and legal decisions. The legislative and litigation update session provided an overview of key Indian legislation and its status, as well as notable court cases affecting housing in Indian country. Other sessions included topics on housing finance, alternative construction systems, discussions on the Byrd amendment, and new management and organizational structures as a result of the transition to NAHASDA. Other issues that were raised in the legal sessions are listed below.

Sovereign Immunity: The Supreme Court's recent decisions address tribal sovereign immunity and state taxation of a variety of activities occurring within Indian country. Specifically, the court issued the following decisions:

- 1) Indian tribes have sovereign immunity from a lawsuit arising from business dealings with non-Indian corporations outside the reservation boundaries;
- 2) States have the authority to impose taxes on the proceeds earned by a construction company that contracted with the BIA to construct roads on Indian reservations; and
- 3) A county has authority to impose its real property tax on land within the reservation that had been allotted to Indians or sold to non-Indians during the allotment period and then purchased by the tribe to augment the tribal land base.

Tax Exemption: Tribal governments may qualify for reduced tax exempt rates of interest meaning the receipt of the interest payments made on the debt are excludable from the gross income of the lender for federal income tax purposes. This exemption enables a lender to offer the tribe a lower rate of interest because the lender is not taxed on interest paid on the debt.

New Initiatives: Tribal Consultation and NAHASDA Policies

The following section contains an overview of the Tribal consultation process as required by President Clinton's Executive Order. It also summarizes the issues raised during the NAHASDA Listening Sessions and reiterates the suggestions given by attendees during the final day general session.

Overview of Tribal Consultation Process

In acknowledgement of President Clinton's Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments", HUD reaffirms its commitment to consultation and the unique government-to-government relationship with federally recognized tribes. The "Consultation and Coordination with Indian Tribal Governments" directs federal agencies to consult with tribal governments as much as possible prior to taking actions that will affect federally recognized tribal governments. HUD recognizes the importance of tribal self-governance and is committed to obtaining tribal input into the policies and procedures it develops. Throughout the upcoming years, HUD will strive to consult with small, medium and large tribes on matters that directly affect their communities.

Overview of NAHASDA Listening Sessions

The following subsets are a list of the six sessions that took place within the NAHASDA Listening Sessions Track. These sessions were a chance for HUD staff to hear the concerns and ideas of the participants regarding various NAHASDA issues. Participants were given the opportunity to ask questions of HUD, as well as offer suggestions on how HUD could improve its processes and programs to better suit the needs of tribes/TDHEs. HUD has recorded the issues and comments received during the listening sessions and will begin to develop its agenda for the upcoming year based on the needs and suggestions received from the participants during the Summit. HUD is dedicated to addressing all of the following and will consult with tribal representatives in making sure that its agenda is in line with tribes/TDHEs.

Indian Housing Plan/Annual Performance Report

This session focused on the requirements of the Indian Housing Plan (IHP) and Annual Performance Report (APR), including a discussion of eligible/model activities and cooperation agreements. Key issues and suggestions that were addressed during the session are listed below.

IHP/APR

1. Part I and II of the Financial Resources is not balanced.
2. Tribes need clarification on the difference between one-year goals and one-year objectives.
3. HUD should change the definition of goals and objectives to industry standards.

4. Tribes need clarification on how recipients handle reserves or carry forward reserves from year to year.
5. Tribes need clarification as to whether the line item in Table 2 (prior year funding) has lost its meaning.
6. Tribes need clarification as to whether revisions to the IHP are mandatory.
7. There are transition period problems with IHP/APR and when they are due.
8. Tribes/TDHEs are being misinformed about standard/nonstandard activities.
9. HUD should clarify when non Indian Housing Block Grant (IHBG) funds have to be spent and whether or not there is a timeframe for obligation of 1937 Act funds.
10. HUD needs to clarify the requirement of the IHP contents and review process for the IHP.
11. Tribes need clarification on the revision process of the APR.
12. The APR should mirror the IHP.
13. There should not be a form for the IHP/APR – makes it too inflexible.
14. HUD should review the structure of both the IHP and APR in order to make it better.
15. There should be a 60-90 day comment period put into effect for consultation.

Cooperation Agreements

1. Tribes need clarification as to whether cooperation agreements can be transferred from an IHA to the tribe/TDHE.
2. Need legislation or NAHASDA amendments to address cooperation agreement problems and to make it work. Look at a total change to the language or the ability for HUD to provide waivers when needed. Look at what would be better for tribes and how amendments would affect tribe sovereignty.
3. HUD should lobby Congress to change the statute for cooperation agreements. It does not work in California because of landless tribes, nor in South Dakota because state law does not recognize tribal governments.
4. HUD needs to address the fact that local governments are not providing these services – cooperation agreements.
5. HUD needs to address the tax exempt issue problem.

Eligible Activities

1. Tribal members should be placed on HUD's review committee (NRC).
2. HUD needs to create a mechanism to share the approved activities with all tribes.
3. HUD should keep an open mind when approving activities (looking at what was approved with the 1937 Housing Act).
4. HUD should examine Section 202 funding when considering Economic Development – Economic Development use to be a linked activity to housing.
5. Tribes need clarification as to whether cooperative housing is a model activity.

Financial Issues

This session focused on financial issues, such as Line of Credit Control System(LOCCS), Program Income and Investments. Participants raised some key questions and issues, as well as gave valuable suggestions on how HUD could revise their processes and programs.

Investments

1. Comment on independent audits versus HUD reviews. Determine which was greater weight.
2. Tribes need clarification as to the beginning of the timeframe for the two year requirement on investments.
3. Tribes need clarification on the relationship between the investment two year requirement and the two year 90% obligation requirement.
4. HUD should clarify what information a self-governance tribe needs to submit based on 1000.28.
5. HUD should explain its actions during the 60-day review process for a self-governance tribe.
6. HUD needs to update investment policies defined in accordance with the investment notice (check list to be developed).
7. Tribes should be able to invest non-restricted funds as they wish.

Program Income

1. Clarification is needed as to whether program income is from NAHASDA funds, '37 Act funds, or both.
2. Tribes need clarification on whether interest earned from proceeds of sale is considered program income.
3. Tribes need clarification as to when program income is available for disbursement.
4. Tribes need clarification as to when the grant period ends in accordance to 85.25(b).
5. Tribes need clarification as to whether they can draw down funds when program income is used for reserves – 85.21.
6. HUD needs to hold formal consultations with tribes regarding program income and self-governance. The members of the meetings should represent small, medium and large tribes.
7. Clarification is needed as to who the tribal members of the Program Income workgroup represent.

LOCCS

1. Tribes need clarification as to how PIH Notice 99-5 applies when the TDHE is in litigation.
2. Tribes need clarification as to whether there will be additional reporting requirements on use at the end of two year investments.
3. Local offices should not lock down LOCCS when a recipient asks HUD to do an environmental assessment.
4. LOCCS should contain a warning on environmental review and refer to the environmental review.
5. HUD needs to give guidance to tribes/TDHEs as to what the guidelines for drawing down funds is in LOCCS – within 45 days of receipt.
6. There should be single line item in LOCCS.
7. Warning: If tribes do not access LOCCS regularly, they will get locked out.

Formula Concerns and Cost Limits (DC&E) Changes

This session provided the opportunity for participants to express concerns with the current formula distribution developed during the negotiated rulemaking for IHBG. Changes and suggestions for DC&E were also discussed. Below are key issues, questions, and suggestions raised during this session. HUD will be forming a workgroup or committee to look at revising the formula in the near future.

Formula

1. In the Census 2000 information there is a lack of housing condition statistics.
2. The two year obligation is critical.
3. HUD should clarify as to whether tribes/TDHEs can remain in the program under the '37 Act or are they forced into NAHASDA. There were requests that a letter be sent to each tribal member explaining the affects of NAHASDA.
4. HUD should explain what the American Housing Survey contains.
5. HUD should explain why funding in Oklahoma went down while appropriations went up.
6. Minimum Funding. Use TDC/DC&E to fund at least one unit per year for each tribe.
7. HUD should partner with IHS and BIA to gather more data.
8. HUD should consider counting NAHASDA units in the formula.
9. HUD needs to explain change to NAHASDA (e.g. how the minimal funding limits affect tribes in Alaska).
10. Tribes would like information on corrections and challenges to the formula and how they can document these.
11. HUD needs to revisit the minimum funding for small tribes. As it stands the minimum funding (\$50,000) is not enough. Alaska natives agree that the minimum funding needs to be increased – HUD needs to take into consideration the higher cost of living in Alaska and the higher cost of construction.
12. HUD should advocate the need for Congress to provide more funding for NAHASDA.
13. Tribes/TDHEs need clear explanation of how HUD will address the overlapping areas.
14. HUD should consult with tribes when they are reworking the formula. Members of the consultations should be from small, medium and large tribes in order to create a balance.
15. HUD should consider IHS data and talk to IHS about its funding mechanisms. IHS and HUD need to share data to be more accurate.
16. HUD should look at data on education levels in homes provided by BIA.

DC&E

1. HUD should utilize tribal specific research when calculating DC&E.

Monitoring and Oversight

This session reviewed the statutory and regulatory requirements and provided an overview of the process for identifying recipients to be monitored. It also discussed self-monitoring by recipients and allowed participants to give feedback on HUD's monitoring and oversight process. The following are a list of suggestions and concerns that were highlighted during the session.

Submission

1. HUD should not encourage electronic submission of APR – not fair to tribes who are not computer savvy.
2. HUD headquarters should support field office provisions of technical assistance.
3. HUD should not place submissions on the internet.

Compliance

1. Tribes want to know due process for noncompliance – need more information on substantial noncompliance.
2. Tribes need clarification as to whether HUD is going to combine compliance supplements with the Office of the Inspector General(OIG) and the Office of Management and Budget(OMB).
3. Tribes should not be held responsible for TDHE compliance after submitting a notice to HUD that the TDHE's performance is unacceptable.
4. HUD should make sure that performance goals are coordinated with the program year.
5. Enforcement should fit in with A-133 compliance requirement.

Review

1. Tribes need clarification as to whether HUD will review the certification of self-governing tribes or will it rely on BIA review.
2. HUD needs to clarify whether all NAHASDA funds are subject to a hearing process.
3. HUD should give copies of the review checklists to all tribes/TDHEs.
4. HUD should obtain a scanner.

Title VI

This session discussed the implementation of the Title VI Demonstration Program.

Participants were most concerned with the following issues:

1. Tribes want an application package/documentation for the Title VI program.
2. Tribes want to know how much of the Title VI money will be guaranteed.
3. Tribes also want to know ways to secure their portion of the guarantee and the options available to small tribes.

Environmental Issues

During this session, participants discussed how some tribes are taking control of the environmental process in their area. Topics included statutory and regulatory requirements and the role HUD plays in the process. Comments that were cited during this session are listed below.

Environmental Review and Other Issues

1. HUD should consider linking LOCCS to environmental clearance.

2. Tribes need clarification as to where the environmental review states that HUD can use the National Environmental Policy Act (NEPA) to affect NAHASDA funds.
3. Tribes need clarification as to what happens to funds if an environmental error occurs but the project is complete.
4. Tribes need training on environmental review.
5. Environmental assessments are site specific.
6. Tribes need clarification as to whether or not there are any situations where "tainted" sites can be used.
7. Tribes need clarification as to whether investments are "exempt activities".
8. HUD should clarify whether or not there is due process when environmental errors are discovered.
9. Tribes need clarification as whether there is a different format of the Request for the Release of Funds (RFOF) and certification that can be used.
10. HUD should explain the capability of tribes to view the Office of the General Counsel (OGC) opinion on the determination of statutory requirements.
11. HUD should clarify as to whether the 701.15 form is required for Part 50.
12. Tribes need clarification on the necessity of documenting its files for exempt activities for Part 50.
13. Tribes need clarification as to who the cognizant agency for environmental issues is.
14. Tribes need clarification as to whether a self-governing tribe can be authorized as a federal agency for environmental approval.
15. Tribes need clarification as to whether HUD, under Part 58, will review the entity the tribe designates to receive a copy of the assessment.
16. HUD should clarify as to the coverage of non-NAHASDA funds under the environmental review requirements.
17. HUD should not make projects ineligible until full due process is completed.
18. HUD should work to fix the disparity under categorical exclusions for multi-family versus single family housing.
19. HUD should consider expanding LOCCS to include a separate account for construction activities.
20. HUD should work to change the law if the forms more important than the actual assessment.
21. HUD should clarify that there are only two options, not three. Tribes are not liable for documents submitted to HUD under Part 50.
22. HUD needs to set a schedule in place for the environmental forms. Some of these forms should even be deleted.
23. HUD should not make any broad-based LOCCS edits.
24. Section 105 of NAHASDA should be re-evaluated regarding who is at fault for "releasing" funds.

Summary of Tribal Consultation

In keeping with HUD's commitment to Tribal consultation, HUD Deputy Assistant Secretary Jacqueline Johnson solicited suggestions and concerns from the audience during the final day as to what they saw as HUD's role in the future of Indian country. The feedback from the audience was much appreciated and is being used to prepare HUD's agenda for the upcoming year. A list of the various suggestions to HUD are outlined below. It was suggested that HUD should work to:

1. Collaborate with NAIHC to deliver training to tribes/TDHEs, as well as enhance open communication between the two organizations.
2. Develop legislation affecting compact HUD money such as funds derived from the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS), and train HUD staff on BIA/IHS issues.
3. Train states regarding Low-Income Housing Tax Credit & NAHASDA Programs– educating them about the issues involved and the model programs that have worked.
4. Develop a partnership with the Department of Energy regarding low-cost/no-cost energy to Indian areas.
5. Examine closely the formula used for the NAHASDA block grant, and ensure that the formula is fair for all recipients.
6. Hold a 60 day comment period on draft guidelines and regulations.
7. Consider drafting legislation that affects the rules related to cooperation agreements, examining closely whether the existing rules conflict with self-determination.
8. Invite lenders to attend conferences and training sessions on the latest processes in Indian country.
9. Relax the Federal Housing Administration(FHA) and Section 184 lending guidelines, increasing flexibility and allowing tribes the opportunity to change mortgage mentality and credit culture in their area.
10. Treat model activities with an open mind and allow tribes further flexibility.
11. Treat tribes as sovereign governments, keeping in mind that the federal government is often one of the largest transgressors in environmental issues.
12. Examine and help resolve the current disputes over who is able to control funds in southern Oklahoma.
13. Do not punish tribes for violations for which HUD may be partly responsible.
14. Conduct training sessions on dispute and conflict resolution.
15. Establish a clear and defined procedure that allows due process with regards to the Title VI Demonstration Program.
16. Address the issue of how federal agencies can meet trust responsibility if action is taken that causes financial distress for tribes.
17. Refer to the collaborative model approach that the Norwest Mortgage Company is using in planning and designing policies and procedures.
18. To NAIHC: Invite Jacqueline Johnson to attend NAIHC meetings.

In response to tribal needs, HUD is working to deliver technical assistance throughout Indian country. In fact, HUD is finalizing some technical assistance products that will be at your door soon.

Coming To Your Tribe Soon!

As a result of your requests for additional training and technical assistance, HUD's Office of Native American Programs is developing many new technical assistance products that will be available to tribes within the next four months. Below is a description and timeline of these products and their availability. If you are interested in receiving a copy of any of these technical assistance products, please contact your Area Office of Native American Programs (ONAP). In addition, all these products will be available on-line at <http://www.codetalk.fed.us>.

Model Housing Code: The model housing code is the second housing code technical assistance piece that HUD has developed. This second set of model housing codes focuses on development. It will provide tribes with sample legal codes, which can be enacted and then used by tribes to manage their development efforts. A draft of the codes was displayed at the Summit for review. The feedback received from the Summit is being incorporated into the final version of the codes. The sample codes cover land use, zoning, and building standards and will be available by early June, 1999.

NAHASDA Side by Side Guide: This guide is a new technical assistance resource that will help tribes work with the NAHASDA statute and regulation. It provides a topic by topic comparison of the regulations and the statute and explains key elements of each section of each major requirement. In addition, the NAHASDA Side by Side Guide acts as a desk reference manual by containing copies of the regulations and guidance for the other federal requirements, which may be imposed upon projects when NAHASDA funds are used. It is anticipated that the final version of this guide will be available by late May, 1999.

Indian Housing Development Models: With the implementation of NAHASDA, tribes have many more opportunities to create a wide variety of housing types using a range of financing methods. The Indian Housing Development Models provide tribes with the basic background information needed to begin the process of designing new programs under NAHASDA. The models have been designed to help the housing staff and leaders of tribes, TDHEs and Indian housing authorities to select which programs to implement and then begin the planning and decision-making process for those programs. The topics that are covered in the models are the Indian housing plan (IHP), homeownership, rental housing, tenant based rental assistance, construction management, housing finance, property and asset management, and financial management. HUD anticipates that these models will be available by late May, 1999.

ONAP On-Line Training: On-line training is comprised of computerized lessons, which the user can access on the internet. It provides many benefits, including allowing the user to learn at his or her own pace and to stop and start the training at will. The trainings cover key topics of interest to tribes, Indian housing authorities, and TDHEs, including homeownership, construction management, housing finance and property and asset management. Future modules are planned on monitoring and self-assessment and on procurement. The ONAP On-Line Training will be available by mid May, 1999.

The Tribal TA and Training Center: ONAP is committed to working in partnership with tribes, tribally designated housing entities and Indian housing authorities to ensure the effective and innovative implementation of Indian housing programs, including Indian Housing Block Grant under NAHASDA. In order to assist tribes and TDHEs in the process, ONAP has created the Tribal TA and Training Center. The Tribal TA and Training Center will be a central resource for tribes, TDHEs and Indian housing authorities on key issues in the planning, development and management of housing. The Center is anticipated to be up and running by June, 1999.

To All Participants

We would like to thank everyone who participated in the Summit in Chicago. It was an appropriate way to kick off the beginning of a new age in Indian country. We received many valuable comments from all of you during the two and half day event and will now incorporate these comments and suggestions into the development of HUD's agenda for the upcoming year.

In addition, we hope you make valuable use of this CD-ROM. It contains all presentations, materials, and tools from the Summit and can be used as a resource in the future. Again, thank you all for making this year's Summit a great success and we look forward to seeing you at Summit II in Pine Ridge, South Dakota.



**Chicago, Illinois
March 30- April 1, 1999**

AGENDA

Monday, March 29, 1999

- 1:00 – 4:00 **One Stop Mortgage Center Consultation Meeting (Regency Ballroom C)**
- 1:00 – 4:00 **NAHASDA Tribal Issues Meeting (Regency Ballroom D)**
- 5:00 – 8:00 **Pre-Registration (Foyer Outside of Regency Ballroom)**
- 6:00 – 8:00 **Welcome Reception (Regency Ballroom A and B)**
- 7:30 – 9:00 **Office of Native American Programs Senior Staff
and Administrators Meeting (Wrigley)**

Tuesday, March 30, 1999

- 7:00 – 9:00 **Registration (Foyer Outside of Regency Ballroom)**
- 9:00 – 11:00 **Welcome and Opening Ceremony (Regency Ballroom A, B, and C)**
White Thunder Singers – Clarence White, John Topash Warren, Jimmy Wesa,
John P. Warren, David Varga, Pokagon Band of Potawatomi
George Bennett, Grand Traverse Band of Ottawa and Chippewa Indians – Invocation
Keller George, President, United South and Eastern Tribes, USET, Inc./ Oneida Indian Nation
Joe Garcia, Representative, National Congress of American Indians
Chester Carl, President, National American Indian Housing Council
Andrew Cuomo, Secretary, U.S. Department of Housing and Urban Development
Jacqueline Johnson, Deputy Assistant Secretary, Office of Native American Programs,
U.S. Department of Housing and Urban Development
Paul Marks, Oukaax à di Clan, Tlingit Representative
Harold Salway, President, Oglala Lakota Tribe, Pine Ridge
- 11:00 – 11:15 **Break**
- 11:15 – 11:45 **Plenary – New Initiatives (Regency Ballroom A, B, and C)**
Gail W. Laster, General Counsel, Office of the General Counsel, U.S. Department of
Housing and Urban Development
Jacqueline Johnson, Deputy Assistant Secretary, Office of Native American
Programs, U.S. Department of Housing and Urban Development
Eileen Fitzgerald, Associate Administrator, Rural Housing Services,
U.S. Department of Agriculture
- 11:45 – 12:00 **Tribal Successes (Regency Ballroom A, B, and C)**
Frank Peratrovich, Jr., Executive Director, Cook Inlet Housing Authority
- 12:00 – 1:30 **Lunch (On Your Own)**





1:30 – 3:00

Concurrent Basic Training Sessions (I):

A. Rental Housing: The Basics: (Haymarket Room)

The purpose of this training course is to provide an introduction to innovative types of rental housing and their benefits. This session will explain how to assess your needs and determine the rental housing market, including the variety of funding sources and amenities. *Recommended for Tribal/TDHE/IHA housing staff, HUD staff, Tribal council members, nonprofit organizations and lenders.*

Frank Peratrovich, Jr., Executive Director, Cook Inlet Housing Authority
Luke Toyebo (Facilitator), Senior Technical Assistance Specialist, National American Indian Housing Council

B. Economic Development: Assessing Economic Development Options: (Gold Coast Room)

This session will teach participants how to assess existing conditions, needs, and resources, as well as discuss options and key steps in designing economic development strategies. *Recommended for Tribal/TDHE staff and nonprofit organizations.*

Kenneth W. Webster, Technical Assistance Director, National American Indian Housing Council
Robert G. Barth (Facilitator), Senior Program Specialist, Office of Native American Programs, U.S. Department of Housing and Urban Development

C. Homeownership 101: The Basics: (Comiskey Room)

This introductory session will provide participants with the key steps needed to set up a homeownership program, including: evaluating your needs and available resources, exploring available homeownership options; learning how to conduct a needs assessment; developing a market strategy; and setting up a homebuyer selection process that maximizes the effectiveness of your program. *Recommended for Tribal/TDHE/IHA housing staff, Tribal council members, lenders, individual homebuyers, HUD staff, nonprofit organizations and housing professionals.*

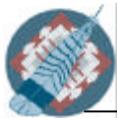
Charles Eiseman, Senior Vice President, Western Security Bank
Robert Gauthier (Facilitator), Executive Director, Salish & Kootenai Housing Authority

D. Homebuyer Counseling & Education: Defining Counseling Needs and Types of Counseling Programs: (Water Tower Room)

This session will provide basic information on how a Tribe/TDHE defines a counseling program best suited to its homebuyers' needs, including: one-on-one counseling, educational programs, and homebuyer fairs. The session will also include an overview of various counseling topics, such as pre-purchase, the loan process, post-occupancy issues, and default counseling, as well as how to leverage resources and build partnerships. *Recommended for Tribal/TDHE/IHA housing staff, nonprofit staff and lenders.*

Jeffrey Koleski, Executive Director, Neighborhood Housing Services/ Oklahoma City, Inc.
Donna Fairbanks (Facilitator), Director, Indian Housing Program, Minnesota Housing Finance Agency





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E. Building an Effective Housing Organization: Developing a Business Plan: (Columbian Room)

This session will focus on how to develop a business plan, including: assessing your resources, allocating funds and staff, conducting risk assessments and developing a mission statement. *Recommended for Tribes, TDHEs, IHAs, and nonprofit organizations who are just beginning the Strategic, organizational, and business planning process, as well as more experienced organizations who want to improve the way they develop new lines of business.*

Richard La Fever, Co-Founder, Crossroads Leadership Institute
Trish Roberts (Facilitator), ICF Kaiser

F. NAHASDA Listening Session – Indian Housing Plan/ Annual Performance Report: (Acapulco Room)

This session will focus on the requirements of the Indian Housing Plan (IHP) and Annual Performance Report (APR). *Recommended for Tribal/TDHE/IHA housing staff, and anyone with an interest in or working with programs that involve NAHASDA.*

Jacqueline Johnson, Deputy Assistant Secretary, Office of Native American Programs, U.S. Department of Housing and Urban Development (session introduction)
Kelly Jorgensen, Program Specialist, National Office of Native American Programs, U.S. Department of Housing and Urban Development
Kathy Bialis, Attorney/Advisor, Office of the General Counsel, U.S. Department of Housing and Urban Development
Donna K. Jacobsen, Program Specialist, National Office of Native American Programs, U.S. Department of Housing and Urban Development
Ann Roman, Northern Plains Office of Native American Programs, U.S. Department of Housing and Urban Development
Peter Petrunich, Program Specialist, National Office of Native American Programs, U.S. Department of Housing and Urban Development
Deborah Lalancette (Facilitator), Director, Office of Grants Management, National Office of Native American Programs, U.S. Department of Housing and Urban Development
Bruce Knott (Facilitator), Director, Office of Grants Evaluation, National Office of Native American Programs, U.S. Department of Housing and Urban Development

G. Legal Issues: Legislative and Litigation Update: (Toronto Room)

This session features updates on recent Indian law litigation and significant Federal legislation affecting Indian country. *Recommended for Tribal and other attorneys.*

Patricia Zell, Democratic Staff Director, Chief Counsel, U.S. Senate Committee on Indian Affairs

Curtis Burkey, Attorney, Alexander & Karshmer

Randall Akers (Facilitator), Associate Field Counsel, Southwest Office of Native American Programs, U.S. Department of Housing and Urban Development

3:00 – 3:30

Break





3:30 – 5:00

Concurrent Sessions (II):

A. Rental Housing: Finance: (Haymarket Room)

This session will discuss financial analysis as related to rental housing programs. It will include discussions on determining your operating income and expenses, what your rents should be set at and relating finance costs to development costs. In addition, topics of eligibility requirements for Housing Quality Standards (HQS), the application process, implementation of the program, monitoring and existing housing will also be covered.

Recommended for Tribal/TDHE/IHA housing staff, Tribal council members, nonprofit organizations and lenders.

David Southerland, Executive Director, Cherokee Nation Housing, Cherokee Nation
Luke Toyebo (Facilitator), Senior Technical Assistance Specialist, National American
Indian Housing Council

B. Economic Development: Creating and Maintaining an Environment for
Business: (Gold Coast Room)

This session will discuss a “Nation” building approach to economic development which emphasizes governing structures and investor security as major factors in successful economic development. Topics to be covered include legal and institutional environments, taxation, and physical infrastructure. *Recommended for Tribal/TDHE staff, Tribal council members, Tribal court personnel and Tribal attorneys.*

Jonathan B. Taylor, Research Fellow, Harvard Project on American Indian Economic
Development

Robert G. Barth (Facilitator), Senior Native American Program Specialist, Office of Native
American Programs, U.S. Department of Housing and Urban Development

C. Homeownership: Homebuyer Finance: (Comiskey Room)

This session will focus on credit analysis, underwriting and matching available financing tools to households. *Recommended for Tribal/TDHE/IHA housing staff, Tribal council members, lenders, individual homebuyers, HUD staff, nonprofit organizations and housing professionals.*

Jay Marcus, Director of Housing Initiatives, The Enterprise Foundation

Scott Stewart, Vice President of Community Investment, Federal Home Loan Bank of
Chicago

Robert Gauthier (Facilitator), Executive Director, Salish & Kootenai Housing Authority

D. Homebuyer Counseling & Education: Pre-Occupancy Counseling:
(Water Tower Room)

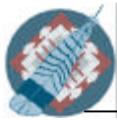
This session will cover what's involved in getting the purchaser ready for homeownership, including: what a borrower can qualify for, how to organize a budget for savings, how to look at spending habits and credit counseling.

Recommended for Tribal/TDHE/IHA housing staff, nonprofit staff and lenders.

Terrie Paredes, Operations Supervisor, Norwest Mortgage Homebuyers Club

Donna Fairbanks (Facilitator), Director, Indian Housing Program, Minnesota Housing
Finance Agency





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- E. Building an Effective Housing Organization: Implementing Your Business Plan: (Columbian Room)
This session will cover how to effectively implement your business plan, including: staffing and administrative issues and how to effectively budget administrative funds. *Recommended for both new and existing TDHEs, IHAs, and nonprofit organizations whether implementing a business plan for the first time, or considering alternative strategies for going from planning to implementation.*
Frank Peratrovich, Jr., Executive Director, Cook Inlet Housing Authority
Trish Roberts (Facilitator), ICF Kaiser
- F. NAHASDA Listening Session - Financial Issues: (Acapulco Room)
This session will focus on financial issues such as LOCCS, Program Income and Investments. *Recommended for Tribal/TDHE/IHA housing staff and anyone with an interest in or working with programs that involve NAHASDA.*
Jennifer A. Bullough, Program Specialist, Office of Native American Programs, U.S. Department of Housing and Urban Development
Jacqueline A. Kruszek, Program Analyst, National Office of Native American Programs, U.S. Department of Housing and Urban Development
Deborah Lalancette (Facilitator), Director, Office of Grants Management, National Office of Native American Programs, U.S. Department of Housing and Urban Development
- G. Legal Issues: Selected Legal Aspects of Housing Finance: (Toronto Room)
This session will focus on how Tribes can address legal issues arising from housing financing activities in Indian country, such as tax exempt bonds and tax credits. *Recommended for Tribal and other attorneys.*
Ann Sherman, Partner, Ater, Wynne, LLP
Thomas W. Fredericks, Partner, Fredericks, Pelcyger & Hester, LLC
Randall Akers (Facilitator), Associate Field Counsel, Southwest Office of Native American Programs, U.S. Department of Housing and Urban Development
- H. Legal Issues: Construction Law Issues: (New Orleans Room)
This session will cover procurement requirements, contract administration, and dispute resolution methods for Indian housing construction activities. *Recommended for Tribal and other attorneys.*
Art Bunce, Attorney, Law Offices of Art Bunce
James Wulfsberg, Senior Principal, Wulfsberg, Reese, Ferris & Sykes, P.C.
Barbara A. Gallegos (Facilitator), Division Director, Southwest Office of Native American Programs, U.S. Department of Housing and Urban Development

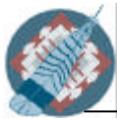
6:00 – 8:00

Resource Room Open (Regency Ballroom C-D)

6:00 – 8:00

Reception (Regency Ballroom A-D)





***Shared Visions: The Native American Homeownership, Legal
and Economic Development Summit I, Sponsored by HUD***

Wednesday, March 31, 1999

9:00 – 5:00

Resource Room (Regency Ballroom C-D)

9:00 – 10:15

Concurrent Sessions (III):

A. Rental Housing: Incorporating LIHTC in Your Rental Housing Program:
(Haymarket Room)

This session will provide hands on information for applying for Low-Income Housing Tax Credits (LIHTC), including: the steps and procedures, forms, resources, requirements, etc. *Recommended for Tribal/TDHE/IHA housing staff, Tribal council members, nonprofit organizations and lenders.*

Bill Picotte, President, Oti Kaga Inc., Cheyenne River Indian Reservation
Paul Caouette (Facilitator), Community Builder, U.S. Department of Housing
and Urban Development

B. Economic Development: Resources for Financing Economic and
Business Development: (Gold Coast Room)

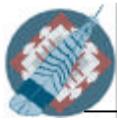
This session will inform participants of potential resources for financing economic and business development in Indian country. Topics covered will include loans, grants, and equity investments from sources such as federal programs, private lenders, investors, and foundations, as well as the use of gaming revenues and bond sales to finance development. *Recommended for Tribal/TDHE staff, HUD staff, Tribal council members and nonprofit staff.*

Craig A. Nolte, Community Affairs Advisor, Federal Reserve Bank of San Francisco
JoAnne F. Lewellen, Assistant Vice President, Federal Reserve Bank of Minneapolis
Robert G. Barth (Facilitator), Senior Native American Program Specialist, Office of Native
American Programs, U.S. Department of Housing and Urban Development

C. Homeownership: Capacity-Building - Using the Title VI Demonstration
Program to Finance Homeownership: (Acapulco Room)

This session will take an in-depth look at how Tribes and TDHEs can take advantage of opportunities provided by the NAHASDA Title VI Demonstration Program in conjunction with financing homeownership programs. It will offer tips and techniques on developing capacity-building grant skills to provide the economic security and development that can enhance program performance. *Recommended for Tribal/TDHE/IHA housing staff, Tribal council members, lenders, HUD staff, nonprofit organizations and housing professionals.*

Chuck Merritt, President, IHA Management Systems, Inc.
Valerie Harris, Associate, IHA Management Systems, Inc.
Jim Hamilton, Associate, IHA Management Systems, Inc.
Robert Gauthier (Facilitator), Executive Director, Salish & Kootenai Housing Authority



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D. Homebuyer Counseling & Education: Purchasing a Home:
(Water Tower Room)

This session will cover information a borrower needs to know about the actual loan process, including finding a lender and builder, understanding mortgages and land status, the loan application process, and what happens at loan closing. *Recommended for Tribal/TDHE/IHA housing staff, nonprofit staff and lenders.*

Carol Wiklund, Director, ABODE Consulting

Donna Fairbanks (Facilitator), Director, Indian Housing Programs, Minnesota Housing Finance Agency

E. Building an Effective Housing Organization: One Stop Mortgage Center:
(Columbian Room)

This session will discuss how to set up a One Stop Mortgage Center in your area in order to streamline lending procedures and coordinate Federal agencies involved in providing mortgages on reservations. *Recommended for Tribes, TDHEs, IHAs and nonprofit organizations striving to foster lending opportunities for homebuyers in Indian country.*

Joanna Donohoe, Community Builder, U.S. Department of Housing and Urban Development

Karen Garner-Wing, Director, Office of Loan Guarantee, National Office of Native American Programs, U.S. Department of Housing and Urban Development

Trish Roberts (Facilitator), ICF Kaiser

F. NAHASDA Listening Session – Formula Concerns and Cost Limits (DC&E) Changes: (Comiskey Room)

This session will provide an opportunity to express concerns with the current formula distribution developed during the negotiated rulemaking for Indian Housing Block Grant funds. Additionally, DC & Es will be discussed, including an opportunity for suggestions by participants. *Recommended for Tribal/TDHE/IHA housing staff and anyone interested in or working with NAHASDA.*

Jacqueline Johnson, Deputy Assistant Secretary, Office of Native American Programs, U.S. Department of Housing and Urban Development (Session introduction)

Jacqueline A. Kruszek, Program Analyst, National Office of Native American Programs, U.S. Department of Housing and Urban Development

Justina L. Walls, Program Specialist, National Office of Native American Programs, U.S. Department of Housing and Urban Development

Deborah Lalancette (Facilitator), Director, Office of Grants Management, National Office of Native American Programs, U.S. Department of Housing and Urban Development

G. Legal Issues: Equal Housing and Civil Rights in Indian Country:
(Toronto Room)

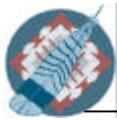
This session will provide an overview of the applicability of fair housing and fair lending laws to Indian country. *Recommended for Tribal and other attorneys.*

James Wagenlander, Manager, Wagenlander & Associates, LLC

Harry Carey, Assistant General Counsel for Fair Housing Enforcement, U.S. Department of Housing and Urban Development

Randall Akers (Facilitator), Associate Field Counsel, Southwest Office of Native American Programs, U.S. Department of Housing and Urban Development





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H. Legal Issues: Ethics: (Hong Kong Room)

This session will provide an overview of Federal and Tribal requirements governing conflicts of interest and lobbying. *Recommended for Tribal and other attorneys.*

John Vandermolen, Attorney

Diana Ortiz, Managing Attorney, Office of Human Resources Law, U.S. Department of Housing and Urban Development

Ken Bowring (Co-Facilitator), Administrator, Northwest Office of Native American Programs, U.S. Department of Housing and Urban Development

Jerry Gardner (Co-Facilitator), Executive Director, Tribal Law and Policy Institute

10:15 – 10:45

Break

10:45 – 12:00

Concurrent Sessions (IV):

A. Rental Housing: Designing an Effective Special Needs Rental Program: (Haymarket Room)

There will be a discussion about the use of NAHASDA funds for a college voucher program with a focus on policies and determination of the amount of assistance for students. In addition, there will be a discussion of housing for the elderly, issues for the elderly and solutions for independent living.

Recommended for Tribal/TDHE/IHA housing staff, Tribal council members, nonprofit organizations and lenders.

Brenda Bouthot, Housing Manager, Kodiak Island Housing Authority

Curtis Cook, Associate State Director, State of Arizona, American Association of Retired Persons, (AARP)

Luke Toyebo (Facilitator), Senior Technical Assistance Specialist, National American Indian Housing Council

B. Economic Development: Tribal Business Development: (Gold Coast Room)

This session will address models, issues, and rules surrounding Tribal business development, such as tax benefits, financing, flexibilities, capital attraction, partnerships, and levels of Tribal government involvement in several types of business development (including Tribal business enterprises, Tribally chartered development corporations, joint ventures, and other models).

Recommended for Tribal/TDHE staff, Tribal council members, Tribal attorneys and nonprofit staff.

Thomas W. Fredericks, Senior Partner, Fredericks, Pelcyger, and Hester, L.L.C.

Robert G. Barth (Facilitator), Senior Native American Program Specialist, Office of Native American Programs, U.S. Department of Housing and Urban Development

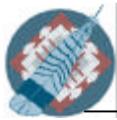
C. Homeownership I: Addressing Infrastructure: (Acapulco Room)

This session will focus on the activities involved in addressing physical issues involved in homeownership, such as the need for infrastructure in new and expanding housing developments. *Recommended for Tribal/TDHE/IHA housing staff, Tribal council members, HUD staff, nonprofit organizations and housing professionals.*

John Romano, Deputy Administrator, Rural Utilities Service, U.S. Department of Agriculture

Robert Gauthier (Facilitator), Executive Director, Salish & Kootenai Housing Authority





Shared Visions: The Native American Homeownership, Legal and Economic Development Summit I, Sponsored by HUD

D. Homeownership II: Self Help: (New Orleans Room)

This session will focus on the nuts and bolts of using self-help labor to open the door to homeownership. *Recommended for Tribal/TDHE/IHA housing staff, Tribal council members, individual homebuyers, HUD staff, nonprofit organizations and housing professionals.*

Peter Carey, Executive Director, Self-Help Enterprises

Leslie Newman, Executive Director, Proyecto AZTECA

William M. Toney, Director, Single Family Housing Loan Division, Rural Housing Services, U.S. Department of Agriculture

Mercedes Márquez (Facilitator), Senior Counsel for Civil Rights and Fair Housing, U.S. Department of Housing and Urban Development

E. Homebuyer Counseling & Education: Post Occupancy and Default Counseling: (Water Tower Room)

This session will focus on what types of post purchase counseling may be needed, including: home maintenance responsibilities, repairs and improvements, and default counseling. *Recommended for Tribal/TDHE/IHA housing staff, nonprofit staff and lenders.*

Deborah Moffitt, Housing Manager, Ronan Housing Authority

Donna Fairbanks (Facilitator), Director, Indian Housing Programs, Minnesota Housing Finance Agency

F. Building an Effective Housing Organization: Setting Up a Nonprofit: (Columbian Room)

This session will address how to set up a nonprofit as a primary coordinator of long-term financial and housing services. In addition, it will discuss outreach and communications strategies, fundraising, 501(c)3 status and tax issues relating to setting up an organization. *Recommended for Tribes setting up a nonprofit.*

LaCharla L. Figgs, Program Director, Management and Organization, The Enterprise Foundation, Inc.

Trish Roberts (Facilitator), ICF Kaiser

G. Legal Issues: Labor Law Issues: (Toronto Room)

This session will provide an overview of the applicability of Federal, state and Tribal laws pertaining to labor and employment in Indian country. It will also discuss EEOC jurisdiction issues and wrongful termination litigation.

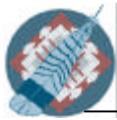
Recommended for Tribal and other attorneys.

Robert Miller, Attorney at Law

John Navarro, Vice President, Council for Tribal Employment Rights

David Heisterkamp II, Associate, Wagenlander & Associates, LLC

Jerry Gardner (Facilitator), Executive Director, Tribal Law and Policy Institute



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H. Legal Issues/NAHASDA Listening Session - Combined: Monitoring and Oversight: (Comiskey Room)

This session will review the statutory and regulatory requirements, provide an overview of the process for identifying recipients to be monitored and the monitoring plan, and discuss self-monitoring by recipients. *Recommended for Tribal/TDHE/IHA housing staff and Tribal and other attorneys.*

Kathy Bialis, Attorney/Advisor, Office of the General Counsel, U.S. Department of Housing and Urban Development

Mathew Jaffe, Attorney, Hobbs, Straus, Dean & Walker, LLP

Bruce Knott (Facilitator), Director, Office of Grants Evaluation, National Office of Native American Programs, U.S. Department of Housing and Urban Development

12:00 – 1:30

Luncheon (Grand Ballroom A-B, C North – East Wing)

Harold Lucas, Assistant Secretary, Public and Indian Housing, U.S. Department of Housing and Urban Development

Jacqueline Johnson, Deputy Assistant Secretary, Office of Native American Programs, U.S. Department of Housing and Urban Development (Recognition Awards)

1:30 – 3:00

Concurrent Sessions (V):

A. Rental Housing: LIHTC in Action: (Haymarket Room)

This session will look at the Red Lake Homes which was one of the first Native American sponsored housing projects combining NAHASDA funds with Low Income Housing Tax Credits (LIHTC). *Recommended for Tribal/TDHE/IHA housing staff, Tribal council members, nonprofit organizations and lenders.*

Jane Barrett, Executive Director, Red Lake Reservation Housing Authority

Paul Caouette (Facilitator), Community Builder, U.S. Department of Housing and Urban Development

B. Economic Development: Microenterprise Development: (Gold Coast Room)

The Sicangu Enterprise Center of Mission, South Dakota and the Navajo Nation will discuss their microenterprise and business development loan programs. These loan programs have both operated successfully for many years in different environments, and will share the secrets of their success with session participants. *Recommended for Tribal/TDHE staff, lenders, Tribal council members and nonprofit organizations.*

Michael S. LaPointe, Executive Director, Sicangu Enterprise Center

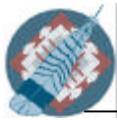
Dolly Lane, Economic Development Specialist, Navajo Nation

Robert G. Barth (Facilitator), Senior Native American Program Specialist, Office of Native American Programs, U.S. Department of Housing and Urban Development

C. Homeownership: Setting Up Your Homeownership Program: (Acapulco Room)

This session will focus on the Osprey Spirit II project, a program designed and implemented by the Coeur d'Alene Tribe that took advantage of Section 184 financing to provide homeownership to 30 low and moderate income families. The session will take an in-depth look at the key steps and lessons learned from the project, which involved construction of a 33-unit housing development memorandums of agreement with the locality, and partnering with such organizations as Norwest Mortgage, Inc., and the Indian Health Service.





Shared Visions: The Native American Homeownership, Legal and Economic Development Summit I, Sponsored by HUD

Recommended for Tribal/TDHE/IHA housing staff, Tribal council members, lenders, individual homebuyers, HUD staff, nonprofit organizations and housing professionals.

Norman Campbell, Tribal Councilman, Coeur d'Alene Tribe

Ken Stocks, Project Coordinator, Osprey Spirit II Housing Development, Coeur d'Alene Tribal Planning and Development Corporation

Robert Gauthier (Facilitator), Executive Director, Salish & Kootenai Housing Authority

D. Homebuyer Counseling & Education: Developing a One-On-One Counseling Program: (Water Tower Room)

This session will look at the Norwest Mortgage Homebuyers Club and how Tribes in South Dakota are using it to increase homeownership.

Recommended for Tribal/TDHE/IHA housing staff, nonprofit staff and lenders.

Terrie Paredes, Operations Director, Norwest Mortgage Homebuyers Club

Robert Skjonsberg, Community Development Lender, Norwest Mortgage Corporation

Donna Fairbanks (Facilitator), Director, Indian Housing Programs, Minnesota Housing Finance Agency

E. Building an Effective Housing Organization: Pine Ridge: (Columbian Room)

This session will discuss how the Oglala Lakota developed the Oglala Sioux Tribal Partnership for Housing, Inc., including needs assessment, development of the organizational structure, and strategic planning.

Recommended for Tribal/TDHE/IHA staff who are interested in establishing a nonprofit organization.

Paul Iron Cloud, Chief Executive Officer, Oglala Sioux Lakota Housing Authority

Shana Soldswisch, Consultant, PriceWaterhouse Coopers, LLP

Nerissa Alexis, Consultant, PriceWaterhouse Coopers, LLP

Trish Roberts (Facilitator), ICF Kaiser

F. NAHASDA Listening Session – Title VI: (Comiskey Room)

This session will discuss the implementation of the Title VI Demonstration Program. *Recommended for Tribal/TDHE/IHA housing staff and anyone with an interest in or working with programs that involve NAHASDA.*

Christine Manion, Program Specialist, National Office of Native American Programs, U.S. Department of Housing and Urban Development

Chuck Merritt, President, IHA Management Systems, Inc.

Karen Garner-Wing (Facilitator), Director, Office of Loan Guarantee, National Office of Native American Programs, U.S. Department of Housing and Urban Development

G. Legal Issues: U.S. Housing Act to NAHASDA Transition: (Toronto Room)

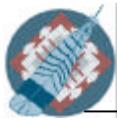
This session will cover legal issues arising from management structures as Tribes/TDHEs continue their transition to NAHASDA. *Recommended for Tribal and other attorneys.*

Catherine Baker Stetson, Attorney/Lobbyist, Stetson Law Offices, P.C.

David J. Rapport, Attorney, Law Offices of Rapport & Marston

C. Raphael Mecham (Facilitator), Administrator, Southwest Office of Native American Programs, U.S. Department of Housing and Urban Development





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H. Legal Issues: Indian Land Issues: (Hong Kong Room)

This session will address acquisition, trust conversions and the BIA lease and recordation process. *Recommended for Tribal and other attorneys.*

Wayne C. Nordwall, Phoenix Area Director, Bureau of Indian Affairs

Leah Harjo Ware, Attorney, Indian Country Lawyers, PLC

Jerry Gardner (Facilitator), Executive Director, Tribal Law and Policy Institute

3:00 – 3:30

Break

3:30 – 5:00

Concurrent Sessions (VI):

A. Rental Housing: Rental Alternatives: (Haymarket Room)

This session will look at the Lulu Heron Congregate Home, which is a multi-funded, 16-unit congregate home for residents who are at least 62 years old and/or disabled and are able to live independently or reside with a caregiver. *Recommended for Tribal/TDHE/IHA housing staff, Tribal council members, nonprofit organizations and lenders.*

Don Fancher, Executive Director, AVCP Housing Authority

Luke Toyebo (Facilitator), Senior Technical Assistance Specialist, National American Indian Housing Council

B. Economic Development: Business Diversification: (Gold Coast Room)

The Cow Creek Band of the Umpqua Tribe of Indians will discuss its economic development strategy, which involves using gaming revenues to diversify its business interests and create economic, educational, and social opportunities for the Tribe and the local community. *Recommended for Tribal/TDHE staff, Tribal council members and nonprofit organizations.*

Sue Shaffer, Chair-Person, Cow Creek Band of the Umpqua Tribe of Indians

Robert G. Barth (Facilitator), Senior Native American Program Specialist, Office of Native American Programs, U.S. Department of Housing and Urban Development

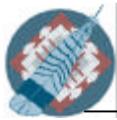
C. Homeownership: Guaranteed Mortgage Demonstration Program:
(Acapulco Room)

This session will focus on the demonstration program designed by the Minnesota Chippewa Tribal Housing Corporation to finance homeownership within the reservation and provide opportunities for families who, without such assistance, might otherwise move away from the Tribe. The session will take an in-depth look at the key steps and lessons learned from the project, which involved working with state legislators to leverage resources and partnering with such organizations as the Federal Home Loan Bank. *Recommended for Tribal/TDHE/IHA housing staff, Tribal council members, HUD staff, lenders, individual homebuyers, nonprofit organizations and housing professionals.*

Richard Smith, Sr., Director of Programs, Home Mortgage Corporation, The Minnesota Chippewa Tribe

Robert Gauthier (Facilitator), Executive Director, Salish & Kootenai Housing Authority





Shared Visions: The Native American Homeownership, Legal and Economic Development Summit I, Sponsored by HUD

D. Homebuyer Counseling & Education: Developing a Counseling Program for Prospective Homebuyers: (Water Tower Room)

Based on the experience of the Chickasaw Nation, this session will address the importance of incorporating homebuyer education into homeownership programs. *Recommended for Tribal/TDHE/IHA housing staff, nonprofit staff and lenders.*

Robert Cheadle, Housing Administrator, Chickasaw Nation

Donna Fairbanks (Facilitator), Director, Indian Housing Programs, Minnesota Housing Finance Agency

E. Building an Effective Housing Organization: Developing Your Organizational Vision: (Columbian Room)

This session will discuss how the Salish Kootenai Tribe built community support, assessed their resources, and developed their organizational mission and vision in a culturally relevant manner. *Recommended for Tribal/TDHE/IHA staff interested in getting started in developing a nonprofit organization consistent with Native American culture.*

Blake Chambliss, Housing Specialist, Rural Community Assistance Corporation

Nancy Warneke, Director TBIC, Salish Kootenai College

Trish Roberts (Facilitator)

F. Legal Issues/NAHASDA Listening Session – Combined: Environmental Issues: (Comiskey Room)

During this session participants will discuss how some Tribes are taking control of the environmental process on their reservation. Topics include statutory and regulatory requirements, the role of HUD in the process, and an illustration of how one Tribe is addressing environmental concerns.

Recommended for Tribal/TDHE/IHA housing staff and Tribal and other attorneys.

Robert S. Kroll, Director, Community Development Division, Southwest Office of Native American Programs, U.S. Department of Housing and Urban Development

Christopher Hartenau, Senior Attorney for Environment and Labor Standards, Office of the General Counsel, U.S. Department of Housing and Urban Development

Mark Tilden, Staff Attorney, Native American Rights Fund

Bruce Knott (Facilitator), Director, Office of Grants Evaluation, National Office of Native American Programs, U.S. Department of Housing and Urban Development

G. Legal Issues: Tribal Housing Legal Infrastructure: (Toronto Room)

This session will focus on Tribal housing and community development related codes and initiatives to support successful Tribal housing projects.

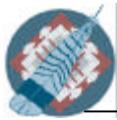
Recommended for Tribal and other attorneys.

Denise Chee, Attorney, Chee Law Offices, P.C.

Jerry Gardner, Executive Director, Tribal Law and Policy Institute

Randall Akers (Facilitator), Associate Field Counsel, Southwest Office of Native American Programs, U.S. Department of Housing and Urban Development

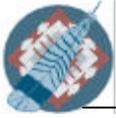




***Shared Visions: The Native American Homeownership, Legal
and Economic Development Summit I, Sponsored by HUD***

Thursday, April 1, 1999 – Tribes and HUD: Working Together to Build the Future

- 9:00 – 9:30 **Year 2000 (Y2K) Update (Regency Ballroom A-D)**
Pamela A. Woodside, Project Manager, Year 2000 Project Office, U.S. Department of Housing and
Urban Development
Gloria Parker, Chief Information Officer, U.S. Department of Housing and Urban Development
- 9:30 – 10:15 **Meet Your Community Builders!**
This session will provide an introduction to the HUD Community Builders and
describe their roles in working with tribes.
- 10:15 – 10:30 **Break**
- 10:30 – 11:30 **Tribal Partnering Process**
This session will contain a discussion on the Tribal Consultation Policy and allow
participants to make suggestions to ONAP for consideration in developing their
agenda for the upcoming years.
Jacqueline Johnson, Deputy Assistant Secretary, Office of Native American Programs,
U.S. Department of Housing and Urban Development
- 11:30 – 12:00 **Closing (Regency Ballroom A, B, and C)**
Chester Carl, President, National American Indian Housing Council
Jacqueline Johnson, Deputy Assistant Secretary, Office of Native American Programs,
U.S. Department of Housing and Urban Development



**Chicago, Illinois
March 30 – April 1, 1999**

Speaker Biographies

**Randall Akers
Associate Field Counsel
U.S. Department of Housing and Urban Development**

Randall Akers is the Associate Field Counsel for the U.S. Department of Housing and Urban Development's Southwest Office of Native American Programs, located in Phoenix, Arizona. For the last 18 years, Mr. Akers has been field legal counsel for HUD Native American programs delivered to 172 tribal governments and 52 Indian housing authorities located in the western and southwestern United States. Mr. Akers attended the University of Oklahoma, where he received his undergraduate degree in Anthropology. Upon graduating from the University of Oklahoma College of Law in 1979 and becoming a member of the Oklahoma Bar Association, Randall went to work for the HUD Office of Indian Programs in San Francisco, California. During 1998, Mr. Akers was part of the Office of General Counsel team providing legal support to the HUD staff members of the negotiated rulemaking committee that drafted the final rule for the new Indian housing block grant program authorized by the Native American Housing Assistance and Self Determination Act of 1996 (Pub. L. 104-330). Mr. Akers is a member of the Comanche tribe of Oklahoma.

**Jane L. Barrett
Executive Director
Red Lake Reservation Housing Authority**

Jane L. Barrett is an enrolled member of the Red Lake Band of Chippewa Indians. She has served as the Executive Director of the Red Lake Reservation Housing Authority (RLRHA) for the Red Lake Nation from December 9, 1996 to the present. She holds a Bachelor of Arts degree from Bemidji State University and is a licensed residential appraiser in the State of Minnesota. Her past work experience has been in the field of Real Estate Services and Administration with the Bureau of Indian Affairs. She has served as the alternate member for Chairman Bobby Whitefeather on the Negotiated Rulemaking Committee for NAHASDA. Since her tenure, the RLRHA has successfully competed for and received Low Income Housing Tax Credits for two new construction projects. One project has recently completed the construction and lease up process and the other is under construction. Currently the RLRHA has applied for 1999 Low Income Housing Tax Credits for a new construction project and a rehabilitation project. Jane is committed to carrying out the mission of the RLRHA which is to enhance the



quality of life of every individual and family on the Red Lake Reservation through the provision of new employment opportunities, the construction of safe and well designed new housing, the preservation of existing houses and the encouragement of affordable home ownership through the creation of public and private financial partnerships. This commitment is evidenced by her being named as one of the recipients of the prestigious Chairman's Award for Leadership.

Robert Barth
Senior Tribal Program Specialist
U.S. Department of Housing and Urban Development

Robert Barth is a Senior Tribal Programs Specialist with U.S. Department of Housing and Urban Development (HUD), National Office of Native American Programs (ONAP). He is responsible for the development and analysis of ONAP policy regarding various HUD tribal assistance programs including the Indian Community Development Block Grant program and the Indian Housing Block Grant program. His responsibilities also include reviewing and monitoring the implementation of tribal program responsibilities by the six ONAP field offices. He served as one of the HUD members of the Negotiated Rule Making Committee for the development of program regulations to implement NAHASDA. Prior to working in his current position, he was a Program Manager in the ONAP Southwest Field Office. He has worked for the HUD Office of Indian Programs (now Office of Native American Programs) since 1976. Before moving to San Francisco in 1974, he held various positions in the Chicago and Milwaukee HUD offices. He received both his B.A. and M.A. (in Economics and Urban and Regional Planning) from the University of Wisconsin.

Curtis G. Berkey
Attorney
Alexander & Karshmer

Curtis G. Berkey is an attorney with the law firm of Alexander & Karshmer in Berkeley, California. He received his law degree from Catholic University of America, Washington, D.C. in 1979, and has been representing Indian tribes and tribal organizations for the past 20 years. He has worked as a staff attorney at the Indian Law Resource Center, a nonprofit law firm which represents Indian tribes throughout the country, and was the Center's Washington Director from 1990-1995. From 1995 to 1997, he was Senior Trial Attorney at the Indian Resources Section of the Environment and Natural Resources Division of the U.S. Department of Justice. At Alexander & Karshmer, which he joined in 1997, Mr. Berkey represents Indian tribes throughout the country in matters concerning housing law, land claims litigation, environmental law, water rights, natural resource law, and tribal sovereignty.



Kathleen Bialas
Attorney-Advisor
U.S. Department of Housing and Urban Development

Ms. Bialas is an attorney in the Office of General Counsel, U.S. Department of Housing and Urban Development in Washington, D.C. She serves as the program counsel for the Indian Housing Block Grant program which was created by the Native American Housing Assistance and Self-Determination Act of 1996, as well as for the Title VI Loan Guarantee program. She has also served as counsel for the Indian Community Development Block Grant and Indian HOME programs for the past several years. Ms. Bialas received a J.D. in 1982 from Wayne State University Law School, where she was a member of Wayne Law Review. She received a LL.M. in 1987 from George Washington University Law Center, with a concentration in Land Use Management and Control. Ms. Bialas has worked as a program attorney in the Office of General Counsel, U.S. Department of Housing and Urban Development in Washington, D.C. since 1982. From 1982 through 1991, she worked primarily with the Community Development Block Grant programs for state and local governments and the Section 108 Loan Guarantee program and since 1991 has served as program counsel for the HOME Investment Partnerships program and the Comprehensive Housing Affordability Strategy (now the Consolidated Plan).

Richard Borgstrom, AIA
Staff Architect
Red Lake Reservation Housing Authority

Richard Borgstrom, AIA, Red Lake Reservation Housing Authority Staff Architect. In addition to an extensive background of single and multifamily housing projects in the private sector, cultural, governmental and institutional projects, Richard Borgstrom has been at the Red Lake, as Staff Architect for the past seven years. During that time the RLRHA has utilized his talents for Low Rent, Mutual Help and Low Income Housing Tax Credit Homes. Also, at the request of the tribe, he has designed additional projects such as the DNR building, Family Social Services Center, Women's Shelter, and an Economic Opportunities Educational Center. He is committed to helping the Red Lake Nation attain high standards in culturally sensitive designs incorporating energy efficiency and occupant input and currently has integrated this process with the "Red Lake Custom Homes" modular housing plant located at Redby, Minnesota. Richard has received honors for his commitment and dedication to his work from the various reservation communities and organizations.



Brenda M. Bouthot
Housing Manager
Kodiak Island Housing Authority

Brenda M. Bouthot has been employed as Housing Manager for Kodiak Island Housing Authority for 10 years. The Authority manages 340 units of housing on Kodiak Island, which includes the City of Kodiak and 6 remote Native Alaskan villages. Ms. Bouthot has administered HUD Mutual Help, Low Rent, and Section 8 Programs as well as HUD grants such as Drug Elimination Program, Family Investment Center, and Economic Development and Supportive Services. Ms. Bouthot was instrumental in developing a NAHASDA Student Rental Assistance Program in 1998 to assist Native Alaskan students from Kodiak Island with housing costs while they attended school.

Jennifer Bullough
Housing Program Specialist
Office of Native American Programs
U.S. Department of Housing and Urban Development

Jennifer Bullough has been a Housing Program Specialist in HUD's Office of Native American Programs in Washington, D.C. since 1994. During that time she has assisted the Deputy Assistant Secretary for Native American Programs, worked as a specialist for Housing and Community Development and served as one of the HUD members of the Negotiated Rule Making Committee for the development of program regulations to implement the Native American Housing Assistance and Self-Determination Act of 1996. Prior to working in her current position, Ms. Bullough was a Financial Analyst in the Southwest Office of Native American Programs since 1990. She started working for HUD in 1987 in the Computerized Home Underwriting Management System Office. Ms. Bullough received a B.S. degree from the University of Maryland, College Park, and a Masters degree from the American Graduate School of International Management in Glendale, Arizona.

Art Bunce
Attorney at Law
Law Office of Art Bunce

B.A., Princeton University: 1970, J.D., U.C.L.A., 1973. Reginald Heber Smith Community Lawyer Fellowship, 1973-1976, Rosebud Sioux Indian Reservation, South Dakota. California Indian Legal Services, Staff and Directing Attorney, Oakland and Escondido, California, 1976-1978. Private practice of federal Indian law, Escondido, California, 1978-present. Practice is limited to federal Indian law, primarily jurisdiction, gaming, water rights, taxation, immunities, sovereignty issues, etc. as general counsel for two southern California tribes since 1978 and 1983. General counsel to All Mission



Indian Housing Authority since 1980 regarding construction, personal injury, taxation, eviction, and immunities issues.



Norman Campbell
Tribal Councilman
Coeur d'Alene Tribe

Mr. Campbell is a member of the Couer d'Alene Tribe and is serving his second term on the Tribal Council. He is the Council's liaison to the Osprey Spirit Housing Development Project and also serves as the Project Inspector on behalf of the Couer d'Alene Tribal Planning and Development Corporation.

Paul A. Caouette
Community Builder
U.S. Department of Housing and Urban Development

Paul Caouette has more than 20 years' experience in community development, project administration, construction management, and real estate development.

As the Founder and President of Partners for Community Development, Mr. Caouette provided support services for planning and development to nonprofit and public agencies, specializing in real estate development. His firm is credited with helping the City of Fort Collins develop a new non-profit agency which has recast affordable housing as an economic necessity rather than simply as a social justice issue.

Before founding his own firm, Mr. Caouette served as Executive Director of the Uptown Partnership, which became a major catalyst for change in inner-city neighborhoods plagued with abandoned structures and lots. He began using Low Income Housing Tax Credits as a funding vehicle for difficult inner city rehabilitation projects in 1990.

Mr. Caouette received his Bachelor's degree in Mechanical and Manufacturing Engineering from Boston University and a Master's degree in Civil Engineering from the University of Denver.



Harry L. Carey
Assistant General Counsel
Fair Housing Enforcement

Mr. Carey has been an attorney in the Office of General Counsel since 1971. His expertise is in areas of fair housing and civil rights. He has been the Assistant General Counsel for Fair Housing since December 1988. Mr. Carey assisted in negotiations regarding revisions to the 1968 Fair Housing Act which were enacted in the Fair Housing Amendments Act of 1988 and was the head of the working group which drafted proposed and final regulations implementing this Act.

He is a recipient of the S. Leigh Curry Award for lifetime achievement in the Office of General Counsel as well as the Nelson A. Diaz Award for Civil Rights and the Department's Distinguished Service Award. He also has received a Department of Justice Commendation for Outstanding Performance from the Assistant Attorney General for Civil Rights.

Mr. Carey is a graduate of the University of Scranton and the Columbus School of Law of the Catholic University of America. He is a member of the Virginia State Bar.

Peter N. Carey
Executive Director
Self-Help Enterprises

Mr. Carey is the Executive Director of Self-Help Enterprises (SHE), a nonprofit housing and community development organization. He joined the organization in 1974 as part of the construction staff and became its third executive director in 1990. A former VISTA and Peace Corps Volunteer, Mr. Carey received a B.A. from Lehigh University and a Masters in Public Administration from the University of San Francisco. He is an officer of the National Rural Self-Help Housing Association, National Rural Housing Coalition, and California Coalition for Rural Housing. He is also active in his local community, having served as planning commissioner, council member, and Mayor of the City of Visalia.



Chester Carl
Executive Director
Navajo Housing Authority

Chester Carl is the Executive Director of Navajo Housing Authority (NHA), the largest Indian Housing Authority in the United States. Mr. Carl has worked for the NHA for a total of eight (8) years. As the Executive Director, Mr. Carl is responsible for the day-to-day administration of managing 7,000 housing units with 14 Field Offices managing occupancy and maintenance, In-house Pest Control Program, including renovation and construction of new homes for a geographical area the size of West Virginia. The management of the program includes Section 8 Voucher, Drug Elimination Program, Youth Sports, Resident Initiative Program, Risk Management/Self-Insurance Program, Force Account Construction Operation, Management Information Systems, and In-House Accounting Program.

Responsible for annual budget from 60-90 million, and a work force of 340 permanent status employees and 500 or more temporary construction workers.

Currently servicing as:

Board of Director—Navajo Partnership for Housing (Neighborhood Works)
Chairman—National American Indian Housing Council
Served as Co-Chair of Negotiated Rulemaking Committee for NAHASDA
Vice-President Southwest Indian Housing Authorities Association
Member—Fannie Mae Impact Advisory Council

Prior to working for NHA

Private Business owners: Carl's Camper Sale—12 years
Top Image Screen Printing—12 years
Carl's Television Satellite Sales—6 years

Robert M. Cheadle
Housing Administrator
Chickasaw Nation

Robert M. Cheadle is from Ada, Oklahoma, and is a member of the Chickasaw Nation. Robert currently serves the Chickasaw Nation as Housing Administrator and has previously served as Attorney General (1996-1997) and Tribal Judge (1983-1989). He has also been Senior Counsel to Federal National Mortgage Association (Fannie Mae) in its Southwestern Regional Office in Dallas, and staff attorney to the North American Native Affairs and Development Group in Washington, D.C. Robert is a member of the American Bar Association, Oklahoma Bar Association, Oklahoma Indian Bar Association,



the Bar of the Indian Court of Appeals and the Board of Directors of Oklahoma Indian Legal Services.



Denise A Chee
Attorney
Chee Law Offices, P.C.

Denise A. Chee represents Indian Housing Authorities and Tribally Designated Housing Entities in the southwest region of the United States and is assisting Indian tribes develop mortgage financing codes and the legal tools necessary to make mortgage financing possible on trust lands. She also provides legal services in the formation of businesses and associations. Ms. Chee is from Isleta Pueblo and has been working in the Indian housing field for the last eight years. Prior to opening her private practice, Ms. Chee served as the general counsel for the Navajo Housing Authority and was involved in the negotiated rulemaking process which developed the regulations to implement the Native American Housing Assistance and Self-Determination Act of 1996. She also worked with the Navajo Land Department and DNA-People's Legal Services as its managing attorney. Ms. Chee graduated from the University of New Mexico Law School in 1988 and is licensed in New Mexico. She received her B.B.A. in Business Management from the Anderson School of Management at the University of New Mexico in 1985.

Curtis D. Cook
Associate State Director
American Association of Retired Persons, State of Arizona Division

Curtis Cook is the Associate State Director for the State of Arizona for AARP. In that capacity, he directs volunteer activities throughout the state, and provides guidance and support to local AARP programs. He works in areas of recruitment and training of volunteers, and interpretation of AARP policy.

Prior to coming to Arizona in September of 1997, he served as Associate State Representative for AARP in the State of Texas, and directed an AARP Senior Employment Program in Colorado for four and one-half years.

Before coming to work with AARP, Curtis was Executive Director of the National Indian Council on Aging from 1985 through 1990, developing human services programs and legislation to improve the lives of older Native Americans. For fifteen years he worked with the Zuni Indians of New Mexico as a linguist, translator, health administrator and personnel director.

A graduate of Biola University in California, he completed his graduate studies in linguistics at the University of Oklahoma in 1968.

Joanna Donohoe
Community Builder, Native American Specialist
HUD — Office of Native American Programs

Joanna Donohoe recently joined the U.S. Department of Housing and Urban Development as a Native American Specialist Community Builder in the Southwest Office of Native American Programs. In addition to working with tribes throughout the Southwest, she is the On-Site Project Manager for the Navajo Nation Pilot of the One-Stop Mortgage Center Initiative. Previously, she worked at the Department of Treasury's Office of the Comptroller of the Currency as an attorney in the Legislative and Regulatory Activities Division of the Law Department, as the Special Assistant to the Chief of Staff, and as a Congressional Liaison Specialist. Prior to that, she was a Legislative Representative at the Independent Bankers Association of America. She holds a B.A. in American Government from the University of Virginia and a J.D. from Catholic University of America — Columbus School of Law.

Charles E. Eiseman, Jr.
Senior Vice President
Western Security Bank of Montana

Charlie Eiseman is the Retail Lending Manager for Western Security Bank of Montana with assets of approximately \$1 billion. Employed with Bank since December 1975, his prior employment included the Havre Federal Savings and Loan Association of Havre, Montana from June 1973 to December 1975. Mr. Eiseman was instrumental in establishing a \$1.5 million set aside for HUD Section 184 loans on Montana Reservations through the Montana Board of Housing. He was also responsible for Bank receiving Federal Home Loan Bank of Seattle's Award for Excellence in Community Lending in 1996. He received the Montana Affordable Housing Award from the Montana Board of Housing in 1997.

Mr. Eiseman's grandparents migrated to Salish Kootenai Reservation from Mexico in the 1920's; his mother was raised on the reservation. He spent his early childhood on the Salish Kootenai Reservation.

Donna J. Fairbanks
Indian Housing Coordinator
Minnesota Housing Finance Agency

While Donna Fairbanks for more than the past decade has been the Minnesota Housing Finance Agency's Indian Housing Coordinator, she began her housing career in 1976 with the Minnesota Chippewa Tribal Housing Corporation. Funds for the program were appropriated by the state legislature to give Tribes the opportunity to develop and implement housing programs for their own communities. Donna, an enrolled member of the Minnesota Chippewa Tribe, Mississippi Band of the White Earth Reservation, has had and continues to have a wonderful and fulfilling way of life involving her family and Indian housing. She brings with her an intimate knowledge and experience in working with the 11 Reservations and Communities in Minnesota (as well as working with Tribes in other States). In her various roles as coordinator, property manager, and consultant, Donna has assisted in the development and implementation of a variety of Tribal housing, educational, and counseling programs.

Don Fancher
Executive Director
AVCP RHA

Yupik Eskimo born in Bethel, Alaska prior to statehood (not much prior to that, though). Born and raised in Western Alaska. Have lived in 6 Alaskan communities, 4 of which are in "bush" Alaska. Married 18 years with 5 children.

Graduated from Covenant H.S. in Unalakleet, Alaska (a private parochial school). Attended George Fox College in Newberg, Oregon majoring in Music. Spent approximately 4 years working on the Trans-Alaska Pipeline Project. Worked 7 years for two regional school districts and the past 11 years for the AVCP RHA, 5 as the Executive Director. As a pilot, traveled to all the villages of the AVCP RHA utilizing my own aircraft, administering its Modernization Programs for Mutual Help housing units prior to my "promotion".

Spent 6 years on the Regional School District Board of Education, 4 as Chairman, and 2 years on the Alaska State Board of Education. All but about 4 years of my adult employment experience has been in the public service domain.



LaCharla L. Figgs
Program Director, Management and Organizational
The Enterprise Foundation, Inc.

LaCharla has sixteen years' experience in affordable housing and community development, having given direct assistance to local and state government officials and nonprofit community development organizations. A member of The Enterprise Foundation's Management and Organizational Development division, she provides training and direct assistance to nonprofits primarily in board development, financial management systems, organizational assessments, and federal regulatory compliance.

Thomas W. Fredericks
Managing Partner
Fredericks, Pelcyger, Hester & White, LLC

Thomas W. Fredericks (Mandan-Hidatsa) is an Indian Law Attorney and managing partner in the law firm of Fredericks, Pelcyger, Hester & White, LLC. He has specialized in Indian Law since the 1970's. His practice includes the representation of Indian tribes, individual Indians, and private corporations in all facets of Indian law, Indian-related natural resources issues, as well as settlement negotiations between Indian tribes and state and federal governments. Mr. Fredericks was Associate Solicitor for Indian Affairs during the Carter Administration and later was appointed as Assistant Secretary for Indian Affairs during the last six months of the Carter Administration. Between 1974-1976, he was Director of the Native American Rights Fund. Mr. Fredericks is a member of the Colorado State Bar and the North Dakota State Bar.

Joseph A. Garcia
Council Member
San Juan Pueblo

Mr. Garcia is an educator, engineer, statesman, and businessman. Since 1991, he has served as both Governor and Second Lieutenant Governor of Ohkay Owingeh (San Juan Pueblo). He has also served as a member of the American Indian Council at Los Alamos National Laboratory (LANL), the Chairman of the Eight Northern Indian Pueblos Council, and the Vice-Chairman of the All Indian Pueblo Council. He is currently the Albuquerque Area Vice President for the National Congress of American Indians. He has earned a B.S. in Science Electrical Engineering from the University of New Mexico Los Alamos Branch and was a faculty member at Northern New Mexico Community College. Mr. Garcia is also a dignified guitar player and vocalist. He enjoys working with children and is interested in education issues.

Jerry Gardner (Gerald Brian Gardner)
Executive Director
Tribal Law and Policy Institute

Jerry Gardner is the Executive Director of the Tribal Law and Policy Institute, an Indian owned and operated non-profit corporation organized to design and deliver education, research, training, and technical assistance programs which promote the improvement of justice in Indian Country and the health, well-being, and culture of Native peoples. Besides serving as the Institute's Executive Director, he is also an adjunct lecturer at the University of California, Berkeley, School of Law (Boalt Hall) and the Administrator for the National American Indian Court Judges Association (NAICJA). Mr. Gardner has 20 years experience working with Indian tribes, Indian housing authorities, and Indian tribal court systems. He served as the Senior Staff Attorney with the National Indian Justice Center (NIJC) from NIJC's establishment in 1983 until January 1997. He has been responsible for the design and development of a series of Indian Housing Law training manuals, delivery of a series of Indian Housing Law training sessions, editor/contributing author for the *Indian Housing Law Quarterly*, and project manager/contributing author of the Tribal Housing Code developed for ONAP. Mr. Gardner has also worked for the U.S. Senate Committee on Indian Affairs, the national office of the Legal Services Corporation, and the American Indian Lawyer Training Program.

Karen Garner-Wing
Director of the Office of Loan Guarantee
U.S. Department of Housing and Urban Development
Office of Native American Programs

A native of Washington, D.C., Mrs. Garner-Wing graduated from the University of North Carolina at Greensboro. Mrs. Garner-Wing began her government service in 1976 and has worked at the U.S. Department of Housing and Urban Development since May 1979. She is currently the Director of the Office of Loan Guarantee in HUD's Office of Native American Programs (ONAP) in Denver, Colorado. Prior to joining ONAP in October 1996, she worked in HUD's Office of Housing/FHA in various positions in the Monitoring Division, Program and Procedures Division, Director of the Lender Approval Division and lastly as the Deputy Director for the Office of Lender Activities and Program Compliance. Mrs. Garner-Wing is married and has two children.

Robert (Bob) L. Gauthier
Executive Director
Salish & Kootenai Housing Authority

Mr. Gauthier is the Executive Director of the Salish & Kootenai Housing Authority, a position he has held since 1983. In his present capacity, Mr. Gauthier is responsible for all housing and community development on the Flathead Indian Reservation in Northwest Montana. Currently, the Housing Authority manages nearly 900 subsidized housing units as well as managing the 16 community water/sewer systems for the Tribes. Additionally, the Housing Authority administers the Housing Improvement Program (HIP), Community Development Block Grant (CDBG), Weatherization Program and Indian Health Services water/waste water programs on behalf of the Confederated Salish & Kootenai Tribes. Mr. Gauthier, a member of the Confederated Salish & Kootenai Tribes, is recognized as an expert on National Indian Housing and finance issues. In 1986, Mr. Gauthier served on the National American Indian Housing Council steering committee that created Amerind Risk Management Services. He served six years as the Treasurer of Amerind and was elected Board Chairman in 1998. Mr. Gauthier served as Chairman of the National Commission on American Indian, Alaskan and Native Hawaiian Housing, as well as on the Board of the Federal Home Loan Banks of Seattle.

Keller George
Special Assistant
Nation Representative, Oneida Indian Nation

Mr. George is a U.S. Air Force veteran who retired in 1974, following 20 years of service.

Mr. George currently works in a professional capacity as a Special Assistant to Nation Representative Ray Halbritter, and represents both Halbritter and the Nation at the local, state, and national levels as the Nation's only full-time diplomat. Mr. George also represents the Nation in several positions:

- President (and former Secretary) of the United South and Eastern Tribes, Inc. (USET), an organization composed of the 23 federally recognized Indian Nations East of the Mississippi, extending from Main to Florida and into Eastern Texas. USET is dedicated to enhancing the development of Indian tribes, to improving the capabilities of tribal governments, and to assisting the member tribes and their governments in dealing effectively with public policy issues and in serving the broad needs of Indian people.
- Treasurer of the USET Gaming Association, a coalition of tribes dedicated to economic development through the opportunities offered by reservation gaming.



- Delegate for the National Congress of American Indians (NCAI), the oldest, largest, and most influential Indian organization in the United States. He has also previously served as the Northeastern Area Vice President.
- Member of the Board of Directors for the National Indian Gaming Association (NIGA); an organization dedicated to promoting successful gaming enterprises for Indian Nations.
- Board Member of Standing Stone Media, Inc., owners of the leading newspaper on Indian issues, *Indian Country Today*.
- Member of the Board of Directors for the National Tribal Development Association, dedicated to the promotion and sale of Indian products throughout the global marketplace.

In addition, Mr. George is:

- A Member of the Oneida Indian Nation's Men's Council (governing body), representing the Wolf Clan.
- First Representative and Treasurer for the Oneida Indian Nation Gaming Commission, which oversees gaming and licensing operations at the Nation's Turning Stone Casino.
- A Member of the Oneida Indian Nation Athletic Commission, which oversees all sporting events held on Nation lands.

Jim Hamilton
Associate
IHA Management Systems, Inc.

Retired from HUD after 33 years, Mr. Hamilton has been a builder, HUD Director of Development and HUD Chief Architect. He has been involved with Indian housing programs since 1974 and currently conducts training programs for Indian housing staffs.

Valerie Harris
Associate
IHA Management Systems, Inc.

Ms. Harris recently retired after 20 years of federal service, 12 of which was with the HUD Office of Native American Programs. She has extensive experience in Housing Management, Administration, Development, Maintenance, Modernization and NAHASDA Indian Housing Plans.



Francis Harjo
Director of Communications Services
National Office of Native American Programs (Denver)

Francis Harjo is the Director of Communications Services in the National Office of Native American Programs (Denver) and is also the Webmaster for CodeTalk, the ONAP Internet site. Mr. Harjo is an enrolled member of the in Paiute Tribe at Duck Valley Indian Reservation and has a unique distinction as the Native American Federal Webmaster. Mr. Harjo came to HUD in 1996 as the Administrator for the Eastern Woodlands Office of Native American Program, Chicago, IL and in 1997 relocated to the Denver National office. In 1994, Mr. Harjo was appointed by the Clinton Administration as a Special Assistant to the Under Secretary for Rural Development in the United States Department of Agriculture, Washington, D.C. and was later named to Director of Native American Programs in the USDA Office of Intergovernmental Affairs. Preceding his work with USDA, Mr. Harjo is the former Executive Director of the National Commission on American Indian, Alaska Native and Native Hawaiian Housing (1991-1993). The Commission was the first Native American Commission appointed by Congress and the Executive Branch of the Government to study the problems and impediments in Indian Housing. The commissions offered a report and recommendations known as the "Blueprint for Change" toward satisfying the housing needs for Native Americans. Prior to his appointment with the Commission, Mr. Harjo was employed as the Information Coordinator for the National American Indian Housing Council (1989-1991). While with NAIHC, Mr. Harjo conducted a series of field hearings and submitted results to Congress in a report "Indian Housing in the 1990's: Still Waiting."

Christopher H. Hartenau
Senior Attorney
Environment and Labor Standards

Christopher H. Hartenau is Senior Attorney for Environment and Labor Standards and serves as Environmental Clearance Officer for the Office of General Counsel, U.S. Department of Housing and Urban Development, Washington, D.C. Mr. Hartenau assisted the NAHASDA Negotiated Rulemaking Committee last year in connection with the environmental, labor standards and flood insurance provisions in the NAHASDA final rule. He has been with the HUD Office of General Counsel since 1972. He is a 1969 graduate of Brown University and received his law degree from Boston University School of Law.

David V. Heisterkamp II
Attorney
Wagenlander & Associates, LLC

David Heisterkamp is a graduate of Dartmouth College and the University of Colorado School of Law. For the past six years Mr. Heisterkamp has worked with the Denver-based law firm of Wagenlander & Associates, LLC counseling Indian Housing Authorities and other tribally designated housing entities through the Northern Plains and Western United States. Mr. Heisterkamp and the firm served as one of the private legal advisors to Tribal representatives on the NAHASDA Negotiated Rulemaking Committee and continue to assist clients in implementing new programs under NAHASDA. He is often involved in the resolution of personnel and termination issues and recently argued successfully before the U.S. 8th Circuit Court of Appeals in *Dillon vs. Yankton Sioux Housing Authority* (holding that the TDHE need not waive its sovereign immunity by signing a contract with HUD and therefore, the Federal Court System had no jurisdiction to hear a wrongful termination case).

Donna K. Jacobsen
Program Specialist
National Office of Native American Programs
U.S. Department of Housing and Urban Development

Ms. Jacobsen comes to the National Office of Native American Programs with 20 years of HUD experience. She is currently in the Housing Management Division and reviews model housing activity proposals in Indian Housing Plans. She participated in the Negotiated Rulemaking Committee and Affordable Housing Workgroup meetings that developed rules implementing the Native American Housing Assistance and Self-Determination Act of 1996. Ms. Jacobsen has a Bachelor of Science degree in Financial Accounting from Metropolitan State College, Denver, Colorado.

Matthew S. Jaffe
Attorney
Hobbs, Straus, Dean & Walker, LLP

Mr. Jaffe is a partner at Hobbs, Straus, Dean & Walker, LLP, a Washington, D.C. law firm with offices in Portland, Oregon and Norman, Oklahoma, which specializes in the practice of Federal Indian law. Mr. Jaffe has been with the firm since 1988 and participated in the NAHASDA Negotiated Rulemaking on behalf of a number of tribal clients. Mr. Jaffe graduated from the National Law Center, George Washington University in 1986, and received a bachelor's degree in Political Science *with honors* from the State University of New York at Binghamton in 1983.

Quentin Michael Jones
Land Records Officer
Bureau of Indian Affairs

Michael Jones was born in Sioux Falls, South Dakota. He spent much of his childhood at Haskell Institute (now known as Haskell Junior College) where his father taught government and coached basketball, track and some football, and where Michael attended school in nearby Lawrence, Kansas. About 1960, Michael's family moved to the Albuquerque Indian School in New Mexico, where his father worked and where he attended high school and the University of New Mexico. In 1981 he graduated from the University of New Mexico, School of Law. After an internship with the New Mexico Oil and Gas Conservation Commission, Michael was a Law Clerk to Justice Harry Stowers of the New Mexico Supreme Court. During law school, Michael performed title work for the Bureau of Indian Affairs' Land Title and Records Program. After graduation he also worked for law firms that represented Indian Tribes and tribal entities. He is licensed to practice law in New Mexico. From 1987 to the present, he has served as the Land Records Officer, Central Office, Bureau of Indian Affairs. He lives in Northern Virginia, with his wife and 2 children.

Bruce A. Knott
Director, Office of Grants Evaluation
Office of Native American Programs
U.S. Department of Housing and Urban Development

Mr. Knott has worked in various ONAP offices since a separate Indian programs office was created within HUD nearly twenty years ago. His resume includes experience in housing management, housing development, and community development block grants for Native Americans. Since 1992, Mr. Knott has managed HUD's housing development and community development programs in the National Office. Currently, he is responsible for developing and managing ONAP's monitoring and evaluation activities for all tribal programs.

Jeffrey Koleski
Executive Director
Neighborhood Housing Services/Oklahoma City, Inc.

Jeffrey Koleski, Executive Director of Neighborhood Housing Services/Oklahoma City, Inc., prior to being employed by Neighborhood Housing Services he has worked in all aspects of residential and commercial development in a management capacity for the past fifteen years. He has been with Neighborhood Housing Services/Oklahoma City, Inc. as its Executive Director for the past five years. Has provided T.A. to several Native American Organizations throughout the State of Oklahoma. Assisted Federal Home Loan Bank in the development of their Homebuyer Education First-Time

Homebuyer Counseling/Education Trainer Program. He has attended and taught at several conference's and training sessions on federal programs and related items. He is active in several neighborhood associations, community organizations, serves on INTEGRIS Business Health Institute's Advisory Council and Fannie Mae's Oklahoma State Advisory Council.

Robert S. Kroll
Director, Community Development Division
Southwest Office of Native American Programs

Mr. Kroll has been with HUD since 1979 in a variety of field offices and positions. He began working with the Office of Native American Programs in 1983 in Phoenix. In the last 15 years, he has held supervisory positions in housing management, financial management, and community development. Since June of 1998, Mr. Kroll has served as acting administrator of the Northwest Office of Native American Programs in Seattle.

Jacqueline A. Kruszek
Program Analyst
National Office of Native American Programs
U.S. Department of Housing and Urban Development

Ms. Kruszek oversees the maintenance and operation of the Indian Housing Block Grant (IHBG) formula including reviewing IHBG formula data corrections and U.S. Decennial Census challenges. She chairs the Workgroup on Program Income and has participated in the Negotiated Rulemaking Committee and Formula Workgroup meetings that developed rules implementing the Native American Housing Assistance and Self-Determination Act of 1996. Ms. Kruszek received graduate training in mathematics, computer science, and economics from the University of Pittsburgh and completed a management training program through the U.S. Department of Housing and Urban Development in housing and community development.

Dick La Fever
Organizational Consultant
Crossroads Leadership Institute

Dick La Fever is the Co-founder of Crossroads Leadership Institute and has worked as an organizational consultant for the past 13 years. Dick works extensively with Alaska Native and Native American Housing Authorities in the areas of strategic planning, team building and quality management systems. Dick is a contractor with ICF Kaiser.

He is an enrolled member of the Northern Cheyenne Tribe in Montana. On his home reservation he has served as an elementary teacher, and was the first principal of the tribally controlled school, formerly a BIA school. He also served as the Executive Director of the Community Action Program.

Dick also does work with Native American Housing Authorities in the Southwest and Alaska. His company represent Organizational Dynamics, a Boston based consulting and training company that specializes in quality and customer service. He also teaches in the Organizational Management and MBA programs at Alaska Pacific University.

Dick is a board member for the Alaska Council on the Prevention of Alcohol Abuse, the Alaska Humanities Forum and for his church, Unity of Anchorage. He is also a member of the American Society for Quality; The American Society for Training and Development; and the Resource Development Council of Alaska.

Michael S. LaPointe
Executive Director
Sicangu Enterprise Center

Michael S. LaPointe is currently the Executive Director of the Sicangu Enterprise Center (SEC), a 501 (c)(3) non-profit community development organization, serving members of the Rosebud Sioux Tribe. The SEC has provided over \$100,000 in micro-business loans for home-based businesses, along with business planning services, and technical assistance. Under his leadership, the SEC has established a Homebuyer's Education program designed to increase homeownership opportunities for members of the Rosebud Sioux Tribe. Michael is a graduate of the University of South Dakota (USD) with a Bachelor of Science degree in Economics. He is also actively involved with the USD chapter of American Indian Business Leaders. He is an alumni member of the Pi Kappa Alpha international fraternity. Michael plans on obtaining his Masters Degree in Public Administration from Harvard University's John F. Kennedy School of Government in Cambridge, Massachusetts. He is a member of the Rosebud Sioux Tribe.



Deborah M. Lalancette
Director, Office of Grants Management
National Office of Native American Programs
U.S. Department of Housing and Urban Development

Deborah Lalancette has worked for the Office of Native American Programs since April 1980. She worked in the Denver Area Office from 1980 to 1989 before moving to Washington, D.C. She was the Financial Manager and Director of Housing Management in Washington, D.C. from 1989 until 1997. In 1997, Ms. Lalancette moved back to Denver with the National Program Office of Native American Programs. In this office, she is the Director of the Office of Grants Management and is responsible for implementing the Indian Housing Block Grant Program under the Native American Housing Assistance and Self-Determination Act of 1996 and also oversees the Drug Elimination and Economic Development and Supportive Services Programs.

Gail W. Laster
HUD General Counsel
U.S. Department of Housing and Urban Development

In November 1997, Ms. Gail Laster was sworn in as HUD General Counsel. From December 1994 to August 1997, Ms. Laster was Director of Governmental Relations/Counsel for the Legal Services Corporation. From January 1992 to November 1994, Ms. Laster served as counsel to the U.S. Senate Committee on the Judiciary. Ms. Laster also served as counsel to the U.S. Senate Committee on Labor and Human Relations. After clerkships with judges who sat on the U.S. District Court for the Southern District of New York and the Washington, D.C. Court of Appeals, Ms. Laster was a staff attorney with the Washington, D.C. Public Defender Service. She is a graduate of Yale University and the New York University School of Law.

JoAnne F. Lewellen
Assistant Vice President and Community Affairs Officer
Federal Reserve Bank of Minneapolis

JoAnne F. Lewellen, J.D., is responsible for central administration, information technology, mergers and acquisitions, off-site monitoring and community affairs of the Banking Supervision Department of the Federal Reserve Bank of Minneapolis.

Ms. Lewellen joined the Federal Reserve System in 1986 as an examiner in the Consumer Affairs and Trust/Specialty examination areas. She was promoted to manager in 1990 and assistant vice president in 1993. She is chair of the advisory council to the Minnesota District U.S. Small Business Administration. Ms. Lewellen is also a national speaker on issues related to banking and lending in Indian Country, including training bank examiners.

Ms. Lewellen has a bachelor's degree from the University of Kansas, Lawrence, and a law degree from the University of Missouri-Kansas City.

Christine Manion
Program Specialist
Office of Loan Guarantee
National Office of Native American Programs
U.S. Department of Housing and Urban Development

Christine Manion began her career with HUD in 1978, in the Alaska Office. During her tenure, she gained experience as a Loan Specialist, working with private owners; performing multifamily property inspections and reviewing audited financial statements. In 1990, she transferred to Public Housing as a program specialist and provided training and technical assistance to public housing staff members and program participants in areas such as modernizations, Section 8, procurement, finance, Drug Elimination and Resident Initiatives. In 1996, she joined the ONAP staff as a Native American Program Specialist and is currently working with the Title VI Loan Guarantee program.

Jay A. Marcus
Director of Housing Initiatives
The Enterprise Foundation

Mr. Marcus has over 15 years experience in developing and implementing affordable housing and communities development strategies throughout the country and providing training and technical assistance to increase the capacity of cities, tribes, lending institutions, and nonprofit agencies nationwide. He specializes in housing finance and special needs housing development. Mr. Marcus started Enterprise's Los Angeles program and oversees Enterprise's Native American and Habitat for Humanity Initiatives.

Mr. Marcus has created 8 new nonprofit housing development organizations and intermediaries and packaged over \$100 million for low-income housing.

Previous to joining Enterprise 8 years ago, Mr. Marcus was Director of Housing Development for Victim Services, where he developed and operated emergency, transitional and permanent housing for homeless families and victims of domestic violence. In the early 1980's, as Special Assistant to the Commissioner of Human Rights in New York, he created lending institution testing programs, funding programs for fair housing centers and substantially increased penalties for housing discrimination complaints in New York State.

Mr. Marcus has a Masters in City and Regional Planning from Harvard University and a B.A. in Political Science (Music Concentration) from Columbia University. Mr. Marcus has published several articles in affordable housing journals.

Mercedes Márquez
Senior Counsel for Civil Rights and Fair Housing
U.S. Department of Housing and Urban Development

At the request of the Clinton Administration, Mercedes Márquez assumed her duties as Deputy General Counsel for Civil Rights and Fair Housing in May, 1997. Ms. Márquez received her B.A. from the University of Southern California and her J.D. and LL.M from Georgetown University Law Center. She has been practicing law—exclusively in the area of civil rights—for 12 years.

Ms. Márquez began her legal career at Georgetown's Institute for Public Representation where she represented a class of over 2,000 African-American and Latino tenants in what became the first published decision regarding the use of Title VIII in the private gentrification context.

Ms. Márquez continued her work in private practice where, at the law firm of Litt & Stormer, she headed the slumlord litigation and fair housing units representing thousands of poor and working class tenants of color against Los Angeles' most reprehensible slumlords.

Ms. Márquez built a multi-racial and multi-cultural firm in Los Angeles where she was one of two partners. Her firm focused, in large part, on countering race discrimination in public housing, by representing hundreds of families and creatively using various state and federal authorities to ensure that tenants of public housing have the same rights as private renters.

Ms. Márquez has served as a fair housing consultant to several different groups in California and has performed pro bono work for the Watts/Century Latino Organization. She recently retired as the national Vice President of the YMCA of the U.S.A. and has served as that organization's National Racial Justice Chair. She currently serves on the organization's Board of Trustees. She has also served as vice chair of Los Angeles Rent Stabilization Commission.

C.W. "Chuck" Merritt
President
IHA Management Systems, Inc.

Former commercial Contractor and Indian Housing Authority Executive Director, Mr. Merritt has been actively involved in Indian Housing, development and training programs for the past eight years. Mr. Merritt founded IHA Management Systems, Inc. to provide the Native American community with training and technical assistance directly related to the unique circumstances that occur in their Housing programs. IHA Management Systems, Inc. competed for and was chosen to be the **"Technical**



Assistance Provider” for the Title VI Demonstration Program. Tribes and TDHE’s will have the ability to access the technical assistance needed to participate in the Title VI program through the IHA Management Systems team of consultants, should they choose to do so.

Robert J. Miller
Attorney at Law
Hobbs, Straus, Dean & Walker LLP

Robert Miller has represented tribal clients and Indian individuals in federal court litigation and before federal administrative agencies. He has also concentrated extensively during 1996-1999 on tribal housing issues and the implementation of NAHASDA. Mr. Miller worked closely with the negotiated rulemaking committee which drafted the regulations for NAHASDA. Mr. Miller has also helped various tribes and tribal organizations to review and revise their governing documents and policies, and he has been involved in tribal employment rights and issues. Mr. Miller is also an adjunct professor and has taught Indian law courses at Northwestern School of Law of Lewis & Clark College and at various Oregon colleges since 1993. He is on the Board of the National Indian Child Welfare Association, the Board of the Oregon Native American Entrepreneurial Network, and is the past Chair of the Oregon State Bar Indian Law Section. He has published numerous articles on Indian Law issues in law review journals, Bar journals and continuing legal educational materials.

Deborah Moffitt
Housing Manager
Ronan Housing Authority and Lake County Community Housing Organization

Deborah Moffitt has worked as Housing Manager for the Ronan Housing Authority and Lake County Community Organization for 6 years. These organizations serve rural communities in Northwest Montana’s Lake County, which is also partially situated on the Flathead Indian Reservation. As Housing Manager, her diverse responsibilities have included managing a homeowner housing rehabilitation program serving 38 clients; a first time home buyer program (including training) serving 39 clients; overseeing construction of and providing property management for 19 low-income rental units; overseeing Section 8 and HOME program tenant based rental assistance programs serving over 150 clients; and directing an acquisition and new construction program building and/or rehabilitating 20 additional homes for first time homebuyers. She is currently supervising final construction and rent up of 16 very low income units; the purchase and management of 29 low-income elderly units; and a housing rehabilitation program expected to serve 24 low-income homeowners over the next 2 years. Her job requires close coordination with the Salish and Kootenai Tribal Housing Authority and the many other agencies serving both the area’s tribal and non-tribal low-income populations. She serves on the Board of the area’s Family Crisis Center; served on the



County's welfare reform board; and is on the planning committee for the area's Workforce Center System. Her prior 15 years experience as a purchasing agent for defense contractors honed the organizational and management skills which have made her so successful in her current position.



Craig Nolte
Community Affairs Advisor
Federal Reserve Bank of San Francisco

Craig Nolte is a Community Affairs Advisor with the Federal Reserve Bank of San Francisco. As part of the Community Affairs Department, Mr. Nolte develops training and consults financial institutions on community investment opportunities. Mr. Nolte is very active in Native American lending issues. Currently Mr. Nolte facilitates seven "Sovereign Lending" task forces in the four northwestern states of Washington, Oregon, Idaho and Utah. The goals of the task forces are to identify and meet individual tribe's banking needs. Mr. Nolte also serves on the One-Stop Mortgage Center Initiative's Credit Worthiness Committee. Prior to joining the Federal Reserve, Mr. Nolte served as a Compliance Examiner with the Office of Thrift Supervision. In that role, Mr. Nolte evaluated thrift institutions' compliance with various consumer and compliance laws and regulations, including the Community Reinvestment Act. Mr. Nolte holds an M.B.A. from City University, Bellevue, WA, and a B.A. degree in Finance from Seattle Pacific University.

Diana Ortiz
Managing Attorney
Office of Human Resources Law
U.S. Department of Housing and Urban Development

Ms. Ortiz is the Managing Attorney for the Office of Human Resources Law at the U.S. Department of Housing and Urban Development. The Office of Human Resources Law provides legal services to HUD in the areas of personnel law, ethics law, contract procurement law and torts law. Ms. Ortiz joined the department in 1996. Prior to coming to HUD, Ms. Ortiz spent five years as a special prosecutor for the Commonwealth of Puerto Rico, where she concentrated on public corruption cases and secured convictions against several local mayors and legislators. Ms. Ortiz graduated with honors from Yale University with a B.A. in English. She received a J.D. from Harvard Law School. Her significant professional experience includes having served in the Massachusetts Executive Office of Communities and Development as Assistant Secretary for Neighborhoods. She was also appointed by former Governor Michael Dukakis to chair the Massachusetts Community and Economic Development Assistance Corporation. Ms. Ortiz has also been a legal services attorney in Connecticut, and has held various public and private sector positions in New York and Puerto Rico.

Terrie Paredes
Operations Supervisor
Norwest Mortgage HomeBuyers Club®

Believing that the key to succeed in the mortgage industry is the ability to adapt to change, Terrie Paredes began her career in 1988 as a loan processor. In 1990, she became a branch manager for TriCore Financial and since then has supervised and managed for Regal Mortgage, Norwest Mortgage, Inc., Bank of America.

Terri is currently working with Norwest Mortgage, Inc. as the Operations Supervisor for the HomeBuyers Club where she is expanding her expertise in affordable housing and community development in today's emerging markets.

Frank Peratrovich, Jr.
Executive Director
Cook Inlet Housing Authority

Over ten years of experience in Indian Housing programs at four different regional housing authorities. Was selected as one of Alaska's top 40 under 40 years of age by the Alaska Journal of Commerce in 1998. He also serves as President of the Association of Alaska Housing Authorities, Treasurer for the National American Indian Housing Council and was a member of the NAHASDA Negotiated Rulemaking Committee.

Peter J. Petrunich
Program Specialist
National Office of Native American Programs
U.S. Department of Housing and Urban Development

Mr. Petrunich works for Deb Lalancette in the Housing Management Division. He has been with the Department of Housing and Urban Development since 1990. He worked in the Eastern/Woodlands ONAP for over four years and then spent two years working with the Public Housing HOPE VI Demonstration program in Washington, D.C. He returned to ONAP in November 1996 when the National office moved to Denver.

Bill Picotte
Executive Director
Oti Kaga, Inc.

Bill Picotte is Executive Director and is a member of the Board of Directors of Oti Kaga, Inc., a non-profit 501(c)(3) housing development corporation he founded in 1993. He has been a member of the Board of Directors of the Housing Assistance Council (HAC) since 1993. He also sits on the Board of Directors of the National Rural Housing Coalition since 1996. Finally, Mr. Picotte is also President of Eagle Thunder Consulting, a housing and business consulting firm.



Carol A. Quinlan
Program Specialist
National Office of Native American Programs
U.S. Department of Housing and Urban Development

Carol A. Quinlan is a Native American Program Specialist at the National Office of Native American Programs in Denver, Colorado. She works for Bruce A. Knott, the Director for the Housing and Community Development Division. Prior to joining the National staff, she represented the Northern Plains Office of Native American Programs (NPONAP) as an Indian Community Development Block Grant and HOME Specialists, a Housing Development Representative and NPONAP's delegate for the 184 Loan Guarantee program.

John Romano
Deputy Administrator
Rural Utilities Service
U.S. Department of Agriculture

The White House designated John Romano as Deputy Administrator of the Rural Utilities Service in April 1995. In this position, he directs Water 2000, the administration's nationwide rural safe drinking water initiative. Since 1976, Romano has worked in the rural community and economic development field serving in his home state of Vermont as a grant writer for a three-county Community Action Agency; a special project's director for the Vermont State Housing Authority; and a senior development officer for the Northern Community Investment Corporation. From 1987 through April of 1995, Romano worked as projects director for U.S. Senator Patrick J. Leahy (D-VT), former chairman of the Senate Agriculture Committee, working primarily on rural economic development issues, projects, and appropriations. Romano worked for Senator Leahy during the development and passage of the 1990 Farm Bill and the Empowerment Zone/Enterprise Community legislation in 1993. Additionally, he played a key role in increasing federal support for Community Development Block Grants from the Department of Housing and Urban Development, water and wastewater loan and grant programs from the Department of Agriculture, and numerous other infrastructures, housing and economic development programs.

Robert T. Skjonsberg
Community Development Lender
Norwest Mortgage, Inc.

Rob is a Community Development Lender for Norwest Mortgage, Inc. in Pierre, SD. His primary responsibility has been to increase mortgage lending within reservation boundaries. He has served as Personal Banker and Manager of the Norwest Bank on the Lower Brule Reservation in South Dakota. The first home improvement and home

equity loans were closed on trust land during his tenure as Manager. His experience includes commercial, consumer, agricultural, and most recently mortgage lending within reservation boundaries. Norwest Mortgage, Inc. has closed loans on eight of the nine reservations in South Dakota. Rob grew up on the Lake Traverse Reservation in South Dakota and is a descendant of the Sisseton Wahpeton Sioux Tribe.

Richard Smith, Sr.
Director of Programs Home Mortgage Corporation
The Minnesota Chippewa Tribe

Mr. Smith is an enrolled member of the White Earth Band of Ojibwe, Minnesota Chippewa Tribes. He is married with two adult children who are also members of the White Earth Band of Ojibwe. He resides on the White Earth Indian Reservation.

Employed by the Minnesota Chippewa Tribes, Mr. Smith serves as the Director of Programs for the Tribally owned Home Mortgage Corporation. Recent accomplishments include the creation of Rental Housing Development Financing through the corporation and positioning the corporation as a non-member borrower of the Federal Home Loan Banking system. Mr. Smith currently serves on the Affordable Housing Advisory Council for the Federal Home Loan Bank of Des Moines, Iowa and is a member of the Minnesota Mortgage Bankers association.

David Southerland
Executive Director
Housing Authority of the Cherokee Nation

Received a Bachelors Degree in Accounting from Northeastern Oklahoma State University in 1992. I went to work for the Housing Authority as a staff accountant after graduation. Established Housing Authority Materials Warehouse in 1994. Served as Director of Purchasing from April 1995 through July of 1997 at which time I was named as Deputy Director. Served in that capacity until April of 1998 when I was named Executive Director.

Catherine Baker Stetson
Attorney
Stetson Law Offices, P.C.

Catherine Baker Stetson attended Vassar College during her undergraduate career and later earned an M.A. from Brown University and a Ph.D. from the University of New Mexico. After obtaining her law degree from the University of New Mexico, she practiced Indian law with Ussery & Parrish until leaving to start an Indian-owned, woman-owned firm with Kevin Gover and Susan Williams in 1986. Gover, Stetson & Williams, P.C. was honored as one of the Top 25 Women-Owned Businesses in New Mexico in 1996.



In 1997, Kevin Gover went to Washington, D.C. to become Assistant Secretary of Indian Affairs, and Cate opened Stetson Law Offices, P.C., a law firm whose practice is limited primarily to providing legal services to tribes and tribal agencies. In addition, she started Legi\X Company, a political consulting and lobbying firm. Cate's Indian law experience has been largely in working on housing and commercial transactions on Indian reservations. She has helped develop on-reservation restaurants, casinos, hotels, shopping centers, mobile home parks, sanitary landfills, and gas stations, and also has designed tribal regulatory, tax, and business structures intended to complement tribes' economic development objectives.

Scott A. Stewart
Vice President of Community Investment
Federal Home Loan Bank of Chicago

Scott Stewart is a Vice President of Community Investment with the Federal Home Loan Bank of Chicago. He serves as an advisor to financial institutions, non-profit groups, and local government agencies on community lending issues and works closely with those interested in taking advantage of the Federal Home Loan Bank's Affordable Housing Program or Community Investment Program. These two programs are valuable resources that financial institutions and community organizations can use to assist them in their efforts to meet the housing and commercial and economic development needs of the community.

Mr. Stewart serves as a board member of the Northwest Housing Partnership, a non-profit committed to increasing the availability of affordable housing in suburban Chicago.

Mr. Stewart joined the Bank in January, 1986, after several years with the Northern Trust Company of Chicago. He holds a M.B.A. from the University of Wisconsin at Madison and a B.S. in Finance from the University of Illinois at Urbana-Champaign.

Ken Stocks
Project Coordinator, Osprey Spirit II Housing Development
Coeur d'Alene Tribal Planning and Development Corporation

Mr. Stocks is the Project Coordinator for Osprey Spirit II and is under contract with the Tribe. Mr. Stocks worked with Council Members Norm Campbell and Marge Zarate during the initial planning of this project in 1995, and was selected as Project Coordinator in January of 1998.



Jonathan B. Taylor
Research Fellow
Harvard Project on American Indian Economic Development

Jonathan Taylor conducts economic and public policy research in Indian Country for the Harvard Project on American Indian Economic Development, the Udall Center for Studies in Public Policy, at the University of Arizona, and for tribes directly as a consultant. His research centers on the causes and consequences of economic development activity on Indian Reservations and the measures tribal governments can take to improve social and economic conditions on reservations. Among his research analyses are: an investigation into the socio-economic consequences of Class III Indian gaming, an analysis of the propensity of states and tribes to compact for casino gaming, a number of constitutional reviews for tribes, and an assessment of Native self-governance policy in Alaska. He received a Master's in Public Policy from the John F. Kennedy School of Government at Harvard University (1992) and a Bachelor's in Politics from Princeton University (1986).

Mark C. Tilden
Staff Attorney and Corporate Officer
Native American Rights Fund

Mark C. Tilden (Navajo) joined the Native American Rights Fund (NARF) as a staff attorney in September 1994 and is also currently serving as a corporate officer. He represents tribal governments in federal recognition, administrative law, Indian family and child welfare law, environmental law and water law. He also lectures and trains in these specific areas. Before joining NARF, he practiced law at Fredericks, Pelcyger, Hester & White. While attending law school, Mark worked for the Colorado Attorney General's Office, Supreme Court of Colorado, Big Mountain Legal Defense Office, and NARF. He received a Bachelor of Science and Business Administration degree from Creighton University and a Juris Doctorate from the University of Denver College of Law. Mark is admitted to practice law in the state courts of Colorado, District of Columbia, U.S. District Courts in Colorado and Arizona, U.S. Courts of Appeal for the Ninth, Tenth and District of Columbia Circuits, Supreme Court of the United States, Fort Peck Tribal Courts, Ft. Mojave Tribal Courts and Oglala Sioux Tribal Courts. He is a member of the Federal Bar Association, American Bar Association (ABA), Colorado Bar Association, Colorado Indian Bar Association, Boulder County Bar Association and ABA Steering Committee on the Unmet Legal Needs of Children.

Luke W. Toyebo, Jr.
Senior Technical Assistance Specialist
National American Indian Housing Council

Luke Toyebo, Jr. has been employed by the National American Indian Housing Council for nearly five years as both a TA Specialist and TA Director. Mr. Toyebo previously served as the Executive Director of the Apache Tribe of Oklahoma's housing authority. During his tenure, the IHA developed many new homes. Mr. Toyebo was the recipient of the Apache Tribe of Oklahoma's Outstanding Achievement Award. A certified NAIHC Housing Manager, he has also served on NAIHC's Board of Directors and as President of the Oklahoma Indian Housing Association. Mr. Toyebo holds a Bachelor's degree from the University of Oklahoma, and has served as an adjunct professor at Oklahoma State University. He has provided technical assistance in all areas of Indian housing operations, and is an experienced developer. He has also worked extensively in the areas of comprehensive/strategic planning, commissioners' training, and policy development.

James F. Wagenlander
Attorney
Wagenlander & Associates, LLC

Jim Wagenlander and the law firm of Wagenlander & Associates, LLC have for over 23 years performed a majority of their work assisting over 100 tribes, IHAs and TDHEs in the areas of housing development and management. With headquarters in Denver, this cross-cultural law firm also practices in the fields of tribal jurisdiction, economic development, lending, contracting, construction, urban housing and international law. Along with a number of other firms, Jim Wagenlander and Wagenlander & Associates, LLC provided legal support to tribes during the NAHASDA negotiated rule-making process. Jim has been extensively involved in addressing discrimination practices including mortgage lending, cooperation agreements, and state agency programs.

Justina L. Walls
Program Specialist
National Office of Native American Programs
U.S. Department of Housing and Urban Development

Justina is presently a Native American Program Specialist with the National ONAP located in Denver. She joined HUD over 20 years ago as an Urban Management Intern, and began her career with the Department in the Office of Fair Housing and Equal Opportunity. She has 18 years of direct housing experience. Housing development has been her primary focus, although she has also worked in housing management and has experience in both single and multi family programs. Her tenure with HUD includes over 13 years as a supervisor and manager. Prior to her career with HUD, she was in law enforcement. She obtained her Bachelor of Science (honors) degree in Criminal Justice from the University of Texas at Arlington and her Juris Doctorate (law) degree from the University of Denver.

Leah Harjo Ware
Lawyer
Indian Country Lawyers, P.L.C.

Leah Harjo Ware is a member of Indian Country Lawyers, P.L.C., a 100 percent American Indian owned law firm, located in Shawnee, Oklahoma. Ms. Ware is a native of the Muscogee Nation and received her undergraduate degree from the University of Oklahoma and her juris doctorate from Creighton University School of Law in Omaha, Nebraska. Leah has served as staff attorney and Executive Director of Oklahoma Indian Legal Services, Attorney General of the Muscogee (Creek) Nation, and as assistant Director of the Oklahoma City University School of Law-Native American Legal Resource Center. Ms. Ware has practiced almost exclusively Federal Indian Law for 14 years and has participated in precedential cases involving the resurgence of tribal courts and exercise of tribal jurisdiction in Indian Country in Oklahoma, as well as precedential cases involving the rights of individual Indian citizens. During her 14 years of experience, Ms. Ware's practice has included Indian Housing issues, trust and restricted land issues. As the education committee chairperson of the Oklahoma Indian Bar Association, Ms. Ware has coordinated 2 Indian Housing conferences for attorneys, housing authority officials and tribal lenders in Oklahoma. Leah maintains a general civil practice of law with emphasis in Indian Housing trust/restricted land issues, probates and Social Security appeals.

Ken Webster
Technical Assistance Director
National American Indian Housing Council

Last month, Ken Webster joined the National American Indian Housing Council (NAIHC) staff as Technical Assistance Director. Ken is responsible for managing NAIHC's field staff, who are based throughout the United States and provide on-site support to more than 100 tribes a year. Ken also helps shape NAIHC's programs and policies, advising the Executive Director on everything from technical housing matters to relations with tribal governments.

"We are immensely excited to have Ken on staff," said Christopher Boesen, NAIHC Executive Director. "He is both experienced and wise and will be a great asset to our organization.

Ken grew up on the Oneida Reservation and is an enrolled member of the Oneida Nation of Wisconsin. Most recently, he served as Interim Executive Director of the Oneida Housing Authority, helping the Housing Authority access low-income housing tax credits and the Federal Home Loan Program. Ken's other work experience includes appointments as Minneapolis Housing and Redevelopment Authority Commissioner, National Congress of American Indians (NCAI) area representative for a four state area,



member of the National American Indian Veterans Ad Hoc Committee, and president of the Intertribal Transportation Association. He is the proud father of four children.



Carol Wiklund
Director
ABODE Consulting

Carol Wiklund is the Director of ABODE Consulting. She has been involved with mortgage lending since 1986. Her experience runs the gamut from Loan Processor to Paralegal to the Director of a homeownership education and counseling program. She is certified by the NeighborWorks Full Cycle Lending for Homebuyer Education and Mortgage Lending Program through the Neighborhood Reinvestment Corporation. She is also certified as an Affordable Housing Specialist and a Mortgage Foreclosure Prevention Specialist. She is a native of Chicago, has lived in the Twin Cities area of Minnesota, and resides in Colorado.

H. James Wulfsberg
Senior Principal
Wulfsberg Reese Ferris & Sykes P.C.

H. James Wulfsberg is the senior principal of Wulfsberg Reese Ferris & Sykes Professional Corporation. He is a nationally recognized expert on public works contracting. He has over 25 years of legal experience on drafting, negotiation, bidding, award, arbitration, mediation and litigation matters arising from public works contracts of all types, including design, construction, construction management, and public "leaseback" contracts. Mr. Wulfsberg assists project owners in determining appropriate procurement and evaluation methodologies, developing procurement documents, negotiating and drafting contract documents, negotiating and administering claims arising during contract administration, developing claims avoidance and dispute resolution strategies and procedures, and providing legal representation and mediation, arbitration and litigation.

Patricia Zell
Democratic Staff Director/Chief Counsel
U.S. Senate Committee on Indian Affairs

Since 1978, Patricia Zell has held various positions with the U.S. Senate Select Committee on Indian Affairs, including Professional Staff, Staff Attorney, and Chief Counsel. From 1990 to 1995, Ms. Zell was the Majority Staff Director and Chief Counsel for the U.S. Senate Committee on Indian Affairs, and since 1995, has been the Democratic Staff Director and Chief Counsel. Ms. Zell is also currently the Editor of the *Indian Law Reporter*, a monthly publication providing non-evaluative summaries of federal, state, tribal, and administrative cases in the field of Indian law. Ms. Zell received her Juris Doctor from Georgetown University.

Andrew M. Cuomo
Secretary
U.S. Department of Housing and Urban Development

Andrew Cuomo, who became Secretary of Housing and Urban Development in January 1997 after he was unanimously confirmed by the U.S. Senate, has implemented a sweeping reinvention plan, more efficient and effective programs, and an aggressive campaign against waste, fraud and abuse at the Department.

Cuomo unveiled his landmark HUD 2020 Management Reform Plan in June 1997. Since then, the plan has been endorsed by HUD's labor unions, successfully carried out by HUD's employees, and praised by President Clinton and government reinvention experts.

President Clinton told the U.S. Conference of Mayors in February 1998: "Secretary Cuomo's reinvented HUD exemplifies the kind of approach we're trying to take to working with the cities all across the federal government."

Management Expert David Osborne - author of Reinventing Government - wrote in May 1998 that HUD's management reform plan "as it is being implemented today represents one of the most ambitious, fundamental and exciting reinvention plans in the recent history of the federal government."

A review by management consultants Booz-Allen & Hamilton concluded in March 1998 that HUD has made "significant progress towards achieving the many management reforms that are critical to making the Department function effectively."

Cuomo's other key accomplishments include:

- Winning Congressional approval in 1997 of a plan to rescue the Section 8 rental subsidy program from financial collapse, averting an affordable housing crisis that could have threatened up to 4.4 million Americans with homelessness. The plan increased funding for Section 8 renewals by \$4.6 billion, to enable HUD to renew all expiring Section 8 contracts.
- Winning Congressional approval in 1997 to end excessive rental subsidies to private landlords under the project-based Section 8 program. By cutting subsidies so that landlords receive rents from HUD at market rates, the measure will save taxpayers nearly \$1.6 billion over five years.
- A 1999 HUD budget proposed by President Clinton that was the best HUD budget in 10 years and sought \$1.8 billion in additional program funds for an intensified effort to revitalize communities, create jobs, produce affordable housing and expand homeownership.



- Helping to boost America's homeownership rate to an all-time annual high of 65.7 percent in 1997. The strong economy created by President Clinton's policies, along with HUD's homeownership programs, led to the increase.
- Working to raise the limit on home mortgage loans insured by HUD's Federal Housing Administration, to help more moderate-income families qualify to become homeowners. FHA insurance enables many Americans who would otherwise have been unable to qualify for mortgages to get the loans and become homeowners.
- Creation of a new Enforcement Center, headed by an FBI agent and assisted by U.S. Attorneys' offices, to establish and implement the highest standards of integrity in HUD programs.
- A crackdown on landlords who collect money improperly from HUD. In 1997, HUD: increased the number of debarment actions against bad landlords to 122 - compared with 30 in 1996. Civil cases and settlements resulting in recoveries against landlords of HUD-assisted housing grew from 24 in 1996 to 46 in 1997. The amount of HUD money recovered from landlords rose from \$18 million in 1996 to \$25 million in 1997.
- A crackdown against discrimination in housing and lending. In 1997 HUD obtained \$9.6 million in relief for individuals in housing discrimination settlements - compared with \$4.4 million in 1996. In the first half of 1998, HUD obtained record commitments from lenders to make nearly \$4 billion in mortgage loans to settle lending discrimination allegations.
- Ending a scheme by con artists that victimized senior citizens when it charged individuals thousands of dollars in unnecessary fees for reverse mortgages. Reverse mortgages allow older people to borrow against the value of their homes.
- Creating a new category of HUD employees called Community Builders who are working to empower America's people and local governments to take the leading role in improving lives and strengthening communities. These generalists serve as one-stop customer service representatives in HUD's 81 field offices. Another new category of employees called Public Trust Officers monitor recipients of HUD assistance to guard against waste, fraud and abuse.
- Opening Storefront Offices around the country called HUD Next Door - a new type of consumer-oriented service center designed to become a national model for more responsive government. The first Storefront Office was opened in Washington, DC in May 1998.

- Bringing new state-of-the-art technology to HUD, including: touch-screen computers set up in information kiosks easily accessible to the public; hand-held computers used for public housing inspections; an updated web site on the Internet that allows people to file housing discrimination complaints electronically; and innovative Community 2020 software that contains detailed information about communities to help local officials better plan for the future.
- Continuing the transformation of public housing. In June 1998 Cuomo launched a new system to more accurately grade the performance of America's 3,400 local public housing authorities and to inspect every public housing development in the nation for the first time. In addition, HUD continued to replace deteriorated high-rise public housing projects that were unfit for human habitation with townhouse-style developments that are connected to their neighborhoods.
- Expanding the Continuum of Care program to help homeless people with housing, education, training, substance abuse treatment and other assistance to become self-sufficient.
- Producing landmark State of the Cities Reports in 1997 and 1998 that examined the greatest challenges facing urban America and described ways to overcome them.
- Producing a study in 1998 of "worst-case" housing needs that found about 5.3 million households with very low incomes - made up of about 12.5 million people - face a housing crisis because they pay over half their incomes for rent or live in severely substandard housing.
- Strengthening HUD's partnerships with state and local governments, the business community, non-profit groups and other organizations to help reverse decades of decline in America's cities by stimulating job creation, economic development and other revitalization efforts.
- Creating the Officer Next Door Program to offer police officers 50 percent discounts on homes HUD acquires in foreclosures in distressed neighborhoods to spark community revitalization.
- Launching a program to return millions of dollars in refunds to homebuyers who made excess payments to the Federal Housing Administration.

When President Clinton nominated Cuomo to succeed Henry Cisneros as HUD Secretary on December 20, 1996, the President called Cuomo "the best person in this country who is today suited to lead HUD into the 21st century,"

Cuomo served for four years as HUD's Assistant Secretary for Community Planning and Development, with responsibility for a broad range of programs dealing with community and economic development, job creation, affordable housing and homelessness. His work included the development of the award-winning Continuum of Care strategy to help homeless Americans become self-supporting. He also administered HUD's role in President Clinton's Empowerment Zone (EZ) and Enterprise Community (EC) initiative in 72 communities around the nation. As Secretary, Cuomo released performance reviews that reported progress in five of the six EZs and in 62 of the 66 ECs. HUD is working with low-performing communities to help them improve.

As Assistant Secretary, Cuomo developed a consolidated planning process that empowered local communities and residents to have a much greater role in determining how HUD funds should be used for housing and community development programs. The process, which won Harvard University's prestigious Kennedy School of Government Innovations in American Government award, produced innovative computer mapping software that provides a wealth of data about communities to help local officials better plan for the future.

Before entering federal service, Cuomo became the youngest Commission Chairman in the history of New York City when he was named in 1991 by Mayor David Dinkins to lead the New York City Commission on the Homeless. The Commission's report was endorsed by Dinkins and other elected officials, organizations and newspapers, and has achieved national recognition.

Cuomo is the first Secretary in HUD's history to have built and operated housing developments before taking office. He founded Housing Enterprise for the Less Privileged (H.E.L.P.) in 1986. H.E.L.P. grew to become the nation's largest private provider of transitional housing for the homeless. The H.E.L.P. model brings safe, quality housing and comprehensive, on-site social services together under one roof to create a supportive community for homeless families.

Cuomo also founded the Genesis Project to develop innovative approaches to urban revitalization, community development and tenant management. Genesis takes a comprehensive approach to linking community development with affordable housing and to coordinating a partnership among all levels of government and the private sector.

Cuomo served as campaign manager for Mario M. Cuomo's first campaign for Governor of New York State in 1982 and served as a Special Assistant to the Governor in 1983. Cuomo then practiced law - first as an Assistant District Attorney in Manhattan in 1984-85, then as a partner in the New York City law firm of Blutrach, Falcone and Miller from 1985-88 - and then went to work at H.E.L.P. full-time.

Cuomo received a law degree from Albany Law School in 1982 and a Bachelor of Arts from Fordham University in 1979. He is married to Kerry Kennedy Cuomo and is the father of three daughters - Mariah, Cara and Michaela. He was born in the New York City borough of Queens on December 6, 1957.



Harold Lucas
Assistant Secretary for Public and Indian Housing
U.S. Department of Housing and Urban Development

Mr. Lucas was nominated for the position of Assistant Secretary on September 23, 1998; and confirmed as Assistant Secretary October 23, 1998. The Office of Public and Indian Housing oversees approximately 3,500 Public and Indian Housing Authorities in the country. Harold Lucas is a native of Newark, New Jersey, and a 1976 graduate of Seton Hall Law School. He is a member of the New Jersey Bar Association.

In 1981, Mr. Lucas joined the Newark Redevelopment and Housing Authority as Director of Redevelopment/Senior Associate Counsel. He managed the urban renewal program and served as council to the Newark Housing Finance Corporation, the agency that provided bond financing for affordable housing projects in the City of Newark.

Mr. Lucas was appointed to the position of Director of the City of Newark's Department of Development in 1986. He was instrumental in organizing the newly established department and introducing a "one-stop-shop" approach to development which shortened processing time by 80 percent compared to traditional methods. The Department of Development, under Mr. Lucas's leadership, was responsible for the implementation of over \$2.5 billion in housing and economic development projects for the City of Newark.

Mr. Lucas was appointed to the position, Executive Director of the Housing Authority of the City of Newark (NHA), in March 1992. The NHA is the 11th largest public housing authority in the nation and the largest in the State of New Jersey. The NHA owns and manages 11,000 dwellings in 36 developments located throughout the city and serves over 30,000 residents of the City of Newark.

Mr. Lucas has been cited by *New Jersey Magazine* as one of Newark's "Renaissance" Men, "one of the key figures shaping the changing face of Newark." At the Newark Housing Authority he jumpstarted the new construction program and expeditiously reduced the extensive waiting list for apartments. Moreover, 3,000 obsolete high-rise units have been demolished with an additional 1,500 units scheduled for demolition. Consequently, construction of 1,500 new townhouse units is complete or underway, another 800 are scheduled for construction and vacant units are being refurbished and occupied. In addition, an ambitious new security plan and a program of tenant apprenticeship were implemented. The NHA once on HUD's troubled list is now one of the few large high performing agencies.

Deborah Vincent
General Deputy Assistant Secretary
Public and Indian Housing
U.S. Department of Housing and Urban Development

Deborah Vincent recently joined the Department of Housing and Urban Development as the General Deputy Assistant Secretary for Public and Indian Housing. Previously, Ms. Vincent served as the Executive Director of the Clearwater Housing Authority for 18 years. Under her leadership, Clearwater received the designation of "High Performer" and won national attention for a variety of innovative programs.

Ms. Vincent has served as President of both Leadership Pinellas and Leadership Tampa Bay. In addition, she has served as President of the Boys and Girls Clubs of the Suncoast and was a Governor appointee to the Welfare Reform Board in Pinellas County. Ms. Vincent is a graduate of the University of Florida and has received numerous awards such as the National Association of Community Leadership, Distinguished Leadership Award, the Boys and Girls Clubs Medallion Award and the Soroptimist International Women Honoring Women award.



Jacqueline L. Johnson
Deputy Assistant Secretary for Native American Programs
U.S. Department of Housing and Urban Development

Ms. Johnson is presently serving as Deputy Assistant Secretary for Native American Programs at the U.S. Department of Housing and Urban Development. The Office of Native American Programs (ONAP) administers programs throughout the United States which provide affordable housing for Native Americans.

Prior to joining ONAP in February 1998, Ms. Johnson served as the Executive Director of the Tlingit-Haida Regional Housing Authority which is headquartered in Juneau, Alaska. She began her career at the housing authority as a research assistant, moving up through progressively more responsible positions until she became the executive director nine years ago.

Ms. Johnson has also served on a variety of national and regional boards. On the national level she was appointed by President Clinton to serve on the National Community Development Financial Institution Fund Advisory Board, an advisory board to the U.S. Department of the Treasury. In 1991 she was appointed a member of the National Commission on American Indian, Alaska Native, and native Hawaiian Housing which was created by Congress with a mandate to assess impediments to safe, decent and affordable housing for Native Americans and to evaluate strategies for the development, management and modernization of housing for Native American families. In 1994 she was elected Chairperson of the National American Indian Housing Council by her fellow executive directors and tribal leaders.

At the regional level during the past nine years she has served continuously as either the president or vice president of the Association of Alaska Housing Authorities. Three years ago she was appointed Vice President of the Alaska Housing Finance Corporation by Governor Tony Knowles.

She attended Utah State University, Snow College in Utah and the University of Alaska Southeast in Juneau, Alaska.

Jackie is a member of the Raven/Sockeye Clan of the Tlingit Tribe and until joining the Department she served as Secretary of the Juneau Tlingit and Haida Community Council. Among her other activities prior to her move to Washington, D.C., she is extremely proud of her service for the past thirteen years as Director of a Native Youth Culture Camp held each summer where young people could experience and learn traditional values.



Jacquie M. Lawing
Deputy Chief of Staff for Programs and Policy
U.S. Department of Housing and Urban Development

Jacquie Lawing currently serves as the Deputy Chief of Staff for Programs and Policy under Secretary Andrew Cuomo in the Department of Housing and Urban Development (HUD).

Prior to her current position, Ms. Lawing was the Acting-Assistant Secretary and General Deputy Assistant Secretary for Community Planning and Development (CPD) for eight months. She had responsibility for the administration of \$7 billion dollars annually in grant programs that help communities plan and finance their growth and development, increase their capacity to govern, and provide shelter and services for homeless people. She developed and articulated Departmental and Administration policy and interacted with Congress, federal, state and local officials, advocacy groups, non-profit providers and citizens throughout the country. She managed a staff of over 800 highly skilled career managers, employees and Schedule "C" staff in HUD's Headquarters in Washington, D.C. and its 41 field offices throughout the United States.

Prior to her appointment as Acting-Assistant Secretary and General Deputy, Ms. Lawing served for four years as CPD's Deputy Assistant Secretary for Economic Development, under the Assistant Secretary Andrew Cuomo. She had primary responsibility within the Department for the administration of all homelessness programs. She provided leadership and direction to the Office of Special Needs Assistance Programs (SNAPs), the office which administers the Stewart B. McKinney Act programs for assisting homeless individuals and families. She also assisted in the establishment of the Office of HIV/AIDS, and was responsible for the Interagency Council on the Homeless (ICH), a working group of the White House Domestic Policy Council. She was a major contributor in the development of Priority: Home! The Federal Plan to Break the Cycle of Homelessness. Under her direction, CPD awarded nearly \$4 Billion in funding to assist homeless persons and persons living with HIV/AIDS from 1993 through 1996 and developed a new community based policy for addressing homelessness called "Continuum of Care."

Before coming to HUD, Ms. Lawing served on the 1992 Clinton/Gore Campaign as the Issues Director for then-Vice Presidential Candidate Al Gore. On the transition she oversaw housing and urban policy. Prior to joining the campaign staff, she worked for then-Senator Gore as Senior Legislative Assistant for Housing, Homelessness, Economic Development, Transportation and Agriculture. She drafted and analyzed legislation and represented the Senator's office in various meetings and forums.

Ms. Lawing is a graduate of the University of Tennessee where she achieved the highest honor given to an undergraduate, the Torchbearer Award.



ONAP COMMUNITY BUILDERS

Through HUD's Community Builders Fellowship program, ONAP has acquired ten experienced and creative individuals to serve as Specialists for Native American Initiatives. These individuals will work with American Indian and Alaska Native communities to develop policies and programs that apply the full range of federal services to specific tribal problems. In addition, the ONAP Community Builders will assist tribes in the advancement of local capacity for self-sufficiency and self-determination. Information on each new Community Builder is provided below:

ANCHORAGE, ALASKA

Steven L. Eggleston
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Steve joins HUD's Anchorage office bringing more than seven years' experience in supervising the planning, financing, and development of housing construction projects and adaptive reuse projects. He served with the Local Initiatives Support Corporation (LISC) in South Bend, Indiana providing financial and technical support to community-based development corporations to improve physical and economic conditions in South Bend neighborhoods. Prior to that, he was the coordinator for the Muncie Home Ownership and Development Center, one of 25 charter local partnerships in the United States recognized by HUD for providing affordable housing.

Mr. Eggleston is a past Vice President and Board Member of the Volunteer Home Maintenance Program in Muncie, a nonprofit organization that assists elderly and disabled homeowners and single mothers with general home maintenance. He is a past Secretary and Board Member of Cambridge House, a residential center for at-risk adolescent girls. Steve also has provided volunteer assistance to Neighborhood Housing Services in South Bend, a nonprofit organization that rehabilitates housing for resale.

Mr. Eggleston earned a Bachelor's and Master's degree in Political Science from Ball State University.

CHICAGO, ILLINOIS

Melissa A. Robinson
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Prior to joining HUD's Chicago, Illinois office, Melissa Robinson, a member of the Omaha tribe and Chickahominy Indian tribe, was the Executive Director of the Native Council on Economic Development Corporation in Walthill, Nebraska, where she worked with federal, State, and tribal government agencies to provide affordable homes for low-and moderate-income tribal members. She developed the Microloan program to provide Native Americans with assistance in establishing small businesses and later became the program's Director.

Melissa has served on the Board of Directors of the Nebraska Justice Center, Native American Youth Services, and The Mark of Honor Youth Lodge. She has also served on several committees and was Chairperson of the Omaha Tribe Higher Education Ad Hoc Committee.

Ms. Robinson earned a Bachelor's degree in Business Administration from Bellevue University.

DENVER, COLORADO

Ed Vaughan
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Edward Vaughan joins HUD's Denver office bringing 17 years of experience in developing affordable housing programs for low-and moderate-income families and elderly persons. A HUD-Certified Comprehensive Housing Counselor, he has specialized in the rehabilitation of substandard housing in economically depressed neighborhoods and has assisted low- and moderate-income families with budget, credit, and home maintenance training programs. Mr. Vaughan has been instrumental in creating mortgage loan programs in partnerships between city and State governments and local lenders. He has coordinated efforts to construct new houses once an area is stabilized, leveraging construction financing with Community Development Block Grants and HOME funds. His most recent position was with The Native Council on Economic and Community Development, where he was the Project Manager providing technical assistance and construction management of 24 single-family housing units on the Omaha Indian reservation in Macy, Nebraska.

Mr. Vaughan is the recipient of numerous awards and certificates, and in 1992 was the Governor's appointee to the Nebraska Interagency Council on Homelessness. He has pursued education in personal and commercial Insurance at the University of Iowa, Credit Counseling at the University of Maryland, and Business Administration at Creighton University.

OKLAHOMA CITY, OKLAHOMA

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John Johnston joins HUD's Oklahoma City office bringing almost ten years of experience in the economic development of Native American communities. Prior to joining HUD, he was an independent Consultant and Founder of Capital Markets Group, providing venture capital funding and investment banking services to a variety of businesses. John is also a former Managing Director with Native American Ventures, Inc. Prior to that, he served as a Venture Capital Consultant and tribal liaison for Diablo Associates, Inc. of California, facilitating joint investment partnerships between Indian tribes and private companies. He also served as Branch Chief of Customer Service for the Department of Interior, Office of Special Trustee for American Indians Office of Trust Funds Management, where he prepared investment plans for tribal entities and educated tribal leaders in trust fund management options. As the Executive Director of the Chickasaw Nation of Oklahoma Industrial Development Commission, he negotiated over \$11 million dollars in investment banking packages for new business construction, creating new jobs and revenues of more than \$25 million per year.

Mr. Johnston has volunteered with the Native American Financial Officers Association, the National Congress of American Indians, the National Indian Business Association, and the National Association of Small Business Investment Companies. He was involved with the Intertribal Council meetings of the Five Civilized Tribes of Oklahoma and has been a soccer, tee ball, and basketball Coach.

John is an enrolled member of the Choctaw Nation of Oklahoma, and a graduate of the National Venture Capital Association's/National Association of Small Business Investment Companies - Venture Capital Institute.

PHOENIX, ARIZONA

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Joanna Donohoe joins HUD's Phoenix Office as a Native American Initiatives Specialist and the on-site Project Manager for the One-Stop Mortgage Center Initiative pilot at the Navajo Nation. She will be outstationed in Gallup, New Mexico. She served for several years with the Office of the Comptroller of the Currency (OCC), Department of the Treasury in Washington, DC. Her most recent position with the OCC was as an Attorney in the Legislative and Regulatory Activities Division, where she coordinated OCC involvement in interagency initiatives to foster economic development and the provision of financial services on Native American lands. She also served as a Special Assistant to the Chief of Staff and a Congressional Liaison Specialist. Before joining OCC, she served as a Legislative Representative and State Liaison for The Independent Bankers Association of America in Washington, DC.

Ms. Donohoe is the Founder and former President of the Women in Housing and Finance Foundation, a nonprofit corporation which conducts educational programs in housing and finance to benefit low-income residents of Washington, DC.

Joanna earned a Bachelor's degree in American Government from the University of Virginia and a Juris Doctorate from The Catholic University of America.

PINE RIDGE, SOUTH DAKOTA

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Emma Iron Plume-Clifford brings to HUD's Pine Ridge office a unique understanding of the housing and economic development issues of Native American reservations. Ms. Iron Plume-Clifford is the former Tribal Council Representative of the Wounded Knee District, Oglala Sioux Tribe in Pine Ridge. She also served as Vice Chairperson of the Economic Development and Judiciary Committees. During her term, she worked closely with State rural development officials to provide housing to low-income residents of the Pine Ridge reservation.

Ms. Iron Plume-Clifford has served as a fund-raiser for many educational, civic, and church organizations that provide housing, goods, and services to Native Americans. She is involved with Youth Works, Inc., an organization of youth groups volunteering to paint homes in the Wounded Knee District. She has also served on several school and college boards on the Pine Ridge reservation.

Ms. Iron Plume-Clifford earned a degree in General Studies from Oglala Lakota College.

SEATTLE, WASHINGTON

Max C. Rice
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Max Rice joins the Community Builders in HUD's Seattle office bringing 25 years of experience in HUD's Federal Housing Authority programs. He is a former Multifamily Housing Representative for the Multifamily Quality Assurance Office outstationed from Chicago, helping to develop guidelines for streamlining the mortgage lending process under the Department's fast track multifamily housing program. While serving as Single Family Housing Program Advisor for HUD's Seattle office from 1995 to 1997, he assisted a task force, in conjunction with the Bureau of Indian Affairs, to increase housing loans to Native Americans. He has worked closely with tribal housing authorities in developing the FHA program for mortgage lending on Indian trust lands and authored a guide to assist banks and mortgage companies in lending on Indian land.

Mr. Rice served for 13 years as a Board member of his church, during which time he held several positions, including assistant treasure, mission secretary, and Deacon. He founded a benevolence committee to maintain a food bank and provide voucher assistance for housing emergency situations.

Max earned a Bachelor's degree in Urban Development from the University of Washington-Seattle and a Master's degree in Public Administration from the University of Puget Sound.

WASHINGTON, DC

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Mr. Floyd's volunteer activities have focused on the promotion of collaborative "public deliberation." James has served as a Local Faculty member for the Pacific Northwest Public Policy Institute in Portland, Oregon and the Public Policy Institute at the University of California at Davis; as a National Faculty member for the National Issues Forum Public Policy Workshops of the Kettering Foundation in Dayton, Ohio; and as a National Trainer for Environmental Issues Forums sponsored by the North American Association for Environmental Education. James also served as a 1997-1998 Fellow in the Education Policy Leadership Program of the Institute for Educational Leadership (IEL) in Washington, DC. Mr. Floyd earned a Bachelor's degree in Psychology and Economics from Oklahoma City University, a Master's degree in Urban Economics from the University of Missouri-St. Louis, and is a doctoral candidate in Urban Studies and Planning (Policy Analysis) at Portland State University.

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Ms. Helfrich has served as a volunteer Tutor for third graders at the Ketcham School in Washington, DC, and is currently a Reading Partner in the Everybody Wins reading program in Washington. As part of the Women in Science program of the National Oceanic and Atmospheric Administration, she has given presentations for sixth-grade girls on opportunities for women in science and public policy. Ms. Helfrich is a Board Member of the Smith College Club of Washington and volunteers with Habitat for Humanity.

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Ms. Scullion was selected as an Associate Fellow for the Institute on Aging at the University of Pennsylvania and became a Board Member of the International Arts-Medicine Association. Over the past 10 years, she has volunteered for Habitat for Humanity, helped feed and clothe the homeless, and assisted the homebound elderly in her community.

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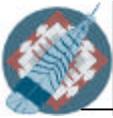
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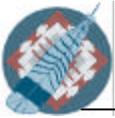
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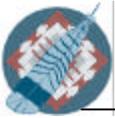
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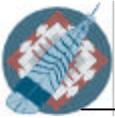
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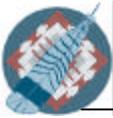
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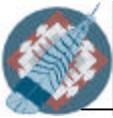
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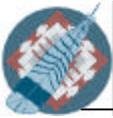
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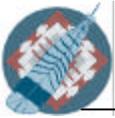
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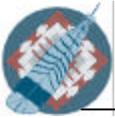
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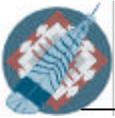
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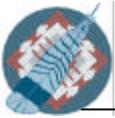
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*Shared Visions: The Native American Homeownership, Legal
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Resource Room Participants

NOTE: HUD has not necessarily reviewed the private products and companies displayed in the resource room. Booths were available free of charge to any organization who requested one. Tribes/TDHEs and Housing Authorities are recommended to use sound judgement and follow applicable procurement requirements in selecting products and companies.

American Association of Retired Persons (AARP)

AMERIND Risk Management Corporation

The Enterprise Foundation

Fannie Mae

Federal Housing Finance Board

First American Services Group

Federal Reserve Bank, Minneapolis

Freddie Mac

Ginnie Mae

Homeownership Week (Information Only)

Housing Assistance Council (HAC)

Housing and Development Reporter, West Group

Indian Housing Block Grant Program

National American Indian Housing Council (NAIHC)

National Cooperative Bank/NCB Development Corporation

NCCED (Information Only)

Neighborhood Networks (Information Only)

North American Native Bankers Association

Rural Community Assistance Corporation (RCAC)

Steelheart, Inc.

Travois — Affordable Housing & Community Development Corporation

U.S. Department of Agriculture — Rural Utilities Service/Rural Development



U.S. Department of Housing and Urban Development

U.S. Department of Housing and Urban Development — Federal Housing Administration

U.S. Department of Housing and Urban Development — Office of Fair Housing and Equal Opportunity

U.S. Department of Housing and Urban Development — National Office of Native American Programs

U.S. Department of Housing and Urban Development — Shared Visions Initiative (Pine Ridge)

Washington Mutual Bank (Information Only)





Chicago, Illinois
March 30 – April 1, 1999

Resource Room Participants

American Association of Retired Persons (AARP)

AARP is the nation's leading organization for people age 50 and older. It serves their needs and interests through information and education, advocacy, and community services which are provided by a network of local chapters and experienced volunteers throughout the country. The organization also offers members a wide range of special benefits and services, including *Modern Maturity* magazine and the monthly *Bulletin*.

Fannie Mae

Native American Lending. Fannie Mae's corporate mission is to provide products and services that increase the availability and affordability of housing for low-, moderate-, and middle-income Americans, regardless of where they live. Fannie Mae is the nation's leading lender in home loans, financing one out of every five home purchased in the United States.

Fannie Mae has pledged to provide \$1 trillion in targeted housing finance to underserved communities across the country by the end of the decade. As part of this initiative, Fannie Mae has been working with Native American tribes, mortgage lenders, the Bureau of Indian Affairs and other housing leaders to increase mortgage financing opportunities for Native Americans.

Most recently, Fannie Mae awarded a \$50,000 fellowship to allow NAIHC to hire a person to assist tribes and Fannie Mae in developing investment opportunities in 1999 that will in turn serve as models for future investments.

Fannie Mae's accomplishments in Native American lending to date include:

- Providing nearly \$65 million in affordable targeted mortgage financing, such as tribal lands, for Native Americans from 1995 through the end of 1998.
- Offering the most comprehensive menu of mortgage loans for Native Americans living on trust or restricted lands, including the HUD Section 184 Loan Guarantee Program, the FHA Section 248 Mortgage Insurance Program, the Department of Agriculture Rural Housing Native American Pilot, Fannie Mae's Native American Conventional Lending Initiative, and the FHA Section 247 Program for Native Hawaiians.
- Issuing the first Mortgage-Backed Security (MBS) that consisted entirely of loans made to Native Americans.
- Helping over 25,000 Native American families purchase homes off trust land, by providing over \$2.3 billion in affordable financing, from 1995 to 1997.

- Expanding the number of tribes we serve from four tribes in three states in 1995, to 67 tribes in 18 states through 1998.
- Investing in 253 households in 1998 – bringing the total number of households served on tribal lands to 707 since 1995.
- Purchasing the largest single privately-funded transaction ever on trust land -- \$5.4 million lease-purchase, construction/permanent loans financing homes in a project in Shiprock, New Mexico for the Navajo nation. Fannie Mae also invested in other large scale housing projects with the Apache of Oklahoma, Lac due Flambeau, and Grand Ronde.
- Approving three Native American lenders – the Blackfeet National Bank in Montana and, in Alaska, the Kodiak Island Indian Housing Authority and Tlingit-Haida – under our Minority- and Women-Owned Lender initiative.
- Investing in Native American housing without any federal guarantees through tax credits in Nebraska, North Dakota, and Montana; conventional loans with Oklahoma tribes (including a rehabilitation project with the Apache tribe); and several negotiated transactions on trust land with the Ft. Mojave and Cochiti Pueblo tribes.
- Training on lending to Native Americans for thousands of tribal representatives, tribal members, lenders and other interested affiliate parties, and Fannie Mae staff.
- Sponsoring housing fairs with over a dozen tribes, including Lac du Flambeau, Navajo, White Mountain Apache, Gila River, and Salt River to provide free information on affordable mortgage products and the home-buying process.
- Funding organizations to develop special home buyer training for Native Americans living on trust lands, and to provide homeownership counseling, including the National American Indian Housing Council and a consortium of tribes in Oklahoma.

For additional information on Fannie Mae's Native American lending initiative, media should contact Betsy Hildebrandt at (202) 752-7608. Consumers may call the Fannie Mae Consumer Resource Center toll-free at 1-800-7FANNIE (1-800-732-6643), Monday through Friday, 9 a.m. to 5 p.m. ET.



Housing Assistance Council

The Housing Assistance Council (HAC) was founded in 1971 to support the development of rural low-income housing nationwide. HAC is a nonprofit corporation that provides technical housing services, loans to primarily nonprofit and public agency developers from a revolving fund, housing program and policy assistance, research and demonstration projects, and technical and information services, including HAC NEWS and a quarterly magazine called "Rural Voices". Since 1991, HAC has worked with tribes in four states to help develop their capacity to use the housing programs of USDA's Rural Development (formerly Farmers Home Administration), and prepared a guide for the use of Rural Development staff in doing lending on Native American lands. HAC operates from its Washington, DC office and four regional offices (Albuquerque, NM, Atlanta, GA, Mill Valley, CA, and Kansas City, MO). For more information contact HAC at 1025 Vermont Avenue, N.W., Suite 606, Washington, D.C., 202/842-8600 or our website at <http://www.ruralhome.org>.

Indian Housing Block Grant (IHBG) Program

The Indian Housing Block Grant (IHBG) Program distributes over \$600 million dollars to tribes and TDHEs for affordable housing activities through a formula mechanism. This formula mechanism consists of two major components, Current Assisted Stock and Need and relies on data from HUD, tribes, TDHEs and the 1990 U.S. Decennial Census. The IHBG formula resource table will have individual tribal data and national information on Fiscal Year 1999 allocations. The resource table will also be staffed with experts who can advise tribes/TDHEs how to correct their Formula Current Assisted Stock or challenge their Needs data.

National American Indian Housing Council (NAIHC)

The National American Indian Housing Council (NAIHC), is a national membership organization that promotes, supports, and uphold tribes and tribally-designated housing entities in their efforts to provide culturally-relevant, decent, safe, sanitary, and affordable housing for Native people in Indian communities and Alaskan Native villages.

NAIHC provides advocacy, research, technical assistance, and training for Indian housing staff, publishes *Native American Housing News* and legislative updates, maintains the only national Resource Center on Indian housing, and convenes an annual legislative conference and convention.

National Cooperative Bank/NCB Development Corporation

National Cooperative Bank provides a broad array of financial products and services to commercial and real estate ventures that are guided by certain cooperative principles. NCB was chartered by Congress in 1978 to meet the financial needs of an underserved niche — those organizations that operate cooperatively, primarily for the benefit of their membership. In 1981, NCB was restructured as a privately-held financial institution — a cooperative that is owned by our borrowers.

Through the Bank's nonprofit affiliate, NCB Development Corporation, we offer development assistance and financing to the nation's at-risk communities. NCBDC provides a full spectrum of development tools from technical assistance to equity investments, and from pre-development capital to permanent financing. Because of NCBDC's structure, we can serve as a bridge to other capital sources including grants and investments.

Travois — Affordable Housing & Community Development

Travois — Affordable Housing & Community Development is a Minnesota corporation devoted to assisting corporations, communities, and Indian Tribes in developing affordable housing and community economic development projects and strategies. Building upon the extensive experience of its President, David W. Bland, the firm can undertake comprehensive market analyses to determine the demand for housing, retail establishments, hotel facilities and other commercial endeavors, as well as assistance in financial packaging, management and marketing. Affordable housing, however, is the primary focus of the corporation, particularly housing developed through the Low Income Housing Tax Credit program. In that regard, the firm has extensive experience in developing housing for low income families, elderly, and persons with disabilities.

The firm's president has directly developed or consulted on dozens of housing projects created through the Tax Credit program, one of the most complex of tax and real estate transactions. Several of the projects directly developed by Mr. Bland have received national recognition, including awards from the Fannie Mae Foundation, the Social Compact, and the All-America City award.

The firm is currently assisting twelve Indian organizations in the development of Low Income Housing Tax Credit housing projects. Its track record is impressive, winning awards of 9 Indian HOME grants for its clients prior to NAHASDA, and receiving 18 out of a possible 20 Low Income Housing Tax Credit program awards. The firm also assisted 5 Indian Tribes in the preparation of their Comprehensive Housing Plans under NAHASDA, the Native American Housing Assistance and Self-Determination Act.



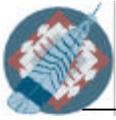
U.S. Department of Agriculture — Rural Utilities Service

The U.S. Department of Agriculture's Water and Waste Disposal program, managed by the Rural Utilities Service Water and Environmental Programs Division, is a funding source for water and wastewater projects in rural areas. It makes low-cost loans and grants to public and nonprofit organizations for water and wastewater projects in rural areas with populations of up to 10,000 residents. The organizations that are eligible to apply for program funds include municipalities, counties, special-purpose districts, American Indian tribes, and nonprofit corporations.

U.S. Department of Housing and Urban Development —Fair Housing Administration

FHA Section 248 is intended to promote affordable housing opportunities for Native American families on Indian trust land. FHA Section 248 can insure mortgages on dwellings involving 1-4 units including: new construction, purchase of an existing home, refinance of an existing home and rehabilitation of an existing home. The borrower must intend to occupy the property as a principal residence.





**Chicago, Illinois
March 30 – April 1, 1999**

Program Initiative Recognition Awards

Recognition for Economic Development Program Initiative

Confederated Tribes of the Umatilla Indian Reservation Pendleton, Oregon

In 1994, the Confederated Tribes of the Umatilla Indian Reservation assessed their needs to increase employment among tribal members and provide increased funding for the community and region. As a result of this assessment, the Umatilla built the Wildhorse Resort, which was completed in 1998. The resort features such amenities as a casino, hotel, RV park, Tamastlikt cultural institute and championship golf course. The resort also employs over 500 people, with approximately half comprising of tribal members.

Cow Creek Band of Umpqua Tribe of Indians Roseburg, Oregon

In 1992, the Cow Creek Band of Umpqua Tribe of Indians began to develop plans for economic development throughout their area to demonstrate their focus on self-sufficiency for the Tribe and their members. The first undertaking was the Seven Feathers Hotel and Casino in Canyonville, Oregon, featuring a casino, hotel, ballroom, restaurant and convention center. The Cow Creeks are not only profiting from the operation of the hotel and casino; rather, the Tribe is using these profits to invest in other business ventures throughout Southern Oregon, such as purchasing two motels, a meat processing business and the Seven Feathers Truck and Travel Center. The Tribe has also purchased property located along the Interstate.

Recognition for Homeownership Program Initiative

Comanche Nation Housing Authority – TDHE for the Comanche Nation Lawton, Oklahoma

The Comanche Nation Housing Authority established a homeownership program to increase homeownership among Comanche families living in Southwestern Oklahoma. Through this program, qualified Native American families will receive a mortgage loan and down-payment assistance. In addition, the families are given freedom in selecting a home within their price range allowing families to fulfill their dream of owning their own home.



**The Choctaw Nation Indian Housing Authority
Coalgate, Oklahoma**

The Choctaw Nation Indian Housing Authority has begun a new program to construct homes for very low, low, and moderate income tribal members in order to increase homeownership. In addition, many tribal members will be hired to construct these homes throughout the life of the project.

**Coeur d'Alene Tribe
Coeur d'Alene Planning and Development Corporation
Plummer, Idaho**

In response to a critical housing shortage within the Coeur d'Alene Reservation, the Coeur d'Alene Tribe, in conjunction with the Tribal Planning and Development Corporation, established a homeownership program, the Osprey Spirit II. The goal of the program is to provide housing that replicates private homeownership to tribal families and provide down-payment assistance based on income and family size, with additional support for elderly and disabled applicants. In support of this goal, several grant proposals were developed for funding, private lenders were identified and an active marketing effort is conducted to continue assisting low and moderate-income families.

**Grande Ronde Tribal Housing Authority
Grande Ronde, Oregon**

In 1997, the Grande Ronde Tribal Housing Authority established its homeownership program, Grand Meadows. The purpose of the program is providing a housing community for tribal members, and it now consists of a 38-unit manufactured housing development on tribal land in Grande Ronde, Oregon. Grand Meadows is rather unique in nature, as it provides a community for tribal families and elders of all income classes. Prior to its inception, there was no tribal housing on tribal land in Grande Ronde.

**The Chickasaw Nation
Ada, Oklahoma**

In April 1998, the Chickasaw Nation, in collaboration with PMI Mortgage Insurance Co., established a homeownership program, the Chuka Chukmasi ("Beautiful Home") Loan Program. It is initiated to provide homeownership opportunities to Chickasaw citizens living within the State of Oklahoma by offering homeownership loans with low down payments and no income limits. The program allows the Chickasaw Nation to provide assistance in the form of a second mortgage loan for down payments, closing costs, reserve requirements, and/or permanent interest rate buy down.



Recognition for Rental Housing Program Initiative

Red Lake Band of Chippewa Red Lake Reservation Housing Authority Red Lake, Minnesota

The Red Band of Chippewa established their rental housing program to offer “better than average” housing to carefully selected single families. This program, the Red Lakes Home II Project, consists of single family homes, and is unique in that the families are responsible for the management and maintenance of the homes. The project is undertaken using both NAHASDA funds and Low Income Tax Credits.

Oti Kaga, Inc. – Cheyenne River Sioux Indian Reservation Eagle Butte, South Dakota

Oti Katga, Inc. established their rental housing program to increase both the quality and stock of housing in the community and to promote higher education. This program, South Main Apartments, is a 20-unit multifamily rental housing project financed through U.S. Department of Agriculture funds, Low Income Housing Tax Credits, as well as other private funds. It serves both families and students and provides support to the Cheyenne River Community College and Presentation College – Lakota Campus.

AVCP Housing Authority Bethel, Alaska

In February 1999, the AVCP Housing Authority established their rental housing program, Lulu Heron Congregate Home in Bethel, Alaska – a 16-unit congregate home. Its purpose is to provide a quality assisted living facility for low income, elderly residents. This program allows elders to remain in the community, near their families, and to continue their traditional ways of life. Lulu Heron is a congregate home, in which all residents must be at least 62 years of age or disabled; it is similar to assisted living facilities. The day it opened, Lulu Heron had every room (of the 16 units) rented and a waiting list.

Kodiak Island Housing Authority Kodiak, Alaska

In 1998, the Kodiak Island Housing Authority established their rental housing program with the intent to promote higher education among Native Americans in Alaska. The Housing Authority saw an opportunity to transition NAHASDA funds into rental assistance for students. Since most students must leave Kodiak Island to attend institutions of higher learning, a program was needed to assist them with housing costs while they are in school. Now students can afford to live off campus and attend schools that they might not have been able to attend previous to the program establishment.



Salish & Kootenai Housing Authority
Pablo, Montana

The Salish & Kootenai Housing Authority established its rental housing program, the Felsman Addition, which consists of 20 units of rental property. This program is the first Tax Credit project in the State of Montana created by an Indian Tribe.



U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

DEPOSITORY AGREEMENT

This **Agreement**, entered into this _____ day of _____, 19____,

between _____

(herein called the "Recipient"), [a [federally recognized or state recognized] Indian tribe; an Indian Housing Authority created under [tribal or state] law; or an entity created under [tribal or state] law providing for housing authorities or housing entities for Indians]

and _____

(herein called the "Depository") located at

_____.

Witnesseth:

Whereas, the United States Department of Housing and Urban Development (herein called "HUD") has entered into one or more grant agreements (herein called "NAHASDA Grant Agreement") with the Recipient for the purpose of funding affordable housing activities under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (herein called "NAHASDA");

Whereas, the Recipient may borrow funds for affordable housing activities which HUD guarantees under the Title VI of NAHASDA pursuant to a guarantee agreement (herein called "Guarantee Agreement");

Whereas, the Recipient is required to hold funds for investment in an account subject to an agreement in a form prescribed by HUD; and

Whereas, the Recipient may only invest in the following (herein collectively called "Securities prescribed by HUD"): obligations of the United States; obligations issued by United States Government sponsored agencies; securities that are guaranteed or insured by the United States; mutual (or other) funds registered with the Securities and Exchange Commission and which invest only in obligations of the United States or securities that are guaranteed or insured by the United States.

Now Therefore, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. The deposits and accounts of the Depository shall continue to be insured by either the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.
2. All monies deposited by the Recipient with the Depository shall be credited to the Recipient in a separate interest bearing deposit or interest bearing accounts, designated: **[enter account name(s) and/or account number(s)]** _____
(herein called the "Accounts"). Any portion of Recipient funds not insured by a Federal insurance organization shall be fully (100%) and continuously collateralized with specific and identifiable Securities prescribed by HUD. Such securities shall be pledged and set aside in accordance with applicable law or Federal regulations. An independent custodian or an independent third party shall have possession of the securities on behalf of the Recipient as bailee (evidenced by safe keeping receipt and a written bailment for hire contract) for the full term of deposit. The Depository may substitute other Securities prescribed by HUD as collateral to equal or increase the value. If Recipient is an Indian tribe or an agency of an Indian tribe, the collateral shall be in United States bonds and otherwise as may be prescribed for public funds by the United States Secretary of the Treasury.
3. Except as stated in paragraph 5, the Depository shall honor any (a) check or other order to pay from the Accounts, or (b) directive to purchase Securities prescribed by HUD with monies from the Accounts or to sell the securities, if such order or directive is in writing and signed on behalf of the Recipient by an authorized representative who is designated by resolution of the governing body of Recipient to have such authority. To assist the Depository in its obligation, the Recipient shall furnish the Depository with a certified copy of the resolution.

4. Any securities received for the Recipient or purchased by the Depository with monies from the Accounts shall be considered to be a part of the Accounts and shall be held by the Depository in safekeeping for the Recipient until sold. Interest on such securities and the proceeds from the sale thereof shall be deposited in the Accounts upon receipt.
5. If the Depository receives written notice from HUD that no withdrawals by the Recipient from the Accounts are to be permitted, the Depository shall not honor any check or other order to pay from the Accounts or directive to purchase or sell securities, or permit any withdrawals by the Recipient from the Accounts until the Depository is authorized to do so by written notice from HUD. In addition, upon written demand from HUD, the Depository shall pay to HUD funds from the Accounts, which may be the entire amount in the Accounts. HUD may only demand funds in accordance with the requirements of 24 CFR §1000.538 or in the event of default pursuant to the Guarantee Agreement.
6. The Depository is not obligated to be familiar, and shall not be charged, with knowledge of the provisions of the NAHASDA Grant Agreement and Guarantee Agreement, and shall be under no duty to investigate or determine whether any actions taken by either the Recipient or HUD in respect of the Accounts are consistent with or are authorized by the NAHASDA Grant Agreement or Guarantee Agreement or whether either the Recipient is in default or noncompliance with the NAHASDA Grant Agreement or Guarantee Agreement. The Depository shall be fully justified in accepting and acting on, without investigation, any certificate, notice, or demand furnished to it pursuant to the provisions of this Agreement and which the Depository shall in good faith believe to have been duly authorized and executed on behalf of the party in whose name the same purports to have been made or executed.
7. The rights and duties of the Depository under this Agreement shall not be transferred or assigned by the Depository without the prior written approval of the Recipient and HUD. This Agreement may be terminated by either party hereto upon thirty days written notice to the other party, and HUD. The rights and duties of the Depository hereunder shall not be transferred or assigned nor shall this Agreement be terminated during any period in which the Depository is required to refuse to permit withdrawals from the Accounts as provided in paragraph 5.
8. HUD is intended to be a third party beneficiary of this Agreement and may sue to enforce its provisions and to recover damages for failure to carry out its terms.

9. The Depository shall promptly notify the Recipient of the deposit or credit of any monies to the Accounts.
10. The provisions of this Agreement may not be modified by either party without the prior written approval of HUD.
11. (For use only in those states that have laws prohibiting the Recipient from implementing paragraph 2.)

At no time shall the Recipient's funds in the Accounts be permitted to exceed the amount insured by federal deposit insurance (herein the "Insured Amount"). At any such time as the amount of funds in the Accounts reach the Insured Amount, whether by the accrual of interest or otherwise, the Depository shall promptly, as directed by the Recipient, and in an amount sufficient to limit the funds in the Accounts to the Insured Amount, either: (a) remit payment to the Recipient, or (b) on behalf of the Recipient, purchase Securities prescribed by HUD. Such securities shall not be considered to be a part of the Accounts pursuant to paragraph 5 hereof but shall be held by the Depository as custodian or trustee for the Recipient in a separate account established for that purpose by the Depository (herein the "Securities Account"). The Securities Account shall be designated: **[enter account name and/or account number]**

Income or other proceeds from securities held in the Securities Account shall, as directed by the Recipient, upon receipt, be paid to or on behalf of the Recipient; provided, however, that such proceeds shall, to the extent consistent otherwise with the provisions of this section, be deposited in the Account. If the Depository receives written notice from HUD pursuant to paragraph 6 hereof that no withdrawals by the Recipient from the Account are to be permitted, the Depository shall not honor any directive from the Recipient to sell securities, or permit any withdrawals by the Recipient, from the Securities Account until the Depository is authorized to do so by written notice from HUD. During the pendency of such restrictions on the Account and the Securities Account, the Depository, except as directed in writing from HUD, shall not remit any payment to the Recipient for the purpose of limiting the amount of funds in the Account to the insured amount but shall instead purchase Securities prescribed by HUD and hold such securities in the Securities Account.

NOTE: Strike paragraph 11 if not applicable.

In Witness Whereof, the Recipient and the Depository have caused this Agreement to be executed in their respective names and their respective seal to be impressed hereon and attested as of the date and year first above written.

Recipient

By: _____

Title: _____
Authorized representative

[SEAL]
ATTEST:

Depository

By: _____

Title: _____

[SEAL]
ATTEST:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4170-N-19]
RIN 2577-AB74

Indian Housing Block Grant Program:
Notice of Revision to Transition Requirements -
Proceeds of Sales of Former 1937 Act Homeownership Units

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of revised transition requirements - proceeds of sales of former 1937 Act homeownership units

SUMMARY: This notice provides additional and updated guidance relating to the sale of homeownership units and to cash management and investment policies and procedures. The purpose of this guidance is to facilitate the smooth transition from procedures and resources under the United States Housing Act of 1937 (1937 Act) to those under the Indian Housing Block Grant (IHBG) Program.

DATES: These transition requirements are effective upon publication.

FOR FURTHER INFORMATION CONTACT: Deborah M. Lalancette, National Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675-1600 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (NAHASDA) was enacted on October 26, 1996, and took effect on October 1, 1997. NAHASDA requires HUD to make grants on behalf

of Indian tribes to carry out affordable housing activities. A final rule to implement NAHASDA and establish the IHBG Program was published on March 12, 1998, (63 FR 12334), with an effective date of April 13, 1998.

NAHASDA also required the publication of a notice in the Federal Register to establish any requirements necessary for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the 1937 Act and other related provisions of law to the provision of assistance in accordance with NAHASDA. An initial transition notice was published on January 27, 1997 (62 FR 3972), with revisions published on February 24, 1997 (62 FR 8258), January 27, 1998 (63 FR 4076), April 15, 1998 (63 FR 18804), and October 2, 1998 (63 FR 53084).

This revision to the transition notice requirements addresses the treatment of proceeds from the sale of homeownership units. Question 42 in the transition notice revision published on January 27, 1998 treated proceeds from the sale of homeownership units the same as rental and homeownership operating reserves, mutual help equity accounts under the Mutual Help Homeownership Opportunity Program, and earned home payment accounts under the Turnkey III programs for purposes of section 210 of NAHASDA. Section 210 states that any funds for programs for low-income housing under the United States Housing Act of 1937 that, on the date of the applicability of NAHASDA, are owned by, or in the possession or under the control of, the IHA for the tribe, including all reserves not otherwise obligated, shall be considered assistance under NAHASDA and subject to the NAHASDA provisions relating to use of such assistance.

In response to inquiries, HUD has reconsidered Question 42 and determined that section 210 of NAHASDA does not apply to the proceeds from the sale of homeownership units. The purpose of the statutory requirement for the transition notice is to facilitate the transition from the 1937 Act programs to the IHBG program. Proceeds of sale of homeownership units under the 1937 Act are not characterized as program income under the IHBG regulation. By providing that the proceeds can be used for any housing activity, community

facility, or economic development activity and are not subject to other Federal requirements, HUD is seeking to expedite the smooth transition to the IHBG program. Accordingly, Question 42 is amended by this notice to remove the reference to homeownership unit sales proceeds, and Questions 42A and 42B are added to provide guidance on the treatment of these proceeds.

In addition to addressing homeownership unit sales proceeds, this notice also revises Question 46 to extend and clarify the applicability of PIH Notice 96-33 to cash management and investment policies and procedures.

II. Revisions to the January 27, 1998 Transition Notice

Accordingly, FR Doc. 98-1939, the Indian Housing Block Grant Program - Revised Notice of Transition Requirements, published in the Federal Register January 27, 1998, 63 FR 4076, is amended as follows:

1. On page 4085, in column 3, Question 42 and Answer 42 are revised to read as follows:

Question 42. What happens to rental and homeownership operating reserves, mutual help equity accounts under the Mutual Help Homeownership Opportunity Program, and earned home payment accounts under the Turnkey III program?

Answer 42. Section 210 of NAHASDA states that any funds for programs for low-income housing under the United States Housing Act of 1937 that, on the date of the applicability of the Act, are owned by, or in the possession or under the control of, the IHA for the tribe, including all reserves not otherwise obligated, shall be considered assistance under the Act and subject to the provisions of this Act relating to use of such assistance. In other words, the funds are considered assistance under NAHASDA and are subject to NAHASDA requirements. The funds in the accounts are also subject to existing agreements with the homebuyers.

2. On page 4085, in column 3, a new Question 42A and Answer 42A are added to read as follows:

Question 42A. Can proceeds from the sale of homeownership units be used for purposes other than eligible NAHASDA activities?

Answer 42A. Yes. We have determined that section 210 of NAHASDA addresses only the 1937 Act funds provided by HUD and not the proceeds from the sale of homeownership units. Proceeds can be used for any housing activity, community facility or economic development activity that benefits the community. If the use of these funds is currently outlined in an Administrative Use Agreement, the Agreement can be terminated at the request of the Indian Housing Authority (or successor entity). The funds can then be used for any housing activity, community facility or economic development activity.

3. On page 4085, in column 3, a new Question 42B and Answer 42B are added to read as follows:

Question 42B. What Federal requirements would apply to the proceeds from the sale of homeownership units?

Answer 42B. The use of proceeds are not subject to any Federal requirements, except that the funds must be used for the activities set forth in Answer 42A.

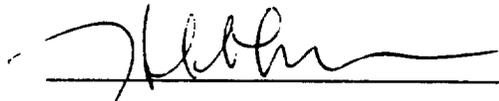
4. On page 4086, in column 1, Answer 46 is revised to read as follows
(Question 46 is republished for the convenience of readers):

Question 46. What cash management and investment policies and procedures are in effect as of October 1, 1997?

Answer 46. Current procedures outlined in PIH Notice 96-33 (HA) dated June 4, 1996, extended by Notice 98-46 (HA) dated September 1, 1998, titled "Required HA Cash Management and Investment Policies and Procedures" will continue to apply to 1937 Act funds which are held in reserve accounts until further notice. Please note, however, that sections 7(c) and 8 of Notice 98-46 do not apply to 1937 Act funds. Also, the limit on maturity dates outlined in section 6 of Notice 96-33 does not apply.

Authority: 25 U.S.C. 4116(a).

DATED: _____



Harold Lucas, Assistant
Secretary for Public and
Indian Housing

[FR-4170-N-19]



MAR 30 1999

OFFICE OF THE ASSISTANT SECRETARY
FOR PUBLIC AND INDIAN HOUSING

TO: Indian Tribes and Tribally Designated Housing Entities

FROM: Jacqueline Johnson, Deputy Assistant Secretary,
Office of Native American Programs

SUBJECT: Title VI Loan Guarantee Demonstration Program and Capacity-Building Grant Funds

I have important information to transmit to you about the Title VI Loan Guarantee Demonstration Program. This information will enable you to begin the process of obtaining a loan guarantee. A description of the Demonstration Program and the Capacity-Building Grant is set forth below. If you are interested in the Demonstration Program, I encourage you to contact IHA Management Systems and avail yourselves of the technical and other assistance that IHA Management Systems can provide under the Capacity-Building Grant, *at no cost to you*.

TITLE VI LOAN GUARANTEE DEMONSTRATION PROGRAM

Statutory authority: Title VI of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (25 U.S.C. 4101 et seq.)

Regulatory authority: 24 CFR Part 1000, Subpart E.

Demonstration Notice: 63 Fed. Reg. 39682 (July 23, 1998)

Title VI of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (NAHASDA) authorizes HUD to guarantee notes or other obligations issued by Indian tribes or Tribally Designated Housing Entities (TDHEs) with tribal approval for the purpose of financing affordable housing activities described in section 202 of NAHASDA. HUD may only provide the guarantee if financing cannot be completed without the use of the guarantee. The Indian tribe and TDHE pledge their current and future Indian Housing Block Grant (IHBC) funds to assure repayment of the loan and may borrow up to five times their IHBC grant amount. HUD's guarantee covers 95% of the principal and interest

due on the loan. The full faith and credit of the United States is pledged to the payment of the guarantee.

For fiscal year (FY) 1998, Congress appropriated \$5 million for the cost of Title VI loan guarantees, which yielded \$45.5 million in guarantee authority. For FY 1999, \$6 million was appropriated for the cost of Title VI loan guarantees, which yielded \$54,200,542 in guarantee authority. No guarantees were issued in FY 1998 due to delays in the publication of regulations and critical issues that required inter-agency communication to resolve. The FY 1998 and FY 1999 guarantee authority does not expire. Therefore, a total of \$99,655,087 in guarantee authority is available. The appropriation acts for FY 1998 and FY 1999 designated the funding for Title VI guarantees as a demonstration.

The objectives of the Title VI Demonstration Program are to develop models which provide innovative ways to enhance development of affordable housing, increase access to private capital to further economic growth, and encourage the investment and participation of traditional financial institutions which do not customarily serve Indian reservations and other Native American areas. Under the demonstration, eligible activities are limited to: (1) housing assistance; (2) housing development; and (3) model housing activities approved by HUD.

Eligible Borrowers: To participate in the Title VI Loan Guarantee Demonstration Program, a borrower must:

- Be a Federally recognized Indian tribe or a TDHE that is an approved recipient for the IHBC funds;
- Have experience with complex financial transactions;
- Certify that it was unable to obtain financing without the use of this guarantee;
- Have tribal approval that authorizes the borrower to issue or undertake financial obligations;
- Have the capacity to repay the loan without impairing its ability to use its IHBC funds, particularly for operation and maintenance of the rental housing developed under the U.S. Housing Act of 1937; and
- Pledge all current and future IHBC grants as security for repayment of the loan.

Eligible Activities: Eligible affordable housing activities under the Title VI Loan Guarantee Demonstration Program are limited to the following affordable housing activities:

- **Indian housing assistance:** Modernization or rehabilitation of Indian housing developed or operated under the U.S. Housing Act of 1937.
- **Development:** Acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing.
- **Model housing activities:** Housing activities that are designed to carry out the purposes of the NAHASDA and are specifically approved by HUD.

Maximum commitment amount: Cumulative amounts borrowed may not exceed an amount equal to five times the most recent IHBG grant for the tribe.

Capacity to repay: The borrower must have the capacity to repay the loan without impairing its ability to use its IHBG funds, particularly for operation and maintenance of the rental housing developed under the U.S. Housing Act of 1937.

Security: HUD's principal security for the repayment of the loan is the borrower's pledge of all current and future IHBG funds. HUD will also require the proceeds of sale of housing which is acquired, rehabilitated or constructed with guaranteed loan funds to be deposited in an account to be used for repayment of the loan. The lender may require other security. Capacity-Building Grant funds (see below) may be used to provide security, such as a debt service reserve account.

Loan Repayment Period: The repayment period may exceed twenty years, depending upon the type and size of the activities.

Financing Source: The loans are obtained through private lenders that are traditional financial institutions.

Interest Rates: Interest rates will vary depending upon the activity undertaken, current market conditions, and the risk factor determined by the lender's analysis. The interest rate is negotiated between the borrower and lender.

Leases: Housing located on trust lands must comply with the Bureau of Indian Affairs lease requirements.

Defaults: In the event of a default on a guaranteed loan, HUD will pay 95% of the principal and interest due on the loan in accordance with the terms of the loan. HUD will exercise its rights to the security provided by the borrower.

CAPACITY-BUILDING GRANT:

Under the FY 1998 HUD Appropriation Act, \$25 million was appropriated to test comprehensive approaches for developing jobs through economic development (skill-building activities); developing affordable low- and moderate-income rental and homeownership housing; and increasing the investment of both private and nonprofit capital in rural and tribal areas of the United States. A \$3 million **Capacity-Building Grant** was awarded out of the \$25 million, in conjunction with the Title VI Loan Guarantee Demonstration Program. The purposes of the Capacity-Building Grant are:

- To strengthen the economic feasibility of Title VI guarantee projects;
- To enhance the financial security of the Title VI guarantee project;
- To finance affordable housing activities; and
- To enhance the economic benefits, such as homeownership opportunities and increase housing availability, of the project.

Technical Assistance Provider: IHA Management Systems, Inc. (IHAMS) was selected as the Capacity-Building Grant recipient and the Technical Assistance Provider. Indian tribes and TDHEs interested in developing a Title VI project should contact IHAMS at:

IHA Management Systems, Inc. (IHAMS)
Title VI Division
16042 N. 32nd Street, Suite D
Phoenix, AZ 85032
Office # (602) 482-0115 x225 or x226
Fax # (602) 485-1015
Email: ihams@ix.netcom.com
Website: www.ihams.com

Technical Assistance to be Provided by IHAMS:

- Assess the level of administrative skills that are required by the Indian tribe or TDHE to accomplish the demonstration project.
- Identify the specific type of training or services needed to enhance the skill level of employees (capacity building) of the Indian tribe or TDHE.
- Develop a Technical Assistance Plan for each Indian tribe or TDHE.
- Provide the training to the Indian tribe or TDHE or assist in the procurement of other training consultants and monitor the consultant's work.

Obtaining Capacity-Building Grant Assistance: Capacity-Building Grant assistance is available to Indian tribes and TDHEs through IHAMS after HUD determines that the activities the Indian tribe or TDHE would like to undertake with guaranteed loan funds are eligible and that the Indian tribe or THDE has experience with complex financial transactions.

IHAMS will perform a needs assessment to determine the type of skill-building activity necessary to enhance tribal skills. A Technical Assistance Plan will be developed for the Indian tribe or TDHE, focusing on the unique concerns and needs of each Indian tribe or TDHE and describe the technical assistance to be provided by/through IHAMS. Based on the amount of training required, a budget estimate shall be prepared and funds obligated on behalf of the Indian tribe or TDHE to accomplish the skill building goals and objectives.

If Capacity-Building Grants funds will be passed through to the Indian tribe or TDHE for technical assistance by a consultant other than IHAMS or for activities to strengthen the economic feasibility, enhance the financial security, or finance some of the activities of the loan guarantee project, IHAMS will estimate the cost and will enter into a subrecipient agreement with the Indian tribe or TDHE. The Capacity-Building Grant funds will then be obligated in the name of the subrecipient and held by IHAMS to pay for courses, consultants or costs of the subrecipient. IHAMS will draw down the funds using the Line Of Credit Control System and will remit funds by check to the Indian tribe or TDHE for payment of eligible costs.

Due to the nature of this pass-through system, IHAMS may require Indian tribes and TDHEs who receive pass-through Capacity-Building Grant funds to submit reports directly to IHA Management Systems, Inc. Failure to submit the reports in a timely manner to

IHAMS will be cause to invoke sanctions as provided in the subrecipient agreement.

HOW THE TITLE VI LOAN GUARANTEE DEMONSTRATION PROGRAM OPERATES:

Developing a guaranteed loan project: Borrowers wishing to apply for Title VI loan guarantee assistance are strongly encouraged to contact IHAMS for technical assistance in developing the project and obtaining a guaranteed loan.

Preliminary approval of loan guarantee activity: The borrower sends a letter to HUD with preliminary information about the proposed guarantee project and about the borrower's experience. HUD determines if the activity is eligible and if the borrower has experience with complex financial transactions. If these requirements are met, HUD sends a letter to proceed.

Lender role: The lender performs a risk analysis, negotiates terms with the borrower, and assembles the required documents. The lender submits the completed application package to HUD.

HUD role: HUD determines if the application package is complete and complies with Title VI of NAHASDA and implementing regulations. If the application is approved, HUD issues a letter of commitment.

Closing: The lender and borrower complete the loan transaction and sign the documents.

Loan Guarantee: HUD issues the loan guarantee.

HUD CONTACTS: Questions regarding the Title VI Loan Guarantee Demonstration Program and the Capacity-Building Grant may be directed to:

U.S. Department of Housing and Urban Development
Office of Native American Programs
ATTN: Christine Manion
Office of Loan Guarantee
1999 Broadway, Suite 3390, Box 90
Denver, Colorado 80202
303/675-1600

COMING TO YOUR TRIBE SOON!

HUD OFFICE OF NATIVE AMERICAN PROGRAMS TECHNICAL ASSISTANCE PRODUCTS SUMMARY

MODEL HOUSING CODE

The model housing code is the second housing code technical assistance piece that HUD has developed. The first housing code, which was published in 1996, provided tribes with sample documents needed to undertake lending in Indian country, including sample mortgages and tribal resolutions. This second set of model housing codes focuses on development. It will provide tribes with sample legal codes which can be enacted and then used by tribes to manage their development efforts. The sample codes cover the following areas:

- Land use;
- Zoning; and
- Building standards.

It is important that tribes consider the implementation of these types of development-related housing codes as they begin to build new homes and encourage economic development. The land use standards, in conjunction with the zoning codes, will help tribes to better plan development on their land by organizing the types of construction that can occur in a given area. For example, the zoning standards can help tribes to carve out areas targeted for commercial development within their tribal jurisdiction and thus can help foster a vital economic center. Building standards are critical to the creation of new units as they enable the tribe to determine the minimum quality that it expects in any new home. Of course, this helps to ensure that units are more safe and sound for tribal families.

The model development-related codes have been collected from existing codes created by tribes from across the nation. The model then provides tribes with an overview of how these sample existing codes can be modified to meet the needs of individual tribes.

If you are interested in receiving a copy of the model housing code, please fill out the attached form and hand it in at the Summit or fax it to your representative at your Area Office of Native American Programs. In addition, the model codes will be available on-line at <http://www.codetalk.fed.us>. It is anticipated that the final version of the model housing code will be available by early May.

SIDE BY SIDE GUIDE

Have you ever tried in vain to find an answer to a particular NAHASDA eligibility question and just not known where to look? Well, help is on the way.

The NAHASDA Side by Side Guide is a new technical assistance resource which will help tribes to work with the NAHASDA statute and regulations. It provides a topic by topic comparison of the regulations and the statute and explains key elements of each section of each major requirement. This comparison will enable Indian housing practitioners to rapidly find information on key program elements.

In addition, the NAHASDA Side by Side Guidebook acts as a desk reference manual by containing copies of the regulations and guidances for the other federal requirements which may be imposed upon projects when NAHASDA funds are used. The Side by Side Guide includes appendices on:

- All of the NAHASDA Guidance Bulletins;
- Section 184 Regulations;
- Indian Civil Rights Regulations;
- Indian Preference Regulations;
- Indian Business Grants Regulations;
- Section 3 Regulations;
- Government Debarment and Suspension and Government Wide Requirements for Drug Free Workplace;
- Procurement and Conflict of Interest Regulations;
- Age Discrimination Act of 1975;
- Lead Based Paint Regulations;
- Section 504 Rehabilitation Act of 1975 and applicable regulations;
- Environmental Review Requirements;
- Davis Bacon Labor Standards Regulations;
- Uniform Relocation Assistance and Real Property Acquisition Statute and Regulations;
- Hearings Procedures Regulations; and
- OMB Circulars.

Finally, the guide also provides a listing and e-mail addresses of other useful sources of program information. It highlights the types of information that may be available from these sources.

If you are interested in receiving a copy of the Side by Side Guidebook, please fill out the attached form and hand it in at the Summit or fax it to your representative at your Area Office of Native American Programs. In addition, the Guidebook will be available on-line at <http://www.codetalk.fed.us>. It is anticipated that the final version of Side by Side Guide will be available by early May.

INDIAN HOUSING DEVELOPMENT MODELS

Many tribes are beginning to consider new methods for delivering housing to tribal members. In the past, some tribes primarily focused solely on creating low rent and lease purchase (Mutual Help) homes. With the implementation of NAHASDA, however, tribes have many more opportunities to create a wide variety of housing types using a range of financing methods.

The Indian Housing Development Models provide tribes with the basic background information needed to begin the process of designing new programs under NAHASDA. The models are broken into chapters which provide: an overview of the specific type of program contained in that particular model; a description of the relevant program rules and regulations; and a discussion of key implementation and administration issues related to that type of program. The models have been designed to help the housing staff and leaders of tribes, TDHEs and Indian housing authorities to select which programs to implement and then begin the planning and decision-making process for those programs.

The Indian Housing Development models cover the following topics:

- Indian housing planning;
- Homeownership;
- Rental housing;
- Tenant based rental assistance;
- Construction management;
- Housing finance;
- Property and asset management; and
- Financial management.

If you are interested in receiving a copy of the Indian Housing Development Models, please fill out the attached form and hand it in at the Summit or fax it to your representative at your Area Office of Native American Programs. In addition, the Models will be available on-line at <http://www.codetalk.fed.us>. It is anticipated that the final version of the Indian Housing Development Models will be available by early May.

ONAP ON-LINE TRAINING

Training is crucial when staff are ready to implement a new or complicated program. Yet, it can be difficult to carve out the time and money to attend an in-person session. In addition, sessions are not always offered at the time and location that works best for staff. A new type of training – on-line training-- can begin to address these concerns. On-line training is comprised of computerized lessons which the user (trainee) can access on the internet. It provides many benefits, including allowing the trainee to learn at his or her own pace and to stop and start the training at will.

In order to take advantage of the opportunities presented by this new type of training, ONAP has created *ONAP On-Line Training*. This training covers key topics of interest to tribes, Indian housing authorities, and TDHEs, including:

- Homeownership;
- Construction management;
- Housing finance; and
- Property and asset management.

Future modules are planned on monitoring and self-assessment and on procurement. Additional topics may be added in the future, as needs are indicated by tribes.

The ONAP On-Line Training will be accessed through HUD's Codetalk website. Once at Codetalk, trainees will click on a button entitled "ONAP On-Line Training". This will automatically load the needed software onto the user's computer and will bring up the welcoming menus of the system. The ONAP On-Line Training has the following features:

- In-depth information on the above-noted topics with accompanying pictures and graphics;
- A Challenge Review (self test) at the end of each major module;
- The ability to start with any module and quickly move between modules; and
- "Hot links" to other websites and useful information.

As noted above, the On-Line Training will be available on-line at <http://www.codetalk.fed.us>. Any HUD grantee with internet access and a Windows 95 compatible machine will be able to access and use this system. However, if you do not have this type of system, you may also order the training on CD-ROM. If you are interested in receiving a copy of the training on CD-ROM, please fill out the attached form and hand it in at the Summit or fax it to your representative at your Area Office of Native American Programs. It is anticipated that the final version of the ONAP On-Line Training will be available by mid May.

HUD OFFICE OF NATIVE AMERICAN PROGRAMS TECHNICAL ASSISTANCE PRODUCT ORDER FORM

NAME:
TITLE:
ORGANIZATION:
ADDRESS 1:
ADDRESS 2:
CITY/STATE/ZIP
E-MAIL:

Please mail me a copy of the following TA products when they become available (check any that apply):

Model Housing Code – Land Issues

Side by Side Guidebook

Indian Housing Development Models

ONAP On-Line Training CD-ROM

Please drop this form in the box at the registration table at the Summit or fax or mail it to your representative at your Area Office of Native American Programs

HUD'S OFFICE OF NATIVE AMERICAN PROGRAMS IS PLEASED TO ANNOUNCE

THE TRIBAL TA AND TRAINING CENTER

ONAP is committed to working in partnership with tribes, tribally designated housing entities and Indian housing authorities to ensure the effective and innovative implementation of Indian housing programs, including the Indian Housing Block Grant under the Native American Housing Assistance and Self Determination Act of 1996. In order to assist tribes and TDHEs in the process, ONAP has created The Tribal TA and Training Center.

The Tribal TA and Training Center will be a central resource for tribes, TDHEs, and Indian housing authorities on key issues in the planning, development and management of housing. Tribes, TDHEs and Indian housing authorities will be able to contact this "virtual center" and:

- Find out about up-coming training sessions at locations across the country;
- Request on-site technical assistance;
- Suggest topics for new training sessions; and
- Learn about new written TA products and guidebooks.

Tribes, TDHEs and Indian housing authorities will be able to contact the TA and Training Center through <http://codetalk.com>, ONAP's website. In addition, each Area Office of Native American Programs has a HUD TA and Training Committee member. You can learn more about the Tribal TA and Training Center by calling your program representative or by calling the Area ONAP TA and Training Committee member. A contact list of TA and Training Committee members will be distributed soon. The Tribal TA and Training Center will also periodically send out information materials letting you know about planned training and conference events.

TRAINING

ONAP has planned a number of **large-scale national training seminars** for the coming year. The nationwide training sessions will be focused on issues of importance to tribes, TDHEs and Indian housing authorities across the country. These sessions will be held at central locations across the country and tribes, TDHEs and Indian housing authorities will be invited to attend any session of their choosing. A calendar of planned nationwide training sessions will be distributed through the Tribal TA and Training Center over the next several months.

In addition to these national training sessions, the Tribal TA and Training Center will offer **locally-based training sessions**. These local sessions will be arranged by your local Area Office of Native American Programs and will be designed to specifically focus on training that is needed in your particular part of the country. These sessions will tend to be smaller in size and will be marketed to only the tribes/TDHEs/IHAs in that part of

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the country. For example, assume that the development of energy efficient homes is a very important concern to entities in Alaska. The Anchorage ONAP Office could elect to plan a session for tribes/TDHEs/IHAs in Alaska highlighting new construction and rehabilitation technologies that improve energy efficiency. These types of sessions will be planned on an as-needed and requested basis, given topics identified by ONAP staff and tribes/TDHEs/IHAs.

Finally, ONAP plans to offer **on-site training sessions** for particular tribes. These on-site training sessions will be designed to provide very specific training to small groups of staff from a particular tribe or to groups comprised of staff from neighboring tribes. The training sessions would be held in tribal locations, such as in conference or training rooms at the tribal housing office. These on-site training sessions will tend to be less formal but more focused on the specific needs of the individual tribe or tribes. For example, if a given tribe wants to start a Section 184 homebuyer program but does not know how to set up the needed legal and programmatic infrastructure, a small training session might be arranged to help them learn more about the program and examine its implementation at their tribe. Tribes/TDHEs/IHAs can request this type of on-site training through the Tribal TA and Training Center methods described above. Training sessions will be scheduled based upon the availability of TA resources and materials on that topic and on ONAP's assessment of the training need.

TECHNICAL ASSISTANCE

Technical Assistance or TA is the provision of direct information to a tribe, TDHE or IHA. TA can take many forms, ranging from:

- Site visits from qualified technical professionals who work with tribal staff to address a specified issue or concern;
- Provision of technical information through another medium such as guidebooks, web-based materials, teleconferences, etc; or
- Group discussion sessions, where a small group of tribal/TDHE/IHA and HUD staff work together to solve a problem.

This approach to TA represents a radical departure from TA efforts of the past. No longer will TA be offered only to tribes who are working to correct deficiencies. TA will now also be offered to tribes who are functioning just fine but who are looking to try innovative approaches and need some technical guidance to make it happen. In addition, TA will no longer solely focus on long term engagements. Instead tribes will be able to request very specialized services for just a few days.

For the coming year, the Tribal TA and Training Center has a number of TA options planned. Through their Area Office of Native American Programs, tribes/TDHEs/IHAs can request technical assistance. In addition, the Area ONAP will work to identify TA needs within their region. Once identified, ONAP staff will work closely with the TA recipient to define the scope of work and ensure the success of the TA.

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Technical assistance will be available on a wide variety of topics, such as:

- Housing finance;
- Organizational development;
- Maintenance and property management;
- Financial management; or
- Homebuyer services such as housing counseling.

Obviously, this is only a sample of the many types of TA that are possible. The Tribal TA and Training Center will be developing a bulletin on the many types of possible TA and on how tribes/TDHEs/IHAs can access these services.

IMPLEMENTING THE TRIBAL TA AND TRAINING CENTER

In order to find out what YOU want from the TA and Training Center, HUD will hold tribal partnering meetings over the next several months. These meetings will be facilitated sessions where tribes, TDHEs, and IHAs should feel free to express their needs for training and TA and make suggestions for new sessions or TA options to be created. These partnering meetings will be held with groups of housing staff and tribal leaders throughout Indian country. Over the next several months, you will receive a letter requesting that you attend a partnering session. Please plan to join us and tell us how you want the TA and Training Center to be implemented.

The Tribal TA and Training Center offers a new opportunity to work together to create new ways of bringing cost-effective, culturally sensitive affordable housing to Indian families. ONAP looks forward to working with you to achieve this goal.

ONAP anticipates that the Tribal TA and Training Center will be up and running by June, 1999.

**One-Stop Mortgage Centers:
Building Local Capacity to Promote Homeownership in Indian Communities**
(3/29/99 DRAFT)

EXECUTIVE SUMMARY

In response to the Executive Memorandum of August 6, 1998, President Clinton directing the Secretaries of Housing and Urban Development and the Treasury to promote homeownership in Indian country, this draft report summarizes the recommendations of the One-Stop Mortgage Center Initiative task force. It identifies barriers that limit homeownership opportunities in Indian country, makes recommendations for actions to address the barriers, and presents a plan to implement the recommendations. Following a further round of consultations with tribal governments and others, the Administration will determine how it can most effectively respond to these recommendations over the next year. The task force will issue its final report to the President by May 2000.

The One-Stop Mortgage Center Initiative task force developed these recommendations through four national work groups and two local pilot sites – one at the Navajo Nation and the other at the Oglala Sioux Nation. The task force researched barriers to mortgage lending in four areas: variances in federal programs, land issues, creditworthiness and education issues, and the need for private providers. The work groups included representatives from the federal government, tribal governments and the private sector.

The intent of this initiative is to increase the capacity of Indian communities to support private mortgage markets through tribal self-determination. The task force seeks to achieve this goal by recommending that the federal government explore options for financing one or more national Native American homeownership intermediaries. Other recommendations include:

A. *REINVENT THE MORTGAGE LENDING PROCESS IN INDIAN COUNTRY*

1. Develop and distribute mortgage process flow chart.
2. Standardize documents for federal loan programs.
3. Streamline the approval process for tribes to provide their tribal members access to loan programs.
4. Develop streamlined realty review standard for mortgage loans in Indian country.
5. Develop streamlined credit review standard for mortgages secured by allotted land (individual trust).
6. Standardize “median income” definition for federal loan programs.

7. Streamline environmental reviews for of homeownership programs.
8. Expedite the process to obtain homesite leases of trust land.
9. Protect trust status of individual trust land used as collateral for mortgage loans.
10. Minimize barriers to homeownership caused by “fractionalization.”
11. Expedite the processing of Title Status Reports.
12. Assess options for improving the federal housing loan guarantee products.

Tribal Reinvention Issues

1. Streamline tribal process to obtain homesite lease on tribal trust land.
2. Provide technical assistance to tribes interested in promoting land-use planning.
3. Provide technical assistance and resources for tribal governments that would like to enhance their legal infrastructure.

B. CATALYZE THE PRIVATE MORTGAGE MARKET

1. Improve training and outreach to lenders and tribes regarding mortgage lending programs.
2. Improve the appraisal process for housing in Indian Country.
3. Promote the development of private real estate markets in Indian country.
4. Increase the availability of title insurance and homeowners insurance on Indian land.
5. Ensure that all benefits of homeownership, such as home equity loans, reverse mortgages, and mortgage financing, are available to homeowners on Indian land.
6. Promote greater involvement of the secondary market participants in Indian country.
7. Promote greater involvement of lenders in Indian country.
8. Determine the feasibility of an Individual Development Accounts program for Indian country.

C. ENHANCE INSTITUTIONAL DEVELOPMENT FOR INDIAN COUNTRY

1. Build capacity at the local level to support a private mortgage market in Indian country.

2. In cooperation with other funders, explore options for financing one or more Native American national homeownership intermediaries.

D. FACILITATE EDUCATION AND INFORMATION DISTRIBUTION

1. Develop curricula for homeownership and financial literacy education in Indian country.
2. Establish mechanism for marketing and disseminating educational products and programs.
3. Establish a national resource center at an Indian-based organization to serve as a clearinghouse for information.

PART I -- INTRODUCTION

For many years, American Indians and Alaska Native communities have encountered barriers to financing for homeownership in Indian country. Residents of Indian reservations seeking to acquire mortgage loans are required to obtain approval from federal, tribal, and local agencies as well as private providers¹ in disparate locations. Those entities have been operating with little, if any, coordination making it significantly more difficult for residents to obtain financing for homes on an Indian reservation. In addition, private lenders must learn to work with issues stemming from trust land status, such as using a leasehold interest as collateral for a mortgage, and they must become familiar with tribal governments and laws.

A. *Executive Memorandum*

To address these problems, President Clinton issued an Executive Memorandum on August 6, 1998, directing the Secretaries of Housing and Urban Development (HUD) and Treasury to work together with local tribal governments and other federal agencies to streamline the mortgage lending process on Indian reservations. In response to the President's Executive Memorandum, HUD and Treasury, in consultation with the Department of Interior, created the One-Stop Mortgage Center Initiative interagency task force.²

This interagency task force, in partnership with local tribal governments, is providing the umbrella leadership necessary to coordinate the activities of numerous federal and tribal agencies to help make the mortgage process more user-friendly to consumers and more attractive to private lenders. The specific objectives of the initiative are to:

- Simplify the mortgage lending process in Indian country;
- Shorten the time periods for residents of Indian country to obtain a mortgage loan; and
- Increase access to government guaranteed/insured and conventional mortgages in Indian country.

This report identifies barriers that limit homeownership opportunities in Indian country, makes recommendations for actions to address the barriers, and presents an action plan to implement the recommendations. In addition, through a pilot program on the Navajo Nation and another on the Pine Ridge Reservation, the One-Stop Mortgage Center Initiative will begin to help bolster the local capacity of Indian communities across the country to promote a mortgage lending market. The initiative also recommends identifying sources of funding for one or more Native American national homeownership intermediaries that would serve as a national resource to support a network of Indian community-based organizations.

¹ "Private providers" could include lenders, contractors, appraisers, inspectors, insurance agents, surveyors, architects, etc.

² Jackie Johnson, HUD Deputy Assistant Secretary for the Office of Native American Programs, and Michael Barr, Treasury Deputy Assistant Secretary for Community Development Policy, co-chair the initiative.

B. Background

Last year, in the Executive Order on Consultation and Coordination with Indian Tribal Governments, President Clinton explained:

Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation has guaranteed the right of Indian tribes to self-government. . . . Indian tribes exercise inherent sovereign powers over their members and territory. . . .

Exec. Order 13084 (1998). In 1790, Congress enacted the Indian Non-Intercourse Act prohibiting anyone from acquiring land from Indian tribes without federal government approval. In the early years of the Republic, the President appointed commissioners to negotiate with tribes to acquire land through treaties, which were ratified by the Senate. The treaties also demarcated Indian reservation boundaries, and under Federal law, the United States typically held legal title to reservation lands in trust for the benefit of the tribe. These lands are referred to as "*tribal trust lands*" and even today, they may not be alienated without congressional consent.

In the 1880s, Congress enacted the General Allotment , which divided some reservation lands among individual tribal members in 160 or 320 acre parcels, with other lands sold as surplus. The resulting individual allotments that were made to tribal members are now commonly referred to as "*individual Indian trust lands*" or "*individual allotted lands*." These lands may only be sold with the approval of the Secretary of the Interior. 25 U.S.C. §§ 348, 462.

Many Indian reservations were dramatically reduced through "sales" of surplus lands over Indian objections, fraudulent transactions involving individual allotments, or forced transfer of the trust land into fee simple status, with subsequent loss through state tax sales. During the Allotment period from 1887 to 1934, American Indian landholdings in the lower 48 states dropped from 138 million acres to 48 million acres, leaving most reservation Indians in poverty. In 1934, the Indian Reorganization Act halted further allotment of tribal lands.

Today, under that Act, the Indian Land Consolidation Act, and other legislation, tribal governments are working to consolidate or rebuild the tribal land base to preserve reservations as "permanent homes," in accordance with treaty pledges. 25 U.S.C. § 465; see e.g., Treaty with the Sioux, Art. 15; 15 Stat. 635 (1868). As the President explained at the White House "Building Economic Self-Determination in Indian Communities" Conference on August 6, 1998, the treaties are "solemn" pacts. While our Nation "did not live up to its side of the bargain in the past, we can and we must honor [those pacts] today and into that new millennium."

Outside of Indian country, private landholders throughout the United States hold title to their land in fee simple status³, which simply means that the landowner holds both the legal and equitable title to the land. Accordingly, private landowners may mortgage or sell their land on their own

³ In the state of Hawaii, however, Native Hawaiian lands are also often held in trust, with long-term leases executed for development purposes.

initiative. The real estate market has grown up around such transactions, and is thriving in today's climate of low-interest mortgage financing.

The creation of the federal government's trust responsibility to Indian tribes began a century before the modern real estate system was established. As modern real estate transactions became more dependent on the use of land as collateral and the free transfer of title between parties, the legal restrictions associated with tribal and individual trust land became an impediment to potential homebuyers in Indian country securing private mortgage financing.

To accommodate the policy of preserving Indian lands while also promoting homeownership, in 1956 Congress authorized the Secretary of the Interior to approve mortgages of individual Indian trust lands. "For the purposes of any foreclosure or sale proceeding" under such a mortgage, the land is treated as unrestricted fee simple land and may be foreclosed under applicable state or tribal law. 25 U.S.C. § 483a. And, Congress recently authorized Indian tribes, with the approval of the Secretary, to lease tribal trust lands for housing purposes for 50 year periods. This enables individual residential leasees to obtain leasehold mortgages. Some tribes are now planning master leases for residential subdivisions in Indian reservation towns to reduce transaction costs for individual Indian homebuyers.

Yet, few reservation Indians are able to obtain mortgage loans on the private market. Because governmental approvals are required for mortgages of individual Indian lands and leases of tribal trust lands, reservation Indians incur higher transaction costs to get a mortgage, and most realtors and real estate financing agencies are not used to transacting business on Indian trust lands. Accordingly, federal mortgage and lending agencies must work together to make the most of guaranteed mortgage programs, and seek to promote more private participation in the conventional home mortgage market on Indian lands.

C. Homeownership in Indian Country

The U.S. Department of Housing and Urban Development is the lead federal agency responsible for the provision of housing and community development assistance to Indian tribes, and tribal members. Although the Public Housing program was established in 1937 with the enactment of the United States Housing Act, Indian tribes were not eligible for funding until 1961, when the Public Housing Administration (HUD's predecessor agency) administratively determined that Indian tribes had the legal authority to establish, pursuant to tribal law, Indian housing authorities (IHAs) to develop and operate low-income housing projects on reservations and other areas subject to tribal jurisdiction. With PHA/HUD financial assistance, from 1961 until 1996 tribally and state created IHAs provided housing assistance for thousands of Native American families through the Mutual Help Homeownership program, Turnkey III program, and the Low Rent program. The enactment of the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) (Pub.L.104-330) transformed the way in which HUD provides housing assistance to Indian tribes and Native American families. Unlike the U.S. Housing Act programs which were competitive grants going to IHAs, NAHASDA is an annual formula based grant that goes directly to the tribes (or their tribally designated housing entity) for a wide range of affordable housing activities.

While federal and tribal public housing programs continue to play a vital role in providing housing to very low-income residents in Indian country, the demand for homeownership through private mortgage financing is growing. Indian families that have found consistent, gainful employment are exploring the possibility of homeownership because they can afford a better quality home or because they have exceeded the eligibility requirements for federal or tribal housing assistance. These potential homebuyers also recognize the benefits of homeownership such as the ability to accumulate equity in property that will appreciate over time. In addition, they are attracted by the opportunity to stabilize their housing costs and to benefit from tax deductions that are not available to rental or mutual help participants. This new demand for conventional homeownership will continue to grow as tribal members increase their knowledge of the benefits of homeownership, and tribal governments become more active in addressing homeownership issues in their communities.

This development represents a shift in the concept of homeownership in Indian country. In the past, Indian individuals generally relied on federal or tribal housing programs to obtain a home, or they built homes themselves. The prevalent view of “homeownership” was having a shelter, not an economic asset. Because this traditional concept of homeownership continues to exist in Indian country, public housing programs must continue to perform their functions.

The demand for homeownership through mortgage financing, on the other hand, is becoming an important alternative. As tribal economies grow, access to credit and financial services need to improve. A private mortgage lending market is a natural progression and has the potential to help fuel economic stability on Indian reservations. At this point, however, the process a potential homebuyer must go through to obtain mortgage financing has thus far stifled the market. According to a recent Government Accounting Office study, lenders made only 91 conventional home purchase loans to Native Americans on trust land between 1992 and 1996. Also, the 1997 Home Mortgage Disclosure Act data showed a one percent decline in home purchase loans to Native Americans while the rate among all other ethnic groups increased.

The One-Stop task force partly attributes these low homeownership statistics to the complex tribal and federal approval processes that are targeted for reform by this effort. However, without job growth and income-producing entrepreneurial activities on Indian reservations, homeownership will remain out of reach for many – regardless of the success of the One-Stop Mortgage Center Initiative. To help address this need for economic opportunities on Indian reservations, the Departments of Commerce and Interior and the Small Business Administration have developed a strategic plan for coordinating existing Federal economic development initiatives for American Indians and Alaska Natives.

In addition, the Department of Treasury’s Community Development Financial Institutions (CDFI) Fund is conducting a Native American study on lending and investment practices on reservations and throughout the United States. The study will identify barriers to private financing, the impact of such barriers on access to capital and credit, and create strategies to address these barriers for Native American populations on reservations. The study will include capital and credit needs for small and large businesses, consumer, and home mortgage lending. Treasury will submit a final report to the President and Congress in the fall of 2000.

Another issue which may affect the success of homeownership initiatives in Indian country is the lack of physical infrastructure in some communities. Because this issue falls outside of the scope of the One-Stop Mortgage Center Initiative, the task force did not make specific recommendations on how to address the need for infrastructure development. Instead, the report underscores the need for tribal governments to work with the appropriate federal agencies and utilities providers to incorporate infrastructure development into their comprehensive land-use planning efforts.

D. New Approach for Federal and Tribal Governments and the Private Sector

1. Federal Government Initiatives

The One-Stop Mortgage Center Initiative task force has reviewed federal and tribal processes and programs in order to compile the following recommendations that “reinvent” government consistent with the principles of Vice President Gore’s National Performance Review initiative. In an attempt to create a federal government that works better and costs less, the recommendations seek to avoid duplication of efforts and remove unnecessary requirements to streamline the federal approval processes, including Department of Interior review processes. The task force also recommends identifying incentives and outreach efforts to encourage the private sector to fill gaps in the mortgage market in Indian country. In addition, the task force is seeking to provide information to tribal governments about how to leverage federal resources.

2. Tribal Governments’ Responsibilities

As the federal agencies take on challenging reforms and new initiatives to help streamline mortgage lending in Indian country to improve the prospects of homeownership, tribal governments must also take steps to better the process. Their ability to do so may vary depending on their level of economic development. However, all tribes now have more flexibility and resources to address homeownership issues with the Indian Housing Block Grant Program authorized by the Native American Housing and Self-Determination Act of 1996.

As tribes build their capacity to support mortgage lending, they should consider addressing the following areas. First, tribal governments must help to educate their members that, along with the many benefits of homeownership, come the responsibilities of being a loan customer. By facilitating the development of intermediaries that provide homeownership counseling and important resources about how to enter the mortgage market, tribal governments can help their tribal members meet those responsibilities. Second, tribal governments should seek to create a business environment in which private providers are able to furnish the services necessary to support a private mortgage market. In some cases, this may involve a financial commitment to establish a downpayment assistance program or a reserve fund to repurchase property in the event of a default. They should also review their policies and laws governing the mortgage lending process in their communities and seek to remove unnecessary barriers to privately financed homeownership.

Third, tribal governments should develop and enhance their legal infrastructure to ensure that the appropriate laws and ordinances are in place to support the market. Finally, tribal governments should ensure that their communities have the adequate physical infrastructure necessary to support housing development, including roads, power, water, and sewer systems. Though tribal governments may not fund these infrastructure projects, their tribal members will benefit from tribal leadership to coordinate their development. Finally, tribal governments

Each of these initiatives must originate from within tribal governments. While the task force seeks to provide assistance to tribal governments in developing these systems to support a mortgage market, as sovereign nations, tribes must determine what would best serve their members and communities.

3. Private and Nonprofit Sector Involvement

Along with federal agencies and tribal governments, private sector lenders and nonprofit organizations have a role to play in the development of an environment conducive to stimulating private financing. First, they can assist tribes in the development and distribution of homeownership counseling materials for their members through the creation of intermediaries. Second, lenders and nonprofit organizations can reach out to tribes and tribal members with whom they do business to educate themselves about the tribal market. This relationship building process will help to create a cooperative environment in which partnerships can lead to successful lending strategies in Indian country. Some perceived lending barriers may even dissipate once private sector members learn more about the reservation market.

Private lenders also have a third responsibility to articulate clearly to tribal officials their legal requirements for a business environment. They should be flexible in the negotiations to determine if existing tribal legal infrastructures meet those requirements without mandating sovereign immunity waivers. For example, if a tribal alternative to a standardized legal requirement exists and provides the tribe adequate enforcement over defaults and foreclosures, private sector lenders should consider accepting it. By engaging in these proactive steps to facilitate mortgage lending in Indian country, private sector participants can develop productive business relationships with tribal governments and their members.

E. One-Stop Mortgage Center Initiative Process

1. Task Force Partners

Since the issuance of the Presidential Memorandum, federal agencies, tribal officials and private sector representatives have been meeting to identify barriers in the mortgage lending process in Indian country. The federal partners include the Department of Agriculture, Department of Housing and Urban Development, Department of Interior, Department of Justice (Office of Tribal Justice), Department of the Treasury, Department of Veterans Affairs, Federal Deposit Insurance Corporation, Federal Housing Finance Board, Federal Reserve System and Neighborhood Reinvestment Corporation. Private partners included Fannie Mae, Freddie Mac,

National American Indian Housing Council, Amerind Financial Services Inc. and a variety of lenders. Tribal partners included various tribal departments of the Navajo Nation and the Oglala Sioux Nation. A complete list of the task force partners is contained in Appendix A.

2. *Task Force Work Groups*

The task force divided into four national work groups in order to identify specific barriers and propose recommendations. *Work Group I – Federal Agency Cooperation and Coordination* addressed how to eliminate inconsistencies between federal mortgage programs. *Work Group II – Land Issues* explored how to remove barriers associated with using trust land as collateral for mortgage loans. *Work Group III – Creditworthiness Issues* researched and made recommendations on the need for education to promote mortgage lending in Indian country. *Work Group IV – Need for Private Partners* explored how to help develop a private mortgage industry on Indian reservations.

3. *Tribal Consultations*

In accordance with President Clinton's April 29, 1994 Presidential Memorandum on "Government-to-Government Relations with Native American Tribal Governments," HUD and Treasury hosted a series of consultation meetings with tribal leaders to solicit feedback on preliminary recommendations. These meetings occurred in Arlington, Virginia; Washington, DC; Portland, Oregon; Minneapolis, Minnesota; Phoenix, Arizona and Denver, Colorado. At these meetings, tribal officials emphasized the need for federal agencies to coordinate their roles in the mortgage lending process. They also encourage flexibility in federal programs to allow for the development of innovative demonstration projects on the local level. While tribal officials appreciated federal efforts to identify additional resources and technical assistance programs, they stressed the need for decision-making to remain at the tribal government level. Specific information discussed at these tribal consultation meetings will be forwarded to the implementation groups formed as a result of the recommendations.

4. *Local Pilots*

In addition to the work groups at the federal level, local work groups at the Navajo Nation and Pine Ridge reservations contributed to the report's recommendations. These pilot programs are seeking to integrate reforms in the federal processes with private markets on the local level. They served as the basis for determining the practicality of recommendations. In its final report, this initiative will summarize the results of the pilots so that other tribal governments can benefit from their efforts and replicate their successes. Appendix B presents the recommendations of the Navajo Nation Local Work Group which are specific to the mortgage lending process on the Navajo reservation. Appendix C summarizes the activities of the Oglala Sioux Nation at Pine Ridge.

PART II – RECOMMENDATIONS

Since August 1998, the One-Stop Mortgage Center Initiative task force studied the current status of mortgage lending in Indian country and consulted with tribal officials to develop the following recommendations for increasing homeownership through mortgage financing in Indian country. These recommendations fall into four areas. First, they suggest ways to “reinvent” the mortgage lending process in Indian country. Second, they present ideas about how to catalyze the private real estate market on the national and local levels. Third, they recommend institutional development through the creation of national intermediaries that could support a network of local capacity building entities. Finally, the recommendations address the need for the education of potential homebuyers, tribal governments, private providers, and federal agencies.

A. *REINVENT MORTGAGE LENDING PROCESS IN INDIAN COUNTRY*

The task force examined the federal and tribal processes that make up the mortgage lending process in Indian country with an eye towards eliminating unnecessary or duplicative steps. The recommendations regarding federal issues include plans for implementation with the targeted completion dates indicated in parentheses. Recommendations regarding the tribal processes, on the other hand, are presented for the consideration of tribal governments. Tribes may choose to implement all or part of the proposals. The suggestions are provided only to help promote the private mortgage market in a tribe’s community – they are not mandatory.

Federal Reinvention Issues

1. Develop and distribute mortgage process flow chart.

Barrier: On many reservations, potential homebuyers are unsure about the steps of the mortgage lending process. Private providers often encounter the same confusion. The specific roles and responsibilities of federal agencies in the mortgage lending process are unclear and inconsistent.

Recommendation

- The task force will appoint a subgroup to develop a process flow chart that would delineate the roles and responsibilities of the agencies, tribes, and lenders and distribute the flow chart to all federal staff in both national and field offices. This flow chart should cover conventional lending as well as federal direct, guaranteed, and insured loan programs.
- The Secretaries of all the relevant federal agencies should distribute the flow chart and provide the training necessary to ensure that the process is followed. Further training and outreach could be performed with the tribes and private sector participants to expand their awareness of the delineated process.

Implementation

Rural Housing Services will establish a subgroup with representatives from the BIA, HUD (ONAP), a tribal representative and a lender. This group will develop the flow chart of the mortgage lending and approval process along with a plan to distribute it. (July 1999)

2. Standardize documents for federal loan programs.

Barrier: Lending programs have varying requirements for leases. This inconsistency may result in tribal members using different documents for each federal housing loan or conventional lending program. It may also serve as a deterrent to private lenders participating in these programs.

Recommendations

- The federal agencies and secondary market providers will develop a uniform minimum lease document that would be acceptable to all agencies for use with tribal trust land and trust allotments within reservations. Tribes could customize the lease as long as they maintained the principles and protections contained in the lease. This would enable tribal governments to accept or amend one lease for participation in any of the federal or conventional homeownership programs. Also, the agencies will also develop a uniform, interagency policy for addressing local modifications to leases to accommodate tribal law and procedures.

Implementation

Rural Housing Service, in conjunction with VA, HUD, NRC, and Ginnie Mae, is already reviewing lease documents to develop the standard lease. The agencies will also consult with Fannie Mae and Freddie Mac to determine if their concurrence is possible, and will submit the standard lease to Interior for review. The agencies should develop training material on the documents to help tribes understand why certain provisions are necessary. (May 1999)

3. Streamline the approval process for tribes to provide their tribal members access to loan programs.

Barrier: Federal agencies may have different requirements for tribal governments to meet to allow their tribal members to use each federal program. These inconsistencies may result in tribes duplicating efforts by adopting different ordinances, eviction procedures, and legal agreements.

Recommendation:

- The federal agencies should develop a document outlining the parameters of a memorandum of understanding that would be acceptable to all federal agencies and develop a process for an expedited joint review of any exceptions. This would enable tribal governments to develop their MOU one time and know that once a single federal agency had accepted them, they would be acceptable to all agencies.
- The federal agencies should also develop a model tribal ordinance(s) providing options and/or parameters for tribal ordinances to address eviction and foreclosure procedures that would be acceptable to all federal agencies.
- HUD, RHS and VA should establish an interagency agreement that allows tribes that meet the requirements of one agency to use the housing loan guarantee programs of all three agencies. HUD (ONAP) will maintain the list of approved tribes on the “Codetalk” website.

- The Department of Veterans Affairs will explore options for a legislative amendment that removes the existing statutory requirement that VA execute a memorandum of understanding with an Indian tribe prior to members of that tribe obtaining a VA Indian loan product.

Implementation:

HUD will take the lead in drafting model legal documents for tribal governments to execute to allow for tribal members' participation in HUD, RHS and VA programs. The agencies will also consult with Fannie Mae, Freddie Mac, and Ginnie Mae to determine if their concurrence is possible. The Department of VA will assess options for the appropriate legislative amendment. (May 1999)

4. Develop streamlined realty review standard for mortgage loans in Indian country.

Barrier: Mortgage loans secured by an interest in trust or restricted land may be subject to up to three levels of review as a result of the fiduciary and/or trust responsibility of the participating agencies. This could result in confusion and lengthy delays. Direct mortgage loans from federal agencies must be approved by the federal agency making the loan and the Department of Interior. Guaranteed or insured mortgage loans must be approved by the federal agency issuing the guarantee or insurance, the private lender making the loan, and Interior. Conventional mortgage loans (i.e., loans without government guarantees or insurance) are approved by private lenders and reviewed by Interior. Tribal governments may also require their approval of each of these loans.

Recommendations

- The federal agencies should work with the Department of Interior to develop one national review standard that meets BIA requirements for the protection of the federal trust responsibility to tribes and tribal members. Participating agencies should assess the legal ramifications and administrative feasibility of developing a process for the appropriate federal agency to certify to Interior that the review standard has been met.
- The Department of Interior should develop a consumer guide that outlines its review process for mortgage loan packages.

Implementation

HUD, Interior, and the Department of Justice will develop a national review standard and procedures to expedite and streamline all mortgage loan approvals. (May 1999)

5. Develop streamlined credit review standard for mortgages secured by allotted land (individual trust).

Barrier: BIA has a trust responsibility to approve loan applications that use allotted land as collateral for a mortgage. Homebuyers may be unfamiliar with the rationale for the procedures involved in this process.

This trust responsibility to approve trust mortgages on allotted land should be distinguished from Interior's responsibility to review mortgage loan applications involving tribal trust and fee land, described above. The review of trust mortgages is similar to loan underwriting because Interior has a trust responsibility to ensure that the trust status of allotted land is not unreasonably put at risk.

Recommendations:

The BIA Central Office should provide guidance to BIA field offices regarding criteria for reviewing credit applications on allotted trust land in order to ensure that the trust status of the land is not unreasonably put at risk.

Implementation

The BIA, with assistance from the other federal agencies, will develop and distribute guidance to Area Offices for reviewing credit packages for mortgages on allotted land. (July 1999)

6. Standardize "median income" definition.

Barrier: Federal housing loan programs available to American Indian and Alaska Natives have inconsistent requirements for median income for participation. In some cases, this does not give tribes the flexibility to use a median level that is appropriate for their particular tribal service areas.

Recommendation

Since the federal programs' "median income" definition is determined by HUD's statute, HUD should assess the feasibility of allowing the option for tribes to use local or national median, as defined by NAHASDA Section 4 (14), 25 U.S.C. 4103(14).

Implementation

HUD in cooperation with RHS will assess options for appropriate legislative amendments that would allow for flexibility in the definition of "median income." (May 1999)

7. Streamline environmental review requirements.

Barrier: If borrowers choose to use federal loan guarantee programs, they may be required to meet certain environmental review requirements. It is often time-consuming and confusing as to which types of clearances are necessary, and costs may be significant.

In addition, depending on demand, the federal agencies may need additional resources to perform the statutorily mandated environmental reviews. If a tribal government elects to perform its own environmental review under HUD's Part 58, for example, the tribe may also require additional

resources.

Recommendations

Adopt uniform, streamlined environmental requirements for all Federal Indian housing loan programs.

Implementation

HUD's Office of General Counsel will organize a working group with the appropriate attorneys from the BIA, HUD, RHS, VA, and the Council on Environmental Quality to review environmental requirements for Indian housing loan programs. The working group will present a summary of the process and recommendations for improvements, including possible legislative amendments and budget requests. To assist tribes that opt to conduct their own environmental reviews, the working group should identify possible sources of funding and technical assistance. (July 1999)

8. Expedite the process to obtain homesite leases of trust land.

Barrier: Generally, title to land on Indian reservations falls into three general categories: tribal trust, individual trust (allotted) or fee simple land. Each type of land presents a unique set of challenges for residents and lenders to address. Tribal and individual trust land can generally be encumbered by mortgage loans through a homesite lease. However, borrowers often encounter lengthy delays in obtaining required approvals for homesite leases of trust land due to BIA and tribal administrative procedures that were not originally designed to accommodate a private mortgage market.

Recommendations

- The Department of Interior has recently implemented a policy that requires giving homesite leases top priority for expedited review and approval not to exceed 30 days. Interior has also recommended that all Area Offices adopt the Aberdeen pilot for processing mortgage-related requests.

Implementation

The Department of Interior is currently undergoing a comprehensive reform of its trust management policies and procedures. In the context of this review, the Department is implementing the above recommendation. (July 1999)

9. Protect trust status of individual trust land used as collateral for mortgage loans.

Barrier: Individual trust land may be mortgaged and may be subject to lien and foreclosure (unlike mortgages on tribal trust land which must be secured by a *leasehold* interest in the land – not the land itself). However, Indian borrowers with individual trust land may be reluctant to

mortgage their land because, in the event of foreclosure, the land leaves trust status and could leave Indian ownership.

Recommendation

- The federal agencies should review each of their statutes to determine if when a mortgage secured by an interest in individual trust land is foreclosed, and an Indian tribe or an individual Indian purchases the property from the lender or federal agency, the land is deemed to have continued in trust status.
- The Department of Interior should provide clarification of the process for foreclosure on individual trust land contained in the federal statute (25 USC 483a) to ensure that Indian land remains in trust or is automatically returned to trust status if an eligible Indian tribe or Indian acquires the land upon default and foreclosure.
- The Departments of Justice and Interior should explore the necessity of legislation to provide that when an Indian tribe or an individual Indian acquires land within an Indian reservation or existing trust lands for residential purposes, the tribe or the individual Indian has the option of converting the land into trust.

Implementation

The Department of Justice will work with HUD and Interior to review these issues to determine if a legislative amendment is necessary. (May 1999)

10. Minimize barriers to homeownership caused by “fractionalization.”

Barrier: Because individual trust land is often conveyed to the descendants of allottees, the number of undivided interests in the resulting tenancy in common may make it difficult for allottees to obtain the necessary clearance from the multiple owners of the land to use it for a mortgage loan. This issue may also affect a private lender’s opportunity to sell its interest in the land in the event of foreclosure, adding to the lender’s reluctance to make mortgage loans in Indian country.

Recommendations:

- Problems caused by “fractionalization” reach far beyond the mortgage lending market. As a result, Congress and the Department of Interior are seeking to address this issue through comprehensive legislation.
- In order to minimize “fractionalization” barriers, the BIA should clarify its procedures for allottees to partition a portion of their allotted land to be used as collateral for mortgage loans.

Implementation

The Department of Interior, with the support of the federal agencies, should consult with the appropriate Congressional staff to explore possible options for legislation to address “fractionalization” and its impact in the mortgage lending process. (May 1999)

11. Expedite the Title Status Report process.

Barrier: The Bureau of Indian Affairs maintains all title records of Indian land. Therefore, when borrowers or lenders want to record their interests in the land or obtain certification of clear title, they must record documents or request Title Status Reports (TSRs) at the appropriate BIA Land Records and Title Office. The BIA title process is not comparable to private title recordation and verification procedures.

Recommendations

- The Department of Interior is instituting the Trust Asset and Accounting Management System (TAAMS) to implement a data clean-up and automation initiative that will allow Area Offices to conduct their own title work and will generally provide better access to title records. Through this reform, Interior will explore the feasibility of developing a tracking mechanism that would allow the ability to provide reports on the time periods for processing mortgage-related requests (including homesite lease applications, mortgage loan approvals and Title Status Report (TSR) requests) to track improvements in processing times.
- The BIA has recently adopted a policy to expedite requests for TSR’s for mortgages. BIA field offices should indicate in their requests to the title plants that the TSR is for a mortgage so that it can be processed within the 30-day time period.

Implementation

The Department of Interior plans to complete its TAAMs reform in all Area Offices by June 2000. The reform will be implemented at the agency level by January 2001. As discussed earlier, the Department of Interior recently implemented a policy that requires giving TSR requests top priority for expedited review within 30 days.

12. Explore improvements to the federal housing loan guarantee products.

Barrier: Existing federal loan products available to Indian country may benefit from increased flexibility and other enhancements.

Recommendation

- HUD should evaluate its homeownership loan programs for Indian country to ensure that the programs are available on all land in Indian country including tribal trust, allotted and fee land. HUD should clarify and provide any enhancements necessary to make its loan products more successful, e.g., flexibility on the local level for the development of demonstration projects for

affordable homeownership. This evaluation should include the possibility of merging HUD's Section 184 and Section 248 programs.

Implementation

HUD, in consultation with USDA and VA, will oversee this reevaluation of the federal housing loan guarantee programs. (May 1999)

Tribal Reinvention Issues

The task force surveyed the existing mortgage lending process in Indian country and found several barriers that prevented or slowed the process for tribal members trying to obtain mortgages. While most of these barriers existed in federal processes, some were as a result of tribal processes. To assist tribal governments in preparing their communities for mortgage lending, the task force recommendations include suggestions that may be helpful to create a reservation environment more conducive to mortgage lending.

Tribal governmental processes in need of streamlining may differ depending on the circumstances of each tribe's mortgage lending market. The following key issues are presented for illustrative purposes. More specific examples of reforms that may be necessary at the local tribal level are contained in the recommendations of the Local Working Groups at the Navajo Nation and Pine Ridge pilot sites contained in Appendices B and C.

1. Streamline tribal process to obtain homesite lease on tribal trust land.

Barrier: The process for obtaining a homesite lease from tribal governments can be lengthy and burdensome, and often the process is unclear.

Recommendations

- Tribal governments should identify the steps in their review processes for mortgage loans and eliminate unnecessary and duplicative steps. They should also develop written manuals and training for their land department offices to eliminate inconsistencies.
- Tribal governments should develop basic consumer guidelines for tribal members outlining the steps and requirements of the homesite lease application process.
- The federal agencies should provide technical assistance to tribal governments to help them review their internal land lease policies and procedures, and develop expedited processes for residential leases and subleases.

2. Provide technical assistance to tribes interest in promoting land-use planning.

Barrier: It is time consuming and expensive for individual residents of Indian reservations to get the necessary surveys, and environmental and archeological clearances necessary to obtain a mortgage loan. Also, some residential Indian communities lack neighborhood support services such as schools, parks, retail stores, day care facilities, employment opportunities and transportation systems.

Recommendations

- Tribal governments should develop expertise in land-use planning. Through land-use planning, tribal governments could designate areas for residential purposes, obtain the necessary surveys and clearances in advance, and develop infrastructure necessary for housing communities. Therefore, when a tribal member decided to build a home, the homesite lease approval process would not be as cumbersome or expensive.
- The federal agencies should develop and distribute a compendium of federal resources available for the purposes of land-use planning and developing zoning ordinances to promote the creation of support services that help to foster permanent and sustained community and economic development.

Implementation

The federal agencies will identify whether a Native American organization is willing to take a leadership role in organizing a committee of tribal representatives to develop further recommendations for tribal reforms to promote land-use planning and zoning in Indian communities.

3. Provide technical assistance and resources for tribal governments that would like to enhance their legal infrastructure.

Barrier: Some tribes may need to enhance their legal infrastructure to support a private mortgage lending market on their reservations. For example, they may need to update housing codes that address building, inspections or foreclosure, or they may need to expand tribal court systems.

Recommendations

- The federal agencies will compile their model codes (housing, building, foreclosure, probate, etc.) and condense them into one consistent model document with options for tribes to develop local laws and procedures.
- HUD will explore legislative and regulatory options to allow NAHASDA or CDBG funds to be used by tribes to develop housing and community development related codes and code enforcement programs.
- HUD will conduct national survey of tribal governments about their housing-related codes. As an information clearinghouse, HUD will compile the codes and distribute them to all tribes.
- HUD will partner with the National American Indian Court Judges Association to provide regional training for tribal court judges and court personnel on Indian housing law.

- The Department of Justice's Office of Tribal Justice will provide technical assistance and grants to assist tribes in their efforts to develop tribal courts and to adopt laws to promote homeownership.

Implementation

HUD (ONAP) will coordinate the implementation of the above recommendations. (July 1999)

B. CATALYZE THE PRIVATE MORTGAGE MARKET

The task force researched barriers caused by the lack of private industry housing partners such as real estate agents, financial institutions, appraisers, builders, contractors and services such as title insurance and home owners insurance. Task force members agreed that once a market for home sales began to grow, a natural outcome would be activity on reservations by real estate agents. In the meantime, intermediaries that service Indian country may provide realtor-type services.

1. Improve training and outreach to lenders and tribes regarding mortgage lending programs.

Barrier: Lenders, tribes and partner organizations have difficulty learning about federal programs, and federal agency representatives are unable to provide information on other federal programs.

Government loan programs are available for the origination of home loans on tribal trust, individual or allotted trust, and fee simple land in Indian country. HUD offers two programs, the HUD Office of Native American Programs' Section 184 program and the HUD/Federal Housing Administrations' (FHA) Section 248 program. Section 184 of the Housing and Community Development Act of 1992 is a loan guarantee program for single-family Indian housing in an area where an Indian housing authority or tribe is authorized to provide housing. Section 248 of the National Housing Act is an insurance program for single-family homes for Indian housing on trust or otherwise restricted land. The Department of Agriculture Rural Housing Service also administers a loan product for Indian applicants titled Section 502. In addition, the Department of Veterans Affairs has a loan product for Indian veterans.

Additional loan programs and conventional loan products are available through secondary market providers and private lenders. Some private lenders have also developed special purpose credit programs to help meet the mortgage credit needs in Indian country.

Recommendations

With HUD's Office of Native American Programs as the lead, each federal agency with any responsibility in the mortgage lending arena should designate an information coordinator who will be responsible for ensuring the communication flow on programs and activities and will serve

on an *Information Committee*. The committee would also invite Fannie Mae, Freddie Mac, Ginnie Mae, and other associations and interest groups to participate.

The committee would be charged with the development of a plan to expand lender and tribal access to relevant information about the federal loan programs. The committee should explore using "Code Talk" as the central Internet link and ensure that an updated list of tribes and designated housing entities are available for everyone's information.

The committee should also develop at least two videos. The first should be developed for tribes and tribal housing organizations that would provide information on all federal programs and clarify which programs work best in which markets and situations. This video could be distributed directly to the tribes and housing organizations. In addition, federal staff could use it to help describe other federal programs when they are making outreach or technical assistance visits. The second video would be targeted to lenders to explain the process of lending in Indian country and the differences in the federal programs. The video would also educate lenders about tribal legal systems and trust land classifications. The task force urges the committee to maximize use of technology, including CD ROMs, and the Internet to ensure that the information available is as up to date as possible.

Implementation

HUD (ONAP) will convene this *Information Committee* to design a lender and tribal outreach program, which will provide information to all agencies that offer mortgage loan products in Indian country and to financial institutions through industry contacts and mailing lists. (December 1999)

2. Improve the appraisal process for housing in Indian Country.

Barrier: It is difficult and expensive to obtain an accurate appraisal on housing located on an Indian reservation due to travel costs to remote areas and lack of accurate comparable sales data.

Recommendations

- The federal agencies should establish an interagency Appraisal Working Group with representatives from the appraisal industry to develop guidelines and technical assistance for conducting appraisals in Indian country.

Implementation

HUD will organize an interagency One-Stop Appraisal Working Group. Because FHA is currently revising its Appraisal Handbook, which, for the first time, will include an "Indian Lands"

chapter addressing how to conduct appraisals for FHA loan programs on tribal trust and allotted land, the working group should use FHA's new chapter as a basis for an interagency discussion. (July 1999)

3. Promote the development of private real estate markets in Indian country.

Barrier: There is a shortage of housing professionals such as appraisers, inspectors, general contractors, and mortgage brokers in Indian country.

Recommendations

- The federal agencies should provide funding for the development of a continuing education curriculum for licensed appraisers (both government agency and private sector) to address how to determine the value of property on tribal trust and individual allotted land. This training curriculum could be based on the guidelines developed by the Appraisal Working Group discussed above.
- The agencies will work with the American Indian Higher Education Consortium to develop curricula to educate new private providers – appraisers, inspectors, contractors, mortgage brokers – from within Indian country.
- The federal agencies should facilitate training for existing private providers interested in doing business on Indian reservations.
- The federal agencies should explore partnerships with national trade associations to develop technical assistance programs to train tribal entities interested in becoming mortgage brokers. The training should include information about how tribal entities could get approved by the FHA or other state or federal agencies as mortgage brokers.

Implementation

HUD and the USDA should assess funding requirements for the development and implementation of: 1) a continuing education curriculum for appraisers, 2) curricula to educate new private providers from within Indian country at tribal colleges and vocational schools, 3) training for existing private providers, and 4) technical assistance programs for tribal entities interested in serving as mortgage brokers. (December 1999)

4. Increase the availability of title insurance and homeowners insurance on Indian land.

Barrier: While federal guarantee/insurance programs do not generally require title insurance, some lenders and the secondary market prefer homebuyers in Indian country to obtain title insurance policies, as is the practice off-reservation. However, few title companies will issue a title policy on reservation land. In addition, it is difficult to obtain homeowners insurance on reservations.

Recommendations

- Federal agencies should work with a Native American-owned insurance pool, such as Amerind Financial Services Inc., to explore the development of title insurance and homeownership insurance products specifically for Indian land.
- Interior and HUD should work with the American Land Title Association to educate title insurance companies about doing business in Indian country and identify companies willing to provide title insurance on Indian land.
- Interior should clarify its regulations that govern public access to title plant records to facilitate private sector title searches. Interior should also clarify tribal governments' ability to access title plants.
- Interior will clarify the legal standing of BIA's certification of clear title.

Implementation

The Federal Housing Finance Board will convene a working group with representatives from Interior, HUD, American Land Title Association, the secondary market providers and Amerind to develop a strategy to implement the above recommendations. (July 1999)

5. Provide all benefits of homeownership to homeowners on Indian land.

Barrier: Homeowners in Indian country may not be able to obtain home equity loans, reverse mortgages or mortgage refinances.

Recommendation

The federal agencies should assess legislative or regulatory options for removing restrictions against these products so that as the mortgage lending market in Indian country grows, this type of lending can develop.

Implementation

HUD (ONAP) will consider the options for appropriate legislative or regulatory amendments. (May 1999)

6. Promote the involvement of the secondary market participants in Indian country.

Barrier: Mortgage lending in Indian country should be linked to mainstream sources of capital through the secondary markets.

Recommendation

- Ginnie Mae, which securitizes government-insured loans, as well as Fannie Mae and Freddie Mac, which securitize conventional and guaranteed/insured home mortgage loans, should

establish clear guidelines for acceptable origination, in consultation with tribal leaders and local originators of such loans.

Implementation

The secondary market participants should make commitments to purchase reasonable home mortgage loans in Indian country. In addition, they should explore ways to make their programs more attractive to lenders through higher servicing premiums and local support staff. (July 1999)

7. Promote the involvement of lenders in Indian country.

Barrier: In some areas, financial institutions make few mortgage loans in Indian country either because of lack of knowledge about the opportunities to lend in Indian country or because of impediments in the lending process.

Recommendation:

- The federal financial regulatory agencies should continue to provide information to financial institutions about the range of opportunities for sound and profitable community and economic development lending and investments in Indian country, including making home mortgage and affordable housing loans, and provide information about how to overcome the obstacles in the lending process.
- The federal financial regulatory agencies should provide information to tribal governments about the opportunities for public involvement when a financial institution develops a strategic plan under the Community Reinvestment Act (CRA) regulations. They should also help to educate tribal governments about the CRA examination process and the regulators' practice of contacting members of the community for input during exams.

Implementation:

The federal financial regulatory agencies should provide information to bankers about successful models of mortgage lending on Indian reservations. These agencies should also support, through the provision of relevant educational materials and, if possible, speakers, the initiatives launched by First Nations Development Institute, the National Association of Affordable Lenders, the National Community Reinvestment Coalition, and the National American Indian Housing Council to train Indian housing officials about working with financial institutions to develop opportunities for sound and profitable community and economic development lending and investments in Indian country. (July 1999)

8. Determine the feasibility of an IDA program for Indian country.

Barrier: The accumulation of assets and wealth is an essential element in helping individuals achieve economic security. Many potential borrowers in Indian country own insufficient assets to enable them to qualify for homeownership or manage a mortgage. However, they may have difficulty saving enough for a downpayment for a mortgage.

Recommendation

The accumulation of assets and wealth are essential elements in helping individuals achieve economic security. In addition to promoting general economic development, Individual Development Accounts have been developed as a tool to address the challenge of asset creation. IDAs are dedicated savings accounts that combine individual deposits with matched funds provided by public and private sources. IDAs offer potential borrowers a means to save for expenses associated with purchasing and maintaining a home. IDAs are held in local financial institutions and managed by community-based organizations, and have been used to assist individuals in establishing creditworthiness and qualifying for homeownership.

Implementation

The Department of Treasury will determine the feasibility of developing an IDA program adapted for Indian borrowers and employed as a part of an overall strategy to build individual assets in Indian country. The program should be designed to assist in facilitating homeownership opportunities for Indians who have income capacity to afford a reasonable mortgage payment, but who do not have adequate funds for downpayments or closing costs. (December 1999)

C. INSTITUTIONAL DEVELOPMENT FOR INDIAN COUNTRY

Barrier: Successful efforts to expand homeownership opportunities for low- and moderate-income households depend on local organizations that can provide homebuyer education, assist in securing mortgages, and develop and financing housing. The success of these local organizations depends on national or regional organizations providing technical assistance, financial support and access to capital. Such institutional capacity focused on serving Indian country, at the local, regional and national level is currently limited and is a major impediment to expanding homeownership in Indian country. Significant growth of homeownership in Indian country will depend on substantial, long-term investments in local, national or regional organizations.

1. Build capacity at the local level to support a private mortgage market in Indian country.

Expanding home-ownership opportunities begins with local organizations that can serve as advocates for potential buyers seeking to own their own homes. Locally based, and familiar with the unique cultural and economic characteristics of the communities they serve, these organizations offer an array of critical services. They prepare families for homeownership, serve as intermediaries with lenders, insurers, tribal governments, builders, and advocate for reforms at the local level. In addition, some act as local housing developers, assembling financing and developing housing in circumstances that at present can not attract sufficient private developers to meet local housing needs. The success of these housing activities at times also requires involvement in community and economic development. While local capacity to support homeownership is far too limited, there are some effective non-profit and governmental

organizations which can serve as useful models, including nonprofit entities, tribally designated housing entities, community development corporations or Indian housing authorities.

Lenders may be more willing to participate in lending in Indian country with an intermediary that was familiar with a tribe's codes, ordinances and customs. This might include someone who can speak the language and assist in translating. The intermediary could also assist the lender in providing homeownership counseling and to alleviate the fears of tribal families who are unfamiliar with the requirements of lenders.

2. Fund one or more national Native American housing intermediaries.

While the impetus and leadership for expanding capacity at the local level must come from within tribal communities, these efforts can be facilitated by national or regional organizations that provide training and technical assistance to build the capacity of local institutions, facilitate access to financial support, and assemble capital pools for gap financing and risk management.

Significant and substantial benefits will arise from the development of a national nonprofit intermediary in Indian country. First, with low- and moderate-income tribal households buying their own homes, tribal housing stock increases for very low-income tribal families. Second, the national intermediary will assist tribes in developing the regulatory jurisdiction over financial and commercial transactions that will provide predictability to both borrowers and lenders, thereby stimulating both homeownership and economic development opportunities. Third, tribal governments may be able to access capital from the intermediary to purchase property that is the subject of foreclosure to ensure that the land stays in their control and to mitigate lenders' reluctance to lend.

Recommendation

- HUD, in cooperation with other funders, should explore options for financing one or more national nonprofit intermediaries to serve as a catalyst to create a homeownership market economy on Indian lands and to support a network of local capacity-building organizations.
- HUD (FHA) should determine whether Section 106 of the Housing and Urban Development Act of 1968 provides authority to make homeownership counseling funds available to nonprofits serving Indian communities.
- HUD (FHA) should assess the feasibility of legislation to provide a three percent set-aside from funds appropriated for housing counseling under Section 106 of the HUD Act of 1968.
- The federal agencies should assess whether legislative amendments are required to their authorizing statutes to allow them to provide technical assistance and capacity-building funds for the formation of intermediary organizations that provide homeownership counseling and financial assistance to homebuyers on Indian reservations.
- The Department of Treasury's CDFI Fund should assist Indian communities who are attempting to create CDFI's with targeted outreach efforts to include workshops and direct technical assistance.

Implementation

HUD and Treasury will take the lead in coordinating these activities. (May 1999).

EDUCATION AND INFORMATION DISTRIBUTION

Financial literacy and homebuyer preparation are essential to ensuring access to mortgage lending in Indian country. The task force found a need for increased understanding between lenders and tribal members. While tribal members need to understand finance, banking, and credit, lenders need to learn about tribal cultural issues, values, and diversity. The most effective means of addressing creditworthiness issues are those that include both tribal officials and financial institution representatives working together to develop lending programs and educational curricula responsive to particular tribal needs.

1. Develop curricula for homeownership and financial literacy education in Indian country.

Barrier: Many potential homeowners in Indian country are in need of homeownership and personal finance counseling. They often have an incomplete understanding of finance, banking, and the credit process among borrowers. Homeownership and financial services education are needed to prepare borrowers and make homeownership achievable in Indian communities.

Recommendation

The federal agencies should establish an *Education Steering Committee* to identify a wide range of homeownership and financial literacy educational materials and curricula. This committee would work in consultation with other organizations that are experts in this field. The committee should assess available educational materials, programs, workshops, and activities that promote financial literacy and homeownership readiness and are appropriate for Indian country and develop additional materials as needed. Educational materials should be distributed to tribal members and officials, lenders, other government agencies, financial intermediaries and program facilitators in the public and private sector in regions throughout the country.

It is vital that interested and effective organizations as well as tribal leaders and members are involved in the committee organized to assess and develop educational materials. The task force recommends that the steering committee be comprised of a representative from the Department of Housing and Urban Development, a representative from the Neighborhood Reinvestment Corporation, a financial industry representative, and a national Indian-based organization representative. The education materials would be directed to several target audiences including tribal members and officials, lenders and other private sector organizations, and public sector organizations at the national, state, and local level. The steering committee would be charged with the responsibility of identifying and coordinating the expertise and resources necessary to develop and evaluate educational materials and curricula. It should organize a committee structure to solicit input from the appropriate experts in the field.

Several organizations that have traditionally been working in Indian country find the idea of increasing the availability of general financial education products a good one. However, they emphasized that respected and credible organizations and tribal members with knowledge and experience in finance and education must be involved in the process. Further, people with expertise in curriculum development and evaluation should also be included, perhaps on a consulting basis.

Implementation

HUD will convene the *Education Steering Committee* which will design a work plan to develop curricula for homeownership counseling and financial literacy education. (December 1999)

2. Establish a mechanism for marketing and disseminating educational products and programs.

Recommendation

The taskforce recommends that a plan for marketing and disseminating the educational products be developed under direction of the steering committee. A broad publicity campaign should be undertaken to advertise the financial literacy and homeownership programs using the news media and local organizations to assist in informing key local groups and organizations.

Utilizing materials identified and/or developed by the steering committee, a train-the-trainer curriculum should be developed to create a resource base of knowledgeable individuals in each tribe who can further disseminate homebuyer education. HUD (ONAP), could work with the Tribally Designated Housing Entities (TDHE) to send their staff members to train-the-trainer courses. Neighborhood Reinvestment Corporation (or another contractor) could provide the training for the TDHE's. Once instructors are trained, private partners could provide funding for the training handbooks and materials. This could also include funding for the production costs of translating the handbook into various Indian languages, if necessary. These activities could be coordinated through the newly created national Native American homeownership intermediary.

A suggestion to provide an incentive for homeownership counseling is for federally insured and guaranteed programs at USDA, HUD, and VA to allow for a reduction in their mortgage insurance premiums, guarantee fee or funding fees for those homebuyers that complete an agency-approved homeownership counseling course. This may require legislation.

Implementation

As it designs the curricula, the Education Steering Committee will develop a plan to disseminate the educational materials. (March 2000)

3. Establish a national resource center at an Indian-based organization to serve as a clearinghouse for information.

Barrier: Education about homeownership programs for lenders, other agencies, financial intermediaries, and public and private lending programs is unavailable or insufficient to meet needs. Effective channels have not been developed to enable lenders, financial intermediaries and public and private lending program officials to learn about available loan products, grants, insurance, loan guarantee, and subsidy programs available to Indian country.

Recommendation

The federal agencies should establish, in conjunction with a national intermediary, a *National Indian Housing Resource Center* to collect, maintain, and make available materials pertaining to financial education and the homeownership process. It could serve as a clearinghouse of information on “best practices” for housing and economic and community development efforts in Indian country. The resource center would use a variety of means to make information available, such as, telephone, fax, and the Internet and would be housed at a facility available to the public. The resource center should have at least one dedicated staff member to ensure that materials remain current.

The national resource center could be established through an Indian-based organization with the capacity and stability to house an office for this initiative as well as the credibility and respect that would ensure its use. The ability to provide space and office resources for staff and to act as a funding vehicle are essential.

Implementation

The Federal Reserve System will convene a meeting of potential partners in the development of a *National Indian Housing Resource Center* to explore alternatives and initiate steps towards establishing such a center. The partners should also consider the relationship of the resource center to the proposed national intermediary.

IV. TRACKING PERFORMANCE: BENCHMARKS AND GOALS

In order to meet the expectations of all partners involved in the One-Stop Mortgage Center Initiative, the task force should develop a system to allow the parties to determine systematically that activities result in the removal of barriers to Indian homeownership. Data should be collected on the status of Indian and non-Indian homeownership (by standard census characteristics) and benchmarks and goals should be established. (e.g., parity in homeownership rates). The benchmarks should then become the public standard for regular appraisal of the One-Stop Mortgage Center Initiative.

The performance tracking system should also focus on federal and non-federal processes, especially on procedures that affect cycle time. When data indicate that procedures generate an unreasonable variation in process cycle time or product quality, the partners should focus on improving the processes that deliver the product or service.

In order to assure that all mortgage processes are continuously improved, data should be collected and analyzed on a regular basis. Particular attention should be given to variations in process, products, and time requirements. This will help determine if variations result from special circumstances or from common problems that require coordinated strategies and procedures.

Recommendation and Implementation

HUD will assemble a measures committee to develop the system described above. (May 1999)

V. IMPLEMENTATION TIMELINE

The members of the One-Stop Mortgage Center Initiative task force will divide into implementation work groups to execute its recommendations. These work groups, chaired by the responsible agency listed below, will complete their mandates over the course of the next year. The task force will delivery its final report to the President by May 2000.

RECOMMENDATION	RESPONSIBLE AGENCY	TARGET COMPLETION
A. REINVENTION ISSUES -- Federal Issues		
1. Develop and distribute mortgage process flow chart.	RHS	May 1999
2. Standardize documents for loan program.	RHS	May 1999
3. Streamline approval process for tribal participation.	HUD	May 1999
4. Develop streamlined realty review standard.	HUD, Interior, DOJ	May 1999
5. Develop streamlined credit review standard.	BIA	July 1999
6. Standardize "median income" definition.	HUD/RHS	May 1999
7. Streamline environmental review requirements.	HUD	July 1999
8. Expedite homesite lease process.	Interior	July 1999
9. Protect trust status of Indian land.	DOJ	May 1999
10. Minimize "fractionalization."	Interior	May 1999
11. Expedite TSR process.	Interior	June 2000

12. Review loan products.	HUD	May 1999
Tribal Reinvention Issues		
1. Streamline homesite lease process.	Interior to provide technical assistance to tribal governments.	Varies by tribe.
2. Promote land-use planning.	HUD to provide technical assistance to tribal governments.	Varies by tribe.
3. Develop legal infrastructure.	HUD/DOJ to provide technical assistance to tribal governments.	Varies by tribe.
CATALYZE PRIVATE MARKET		
1. Create <i>Information Committee</i> .	HUD	December 1999
2. Improve appraisal process.	HUD	July 1999
3. Promote real estate market.	HUD/USDA	December 1999
4. Increase title insurance and mortgage insurance	FHFB	July 1999
5. Home equity, refinances, reverse mortgages	HUD	May 1999
6. Promote secondary market participants.	Treasury/HUD	July 1999
7. Promote lender involvement.	Federal bank regulators	July 1999
8. Determine feasibility of IDA program for Indian country.	Treasury	December 1999
C. INSTITUTIONAL DEVELOPMENT FOR INDIAN COUNTRY		
Explore funding resources for national Native American homeownership intermediaries.	HUD /Treasury	May 1999
D. EDUCATION AND INFORMATION DISTRIBUTION		
1. Develop curricula for homeownership and financial literacy counseling.	<i>Education Steering Committee</i>	December 1999
2. Develop dissemination plan.	<i>Education Steering Committee</i>	March 2000

3. Establish <i>National Indian Housing Resource Center</i> .	Federal Reserve	December 1999
IV. TRACKING PERFORMANCE: BENCHMARKS AND GOALS		
Determine benchmarks and establish goals.	HUD	May 1999

VI. CONCLUSION

The One-Stop Mortgage Center Initiative addresses the shift in the provision of housing in Indian country from predominantly public housing to a mix of rental public housing and affordable homeownership. As tribes and their members increase their capacity for mortgage financing, a private real estate market in Indian country will develop. To stimulate this growth, the One-Stop Mortgage Center Initiative seeks to streamline tribal and federal review processes, catalyze the private sector, explore sources of funding for one or more national Native American homeownership intermediaries and promote homebuyer education. Through a partnership between the federal government, tribal governments and the private sector, this White House initiative will help to make homeownership in Indian country an attainable goal.

VII. APPENDICES

- A. Partners of the One-Stop Mortgage Center Initiative
- B. Recommendations of the Navajo Pilot Project
- C. Summary of the Pine Ridge Pilot Project
- D. Resource List

APPENDIX A

One-Stop Mortgage Center Initiative Task Force Members

Native American Partners

Amerind Risk Management Corporation
Chickasaw Nation
Inter Tribal Council of Arizona
Lakota Fund
National American Indian Housing Council
National Congress of American Indians
Navajo Housing Authority
Navajo Nation
 Community Development Division
 Department of Justice
 Economic Development Division
 Historic Preservation Department
 Housing Services
 Land Department
Navajo Townsite Community Development Corporation
Navajo Tribal Utilities Authority
Navajo Partnership for Housing
North American Native Bankers Association
Oglala Lakota Tribal College
Oglala Sioux Housing Authority
Oglala Sioux Nation
Oglala Sioux Partnership for Housing

Federal Partners

U.S. Department of Agriculture
 Rural Development
 Rural Housing Services
U.S. Department of Housing and Urban Development
 Office of Native American Programs
 Federal Housing Administration
 Ginnie Mae
U.S. Department of the Interior
 Bureau of Indian Affairs
U.S. Department of Justice
 Office of Tribal Justice
U.S. Department of the Treasury
 Community Development Financial Institution Fund

Office of Community Development Policy
Office of the Comptroller of the Currency
Office of Thrift Supervision
U.S. Department of Veterans Affairs
Federal Deposit Insurance Corporation
Federal Home Loan Bank System
Federal Housing Finance Board
Federal Reserve Board
Federal Reserve Bank of Kansas City
Federal Reserve Bank of Minneapolis
Federal Reserve Bank of San Francisco, Los Angeles Branch
Federal Reserve Bank of San Francisco, Seattle Branch
Indian Health Services
Neighborhood Reinvestment Corporation
The White House

Private Partners

American Land Title Association
Arizona Bank, Tucson, AZ
Banc One Mortgage Corporation, Indianapolis, IN
Bank of America, San Francisco, CA, Phoenix, AZ
BankAmerica Mortgage, Phoenix, AZ
Bank of the Southwest, Farmington, NM
Charter Bank for Savings, Albuquerque, NM
Citizens Bank, Farmington, NM
Countrywide Home Loans
Fannie Mae
Federal Home Loan Bank of San Francisco
Federal Housing Finance Board
First Americans Mortgage, Phoenix, AZ
First Heritage Bank, Marysville, WA
First National Bank of Farmington, Farmington, NM
First Security Bank, Salt Lake City, UT
First Security Bank of NM, Albuquerque, NM
First Western Bank, Monticello, UT
First Western National Bank, Blanding, UT
Freddie Mac
Gallup Federal Savings Bank, Gallup, NM
McLain County National Bank, Purcell, OK
National Bank of Arizona
New Mexico Housing Finance Authority
New Mexico Office of Indian Affairs
Norwest Bank
Norwest Mortgage

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Suburban Mortgage, Albuquerque, NM
Vectra Bank, Farmington, NM
Washington Mutual Bank, Seattle, WA
Wells Fargo Bank, Houston, TX, San Francisco, CA
Zions Bank, St. George, UT
Zions First National Bank, Salt Lake City, UT
Zions Mortgage, Salt Lake City, UT

APPENDIX B

Draft Recommendations of the Local Working Group -- Navajo Nation One-Stop Mortgage Center Initiative

Background – Obtaining a Mortgage Loan on the Navajo Nation

Residents of the Navajo Nation face many hurdles in their pursuit of homeownership on the reservation. Before an individual can apply to a lender for a mortgage loan, he or she must obtain a homesite lease from the tribe to use as collateral for the loan (if the intended location of the home is on tribal trust land). The homesite lease application process involves surveying the land, obtaining permission from the appropriate grazing permittees who have a right to use the land, and getting an archeological clearance. After having completed these steps, the Navajo Land Department (NLD) and the Bureau of Indian Affairs (BIA) must approve the applicant's package. Upon approval, the BIA title plant must record the homesite lease. The individual must then request a BIA Title Status Report (TSR) and a BIA Categorical Exclusion from environmental assessment requirements, if appropriate. At this point, the individual is ready to file an application with a lender to begin the mortgage loan process. If the home will be located on allotted land, the individual must obtain clearances from the other allottees and/or partition a homesite before he or she can begin the loan process.

Objectives of the Local Working Group

The One-Stop Mortgage Center Initiative task force created the Local Working Group after the November 18, 1998, meeting in Window Rock, Arizona. Richard Kontz, Executive Director of the Navajo Partnership for Housing, and Chester Carl, Executive Director of the Navajo Housing Authority chair the group, which is composed of tribal officials, local federal government representatives, and private providers. Its objective is to review the homesite lease and mortgage loan application process and recommend possible reforms that will improve homeownership opportunities on the Navajo reservation.

Local Working Group Recommendations

The recommendations of the Local Working Group fall into the following areas: 1) promote land-use planning and infrastructure development; 2) streamline tribal and federal government approval processes; 3) develop a comprehensive consumer guide about the mortgage lending processes; 4) clarify federal and tribal requirements for environmental and archeological clearances; 5) explore ways to expedite the process of obtaining clear title; and 6) support the growth of a private market on the reservations.

In some areas, the local working group has already succeeded in improving steps in the mortgage lending process. The report notes these accomplishments.

I. PROMOTE LAND-USE PLANNING AND INFRASTRUCTURE DEVELOPMENT

Barrier: It is time consuming and expensive for individual Navajo residents to get the necessary surveys, and environmental and archeological clearances necessary to obtain a homesite. Also, many Navajo communities lack adequate infrastructure and neighborhood support services.

Navajo residents must go through a lengthy application process to obtain a homesite lease from the Navajo Land Department. The location of the homesite is based mostly on the applicant's preference. However, if the local Chapters of the Navajo government were able to zone land in their jurisdictions, they could designate areas for residential purposes, obtain the necessary surveys and clearances in advance, and develop infrastructure and other community support services. Through land-use planning, Chapters would be able to minimize potential conflicts with grazing permittees. Therefore, when a resident decided to build a home, the homesite lease approval process would not be as cumbersome or expensive.

Recommendations

- The Navajo Nation government should designate one division to serve as a regulatory office and technical assistance provider. This division would provide support to local Chapters so that they could designate areas for homesites, obtain all necessary clearances for their members in advance of the homesite lease application process, and develop infrastructure and community support services. This recommendation should be implemented consistent with the Local Governance Act – a new tribal law that shifts governmental functions to the local Chapter level.
- The Local Working Group should explore the possibility of using NAHASDA funds to help develop a land-use planning program on the reservation.
- The Local Working Group should explore the possible sources of grants and loans, including NAHASDA funds, to cover the costs of surveys, and environmental and archeological clearances for subdivision development.

Accomplishments

- In accordance with the Local Governance Act, 30 Chapters will receive land-use planning resources and technical assistance through \$1.2 million of funding from the Navajo Nation's FY '99 NAHASDA funds.
- The Navajo Housing Authority will provide pre-engineering services to all customers of NAHASDA-funded housing providers.

Barrier: It is difficult for residents on single sites to obtain access to utilities.

Recommendations

- The Local Working Group should organize coordination meetings between Indian Health Services, Navajo Tribal Utilities Authority (NTUA), housing developers and the Navajo Nation government to develop recommendations for an overall infrastructure plan.
- As part of their land-use plans, Chapters should work with utilities providers and the Indian Health Services to develop a strategy to improve services to remote sites.
- Utilities providers should explore alternative energy and water sources.
- The Local Working Group should explore sources of financing such as NAHASDA, Community Development Block Grants (CDBG) and NTUA funds to help defray infrastructure costs.

II. STREAMLINE TRIBAL AND FEDERAL PROCESSES

Barrier: Homesite lease applicants face considerable delays in obtaining surveys and archeological clearances from the tribe. By seeking private providers of these services, the process could be shortened.

Recommendations

- The Navajo Land Department should promote the use of private surveyors for homesite leases by providing applicants with a list of licensed surveyors in their areas. Also, in some cases, Navajo Housing Authority surveyors may be available to homebuyers.
- To expedite the process for archeological surveys, the tribal government should assign archeologists to each NLD agency office.

Barrier: The homesite lease application process is confusing and burdensome for Navajo residents, and the process differs by agency office.

Implementation

- The NLD and BIA should eliminate unnecessary and duplicative steps in their review process and should develop written manuals and training for their agency offices to eliminate inconsistencies.
- The NLD and the BIA should develop very basic guidelines outlining the steps and requirements of the homesite lease application process.
- The NLD and BIA should develop expedited homesite lease application procedures to be used when an existing homesite leaseholder transfer property to a new homesite leaseholder.
- The Navajo Nation recently approved a new masterlease with provisions for a 50-year lease term, community-planned subdivisions, and encumbrances. The tribal government and the BIA should develop a model subdivision masterlease for private and non-profit developers.

Barrier: It is difficult for allottees to obtain clearance from multiple owners.

Recommendations

- The One-Stop Mortgage Center Initiative should assess options for federal legislation aimed at simplifying the heirship issues, such as removing Federal Privacy Act restrictions against the BIA releasing names of heirs to allotments.
- Chapters with allotted land should develop programs to assist allottees to obtain the necessary changes.

Barrier: BIA approval of the credit package is time consuming.

Recommendations

- The BIA Area Office should be allocated a new position dedicated solely to reviewing homesite lease and credit applications.
- The BIA Central Office should provide better guidance to area and agencies offices regarding criteria for reviewing credit applications. It should also allocate a new position to the Navajo Area Office dedicated solely to reviewing homesite lease and mortgages.
- The BIA Area Office should fax notice of its approval of mortgages to the lender, upon request.

III. DEVELOP COMPREHENSIVE CONSUMER GUIDE

Barrier: Navajo residents have to work with many different tribal and federal agencies to obtain a mortgage. The Navajo Partnership for Housing, Inc. assists families to prepare for homeownership and, to a limited extent, can help them navigate through the bureaucracy. However, there is no comprehensive summary of the homesite lease and mortgage lending process.

Recommendation

- The Local Working Group should compile each agency's guidelines into one comprehensive guide to homeownership on the Navajo Nation. This consumer guide should be distributed through all housing providers, including Chapter Houses.

IV. CLARIFY FEDERAL AND TRIBAL REQUIREMENTS FOR ENVIRONMENTAL AND ARCHEOLOGICAL CLEARANCES

Barrier: Navajo residents are often uncertain about when an environmental or archeological clearance is required.

- The Navajo Historic Preservation Department should develop guidelines explaining the archeological clearance process.
- The One-Stop Mortgage Center Initiative should determine whether the Navajo Environmental Protection Agency could be recognized as a federal agency with sovereign immunity and be responsible for administering relevant federal environmental statutes with the discretion to adapt the administration to the unique circumstances of the reservation.

V. EXPEDITE AND IMPROVE TITLE PROCESS

Barrier: It takes too long to obtain a Title Status Report (TSR).

Recommendations

- The Albuquerque Title Plant should allow public access to title plants so that title companies can conduct title searches.
- The One-Stop Mortgage Center Initiative should explore whether tribes could assume title plant functions through Public Law 93-638 and whether this function could be funded by NAHASDA.

Accomplishment

- The Navajo Nation, in partnership with the BIA Albuquerque Title Plant, established a title examiner position to streamline processing between the Navajo Area Office and the Albuquerque Title Plant.

VI. SUPPORT GROWTH OF PRIVATE MORTGAGE MARKET ON NAVAJO NATION

Barrier: Lenders are concerned about the marketability of a home in the event of a default and foreclosure.

Recommendations

- The Local Working Group should explore the creation of an intermediary that would purchase defaulted property from the lender and resell it to a tribal member.
- Masterleases should include language to allow developers to purchase defaulted property from the lender and resell it to a tribal member.

Barrier: It is difficult to get an accurate appraisal of property on the Navajo Nation.

Recommendations

- The Local Working Group should compile a list of appraisers who are willing to work on the reservation for inclusion in the consumer guide and distribution to local lenders.
- The Local Working Group should compile a database of all available information on existing appraisals to serve as comparables. The Navajo Housing Authority is conducting appraisals on all of its housing stock to promote equity financing for rehabilitation and small business.

Barrier: Lenders require title insurance policies, but few title companies will issue a title policy on reservation land.

Recommendations

- The Local Working Group should compile a list of title insurance companies who are willing to work on the reservation for inclusion in the consumer guide and distribution to local lenders.

Barrier: There are no housing or building codes on the Navajo Nation to govern the construction of housing, which adds to the reluctance of lenders to make mortgage loans especially (construction financing) on the reservation.

Recommendations

- The tribal government should adopt a housing code that would require licensed contractors to build to code. The tribal agency that has authority for land-use planning could also enforce the building code by licensing contractors and conducting inspections.

Barrier: BIA regulations restrict the use of home equity loans.

Recommendations

- The One-Stop Mortgage Center Initiative should propose an appropriate amendment to allow residents of trust land to take advantage of the full benefits of homeownership.

APPENDIX C

One-Stop Mortgage Center Pilot Project Oglala Sioux Tribe Partnership for Housing, Inc. Pine Ridge, South Dakota

In August 1998, HUD Secretary Andrew Cuomo visited the Pine Ridge Indian Reservation to examine first-hand the severe housing and economic development challenges facing the Oglala Sioux Tribe. He found that many economic hurdles persist on the Pine Ridge reservation. Unemployment can reach as high as 85 percent during certain times of the year. Little infrastructure exists, and commerce is minimal. As a result, living conditions are deplorable. An estimated 4,000 families need homes. Overcrowding is severe, and in many cases, three or four families share a single house.

During Secretary Cuomo's visit, Tribal leaders discussed the need for a philosophical change in the delivery of housing services. Since the 1960's, the Oglala Sioux Tribe's designated housing authority has provided rental and other federally assisted housing options, but the Housing Authority has not had the capacity to provide extensive homeownership services. As a result of Cuomo's close consultation with Tribal leaders in housing issues, the Tribe received assistance from HUD to create a not-for-profit entity, the Oglala Sioux Tribe Partnership for Housing, Inc. (OSTPHI). The Oglala Sioux Partnership's mission is to promote homeownership on the Pine Ridge reservation and provide long-term housing and financial services to Oglala Lakota tribal members. The Oglala Lakota name for the nonprofit is **Tatanka Woihanble Otipi: Buffalo Dreams, Gathering Homes**. The Oglala Sioux Partnership will serve many functions: help identify families ready to buy a home, provide families with home buyer counseling, serve as a liaison between families and lending institutions, assist families in finding an affordable home for purchase or construction, as well as locating the best lending package. OSTPHI also will help find or provide gap financing, and, most importantly, entice the private sector to address real estate needs, construction development, and financing on the reservation.

Secretary Cuomo believes that creation of this type of tribal non-profit, specifically targeted to homeownership services, should not be limited to the Pine Ridge Reservation. Secretary Cuomo's goal in working with the Oglala Sioux Tribe and tribal leaders across the country is to create a national housing model to build and renovate affordable housing on tribal lands and help more Native Americans become homeowners. This model, entitled **Shared Visions**, is being designed for replication on tribal lands everywhere, to increase the number of affordable, quality homes and make it easier for Native Americans to obtain mortgages. To showcase the creation of this national housing model, the Oglala Sioux Tribe will host the Pine Ridge Building Summit, July 30 - August 7, 1999. The Summit will be the Oglala Sioux Partnership's first initiative to improve housing and economic conditions on the reservation. The Building Summit will result in 300 new or rehabilitated homes in all nine districts on the reservation by the year 2000. The first building event will be a seven-day effort, when 50 homes will be built or rehabilitated. New roads and water and sewer systems will be constructed, and an additional 250 homes will be constructed in 2000.

A primary focus of the Pine Ridge Building Summit will be the use of volunteer labor to offset the cost of housing construction. More importantly, **Shared Visions** will include a self-help housing component which brings together financial subsidies with “sweat equity.” “Sweat equity” refers to labor that families contribute to the construction of their homes. The level of sweat equity will depend upon the skills and health of the families involved. Having families assist in the construction of their homes makes the homes more affordable and provides a heightened sense of ownership for the homebuyer. Sweat equity also provides an opportunity to teach construction and related skills to family members who participate.

Since its inception, Secretary Cuomo has insisted that national tribal leaders take the lead in the design and implementation of **Shared Visions**. Cuomo has encouraged tribes to consider this an opportunity to actively seek public and private sector partners in housing to meet the immediate housing needs of tribes, and to increase private investment activity on reservations in general. At Pine Ridge, OSTPHI is working closely with Norwest Mortgage to facilitate homebuyer readiness and mortgage loans for families interested in the Pine Ridge Building Summit. Norwest has had a long-standing relationship with northern plains Tribes, and is a leader in mortgage lending throughout Indian Country. OSTPHI has identified potential homebuyers through outreach in the community including hosting homebuyer fairs, sending mailings, holding informational meetings, and collecting pre-applications. Norwest has begun screening applicants for mortgage loans and forwarded approved applications to HUD’s Office of Native American Programs for Section 184 underwriting approval. Working together, these partners have provided individual application assistance to each household, and will provide mandatory homeownership counseling for approved applicants. OSTPH and Norwest are also offering counseling to applicants with credit issues, to repair their credit and prepare them for homeownership. Once they address credit and budget issues, OSTPH will work with them to obtain a mortgage.

Developing the **Shared Visions** model and preparing for the Building Summit has been an excellent example of interagency coordination on the ground at Pine Ridge. OSTPH is coordinating closely with BIA on construction preparation for homes to be built during the Building Summit, including streamlined approval of sites for preparation. Recent designation of Pine Ridge as an Empowerment Zone in January of 1999 also compliments the economic development aspect of the **Shared Visions** effort through coordination with USDA Rural Development. At the same time, HUD and tribes have worked to incorporate private interests nationwide. Partnering with tribes will be the members of the National Partners in Homeownership, including Habitat for Humanity, the National American Indian Housing Council, the Neighborhood Re-investment Corporation, the National Association of Homebuilders, and the Mortgage Bankers Association of America, to name a few. Through the One-Stop Mortgage Center Initiative, the U.S. Department of Agriculture, Treasury, Interior, Bureau of Indian Affairs, and other federal agencies also are contributing to Shared Visions, as well as the overall effort to reform mortgage lending on tribal lands. OSTPH is also moving forward with fund-raising efforts for operation, new construction, housing counseling, and financial products.

The Pine Ridge Building Summit is only the beginning. The long-term goal of **Shared Visions** is to help solve the housing crisis on American Indian Reservations across the country by

finding innovative ways to build affordable, quality homes and encourage homeownership and private sector investment in reservation communities.

Because **Shared Visions** attempts to address many of the goals of the One-Stop Mortgage Center Initiative, Secretary Cuomo and the One-Stop Mortgage Center Initiative designated the Oglala Sioux Partnership as the second One-Stop Mortgage Center pilot project. The Navajo Partnership for Housing, Inc. was designated as the first pilot project as a reinvention of the existing Navajo capacity to provide homeownership services to tribal members. Pine Ridge, on the other hand, has extremely limited capacity for providing homeownership services. The **Shared Visions** initiative currently underway is an educational and capacity building effort to fill an existing void in homeownership services to residents. Incorporating the principles of the One-Stop Mortgage Center Initiative in developing a new local homeownership intermediary will help OSTPHI to foster homeownership in Pine Ridge and serve as a further model for other reservations seeking to expand homeownership opportunities.

APPENDIX D

RESOURCE LIST

The following represents a list of partners that have demonstrated cultural awareness and sensitivity in past partnerships or have programs that will enhance the development of culturally appropriate partnerships.

GOVERNMENT AGENCIES

Bureau of Indian Affairs, Office of Indian Education Programs - 1849 C Street, NW, Washington, DC 20240-0001, 202-208-6123

See <http://shaman.unm.edu/oiep/studsch.htm> for information about students and schools, and <http://shaman.urun.edu/oiep/prog2.htm> for information about programs.

The mission of the BIA Office of Indian Affairs is to provide education from childhood through adult life for Indian people. Dr. Sandra Fox has worked with curriculum development and would like to work more with the American Indian Business Leaders and other resource organizations to further financial literacy and programs for economic and homebuyer education in Indian country. Extensive information about programs and local contacts is available at the OIEP website.

Contact:

- Dennis Fox, Assistant Director.
- Dr. Sandra Fox, Oglala Lakota - Chief of Monitoring and Evaluation.
- Charlie Geboe (202) 208-4040

Department of Housing and Urban Development, Office of Native American Programs - 451 17th Street, SW, Room 4128 South, Washington, DC 20410-5000

See <http://www.codetalk.fed.us.onapstaf.htinc> for information about HUD programs for Native American housing.

Contact:

- Jacqueline Johnson, Deputy Assistant Secretary (202) 401-7914

Community Development Financial Institution Fund - 601 13th Street, NW - 200S, Washington, DC 20005

See www.treas.gov/cdfi for information about this wholly owned government corporation within the U.S. Treasury.

CDFI promotes economic revitalization and development in distressed urban and rural

communities throughout the United States.

Contact:

- Ellen Lazar, Executive Director (202) 622-8662
- Rodger Boyd, Native American Issues

COLLEGES AND UNIVERSITIES

Haskell Indian Nations University, 155 Indian Avenue, Lawrence, Kansas 66046-4800, (785)-749-8404 (phone), (785) 832-6606 (fax), <http://www.haskell.edu/>.

Haskell serves all federally recognized tribes, focusing on education, research and cultural programs that increase knowledge and support educational needs of American Indians. They offer four-year degrees in education, Native American Studies and business administration. The Center for Tribal Entrepreneurial Studies is working on developing training for tribal leadership and developing entrepreneurial curriculum for elementary and high school teachers.

Contact:

- Cheryl Foley Chuckluck, Director of the Center for Tribal Entrepreneurial Studies, (785) 749-8404 ext. 293.
- Don Bread, Business Department (785) 749-8402

Salish Kootenai Community College, 52000 Highway 93, Box 117, Pablo, MT 59855, (406) 675-4800 (phone), (404) 675-4801 (fax).

Salish Kootenai College offers degree programs in vocational training, community service, Indian culture, history and adult education. They are funded by the Kauffman Foundation to do curriculum development, and have been doing work on educational literacy issues.

Contact:

- Michelle Lansdowne (406) 675-4800 ext. 246 - educational literacy issues, michelle_lansdowne@skc.edu.

Fond du Lac Tribal Community College

The college has recognized the need for increased understanding of how credit works and has established a personal finance course for students. College officials are also working with the University of Minnesota to establish a two year business/financial services curriculum for community college students that will begin the Fall semester of 1999.

Contact:

- Bryan Jon Maciewski (218) 879-0800, (800) 657-3712, bjon@mail.fdl.cc.mn.us

Tribal Colleges

Thirty tribes operate their own colleges. See <http://niikaan.fdl.cc.nm.us/tqi/tcweblinks.htm> for a complete list of mailing addresses and telephone numbers. See <http://flinfo.pitt.edu/-Imitten/education.html> for website addresses.

EDUCATIONAL ASSOCIATIONS

American Indian Higher Education Consortium

Consortium of 30 tribal colleges. Publishes the *Tribal College Journal*, which includes 12/97 article, "American Indian Culture and Curriculum". See <http://nikaan.fdl.cc.nm.us/tcj/>.

National Federation for Teaching Entrepreneurship

See www.nftebiz.org.

Contact:

- Michael Caslin 111 (212) 232-2244 (212) 978-0105 (voice mail): Executive Director. See nftecaslin@msn.com.

National Indian Education Association

Founded in 1969 to give American Indians and Alaska Natives a national voice in improving access to educational opportunity. See <http://www.niea.org/>.

Contact:

- Dr. Sherry R. Allison, President: Senior research scientist at the Center for Development and Disability, University of New Mexico - Albuquerque.
- Gloria Grant, Board Member: Navajo-Omaha, curriculum center director for Chinle Unified School District No. 24.
- Elmer J. Guy, Board Member: Navajo. Executive Director for Navajo Nation, division of Dine education, Window Rock.

FOUNDATIONS

Ewing Marion Kauffman Foundation, 4801 Rockhill Road, Kansas City, MO 64110-2046, 816-932-1151 (phone) (816) 932-1430 (fax). See www.emkforg, www.entreworld.org.

The Kauffman Foundation is a large, relatively new foundation with substantial research capacity that supports youth education and entrepreneurship. They have provided substantial funding for curriculum development to Haskell Indian Nations University in Lawrence, Kansas and the Salish Kootenai College in Pablo, Montana. One of the programs they support is a Mini-Society modular curriculum in which children ages 8 to 12 design and develop their own society in which to learn about entrepreneurship.

Contact:

- Rhonda Holman (816) 932-1151: Director of Community Entrepreneurship.
- Dr. Marilyn Karilsky: Expert on curriculum development.

Fannie Mae Foundation, 4000 Wisconsin Ave., North Tower, Suite One, Washington, DC 20016.

The mission of the Fannie Mae Foundation is to transform communities through innovative partnerships and initiatives that revitalize neighborhoods and create affordable homeownership and housing opportunities across America.

Contact: Julie Ha, Manager of Targeted Outreach Programs (202) 274-8034

NONPROFIT ORGANIZATIONS

American Indian Business Leaders, University of Montana, Gallagher Business Building, Suite 366, Missoula, MT 59812, (406) 243-4879 (phone), (406) 243-2086 (fax).

AIBL was organized at the national level in 1995, and is advised by the American Indian Higher Education Consortium (AIHEC). They have worked with the BIA's Office of Indian Education and others to develop an economic education curriculum, and are very interested in working further on culturally appropriate education. Their general purpose is to stimulate tribal economic growth and stability, with an emphasis on maintaining culturally appropriate education. Their general purpose is to stimulate tribal economic growth and stability, with an emphasis on maintaining culturally appropriate American Indian business development. Board members include Sherry Salway Black (Oglala Lakota) of the First Nations Development Institute and banker Gerald Sherman (Oglala Lakota). Chairman Dave Archambault is a former president of the American Indian Higher Education Consortium.

Contact:

- Dave Archambault, Oglala Lakota, Chairman of the board of directors (701) 854-7201 or (701) 854-7245.
- Michelle Henderson, Asiniboine, Executive Director (406) 243-4879.

America's Promise - Alliance for Youth

This is an initiative started by General Colin Powell and former presidents that supports youth through mentors, safety, health, education, and service. See www.americasp-omise.org.

First Nations Development Institute, The Stores Building, 11917 Main Street, Fredericksburg, VA 22408, fax (540) 371-3515.

The primary mission of First Nations is to promote culturally appropriate economic development by and for Native peoples. In addition to economic development, this 18year-old organization has been working with banks and others on financial literacy and housing issues. They recently formed a Native Assets Research Center to promote research on native issues and to address policy issues.

Contact:

- Sherry Salway Black, Oglala Lakota , Vice President (540) 371-5615.

North American Native Bankers Association

The North American Native Bankers Associations a nonprofit association of Indian owned financial institutions. Formed in 1998, this organization was created to strengthen and increase the number of Indian owned financial institutions in the United States and Canada. See www.naba.org.

Contact:

- J.D. Colbert, President (405) 292-3020

Lakota Fund

Nonprofit housing and small business development organization serving the needs of Native Americans on the Pine Ridge reservation in South Dakota.

Contact:

- Elsie Meeks, Executive Director (612) 824-9363. See **Error! Bookmark not defined.**

Minnesota Indian Economic Development Fund

The Minnesota Indian Economic Development Fund acts as a catalyst for entrepreneurial activities and a gap financier completing the link between the borrower and the primary lender.

Contact:

- William Connelly, Executive Director (612) 824-9363

National American Indian Housing Council, 900 2nd Street, NE, Suite 009, Washington, DC 20002, fax (202) 789-1758, <http://naihc.indian.com/>.

The NAIHC is an Indian organization that advocates for improved Native American housing and provides technical assistance, training, research and information services to tribes.

Contact:

- Chris Boesen, Executive Director (202) 789-1754

National Center for American Indian Economic Development, 953 E. Juanita Avenue, Mesa, AZ 85204-6622, fax (602) 545-4208.

The National Center has provided management consulting and assistance to small businesses in Indian Country for 27 years. They have been recommended as a partner because of the philosophy of their approach to working in Indian country and their network of contacts for dissemination of materials to individuals and tribes. The mission of the organization is to develop and expand the American Indian private sector to employ Indian labor and increase the number of tribal and individual Indian owned businesses. NCAIED positively impacts and involves reservation communities, by establishing business relationships between Indian enterprises and private industry.

Contact:

- Ken Robbins, President (602) 545-1298. See www.nacied.org

Future Business Leaders of America

Future Business Leaders is an educational association of students preparing for careers in business and business-related fields, divisions for middle school, high school and post-secondary students. 13,000 chapters in the United States, supported by dues and contributions. See <http://www.fbلا-pbl.org/fag>.

Junior Achievement

Economic education program for students K-12, taught primarily by classroom volunteers. Has been used extensively by tribes in Alaska. See <http://www.ja.org/index.asp>.

Contact:

- Vera Tanier (719) 540-6252: Director of Strategic Alliances and Volunteers.

FOR-PROFIT ORGANIZATIONS

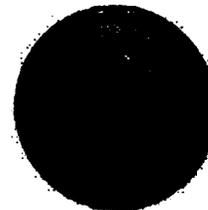
Falmouth Institute Offers Training, consulting and publications for Indian country. See <http://www.falmouthinsti.com/index.htm>.

Financial Institutions

The following institutions have developed programs and curriculum for use in Indian Country: Bank of America-Nations Bank, Washington Mutual, Wells Fargo and Norwest.

OTHER ORGANIZATIONS

Federal Deposit Insurance Corporation
Federal Home Loan Bank
Federal Reserve System
Freddie Mac
Neighborhood Reinvestment Corporation
Office of Comptroller of the Currency
Office of Thrift Supervision
U.S. Department of Education
Neighborhood Housing Services of America



CHECKLIST FOR RAP

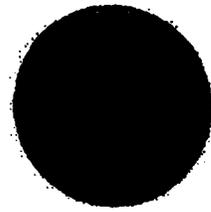
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- CHECKLIST
- NOTIFICATION LETTER TO TENANT/OWNER
- TENANT INFORMATION FORM
- W-9
- OWNER INFORMATION FORM
- UNIT SHEET
- CIVIL RIGHTS COMPLIANCE
- RAP LEASE ADDENDUM
- RAP HOUSING ASSISTANCE PAYMENTS CONTRACT
- INSPECTION CHECKLIST
- REQUEST FOR LEASE APPROVAL
- RAP COUPON
- RAP BRIEFING PACKET
- COMPUTER WORKSHEET
- RAP CALCULATION WORKSHEET
- INCOME/DEDUCTIONS VERIFICATIONS
- BRIEFING APPOINTMENT LETTER

The above items have been checked. All the necessary forms have been signed, dated and the amounts are true and accurate.

Checked by

Date



CHECKLIST FOR RAP
-RECERTIFICATION -

- ___ CHECKLIST
- ___ NOTIFICATION LETTER TO TENANT/OWNER
- ___ TENANT INFORMATION FORM
- ___ W-9
- ___ OWNER INFORMATION FORM
- ___ UNIT SHEET
- ___ INSPECTION CHECKLIST
- ___ REQUEST FOR LEASE APPROVAL
- ___ COMPUTER WORKSHEET
- ___ RAP CALCULATION WORKSHEET
- ___ INCOME/DEDUCTIONS VERIFICATIONS
- ___ ANNUAL REVIEW APPOINTMENT LETTER

The above items have been checked. All the necessary forms have been signed, dated and the amounts are true and accurate.

Checked by

Date

APPLICATION FOR HOUSING SERVICES

NAME _____
 MAILING ADDRESS _____
 CITY, STATE, ZIP CODE _____
 () () _____
 TWO PHONE NUMBERS _____

Date: _____

For Office Use:

Received by: _____
 Date: _____

Forwarded to: _____

HOUSEHOLD COMPOSITION:

Names of all Household Members Last Name, First Name, Middle Name	Relation to Head	Sex M/F	Date of Birth	Indian Yes/No	List Tribe	Ethnic Hispanic Non/Hisp	Social Security Number
1.	Head						
2.	Spouse						
3.							
4.							
5.							
6.							
7.							
8.							

Elderly Status:

0-Non Elderly: _____

1-62 or older: _____

2-Disabled: _____

Handicapped unit:

Sight impaired _____

Hearing impaired _____

Mobility impaired _____

TOTAL HOUSEHOLD INCOME: List all money earned or received by everyone living in your household. This includes money from wages, self-employment, child support contributions, social security disability payments, (SSI), workman's compensation, retirement, TANF, VA, rental property income, stock dividends, business income, lump sum payments.

LIST AMOUNTS BELOW

Household Members	Employer(list name address) School (list name of school)	Total Weekly Wages	TANF	Child Support Payment	Social Security Benefits	Unemployment Benefits	All Other Income
1.		\$	\$	\$	\$	\$	\$
2.		\$	\$	\$	\$	\$	\$
3.		\$	\$	\$	\$	\$	\$
4.		\$	\$	\$	\$	\$	\$

TYPE OF ASSISTANCE NEEDED

DIRECT HOUSING RENTAL PROPERTIES

I would like to rent an apartment located in a Housing Authority complex in the following city: (Circle one city)

Bartlesville Catoosa Claremore Grove Hulbert Jay
 Locust Grove Nowata Pryor Porum Sallisaw Stilwell
 Tahlequah Vinita Warner Wagoner Westville

S-8/ RENTAL ASSISTANCE

I would like help in paying my rent in the following county: (Circle one county)

Adair Cherokee Craig Delaware McIntosh Mayes Muskogee
 Nowata Ottawa Rogers Sequoyah Tulsa Wagoner Washington

MOD RENTAL-UNITS

I would like to rent a MOD unit in the following county: (Circle one county)

Adair Co.: 2 bedroom Sequoyah Co: 3 or 4 bedrooms Cherokee Co.: 1,2,or 3 bedrooms

HOME OWNERSHIP/MISC. LOANS

- List the type of home ownership loan you are applying for new construction or home already built: _____
- List the type of misc. loan you are requesting: _____
- List the county you are requesting assistance in: _____

Circle what repairs are needed for your home:

1. Is this a Mutual-Help (Indian) Home Yes No Are you still making payments? Yes No
2. Housing Rehabilitation (Need home repairs)
3. New Water System (Need new water system for home)
4. New Sewer System (Need new sewage system for home)
5. Housing Disaster: (Circle disaster type below)
 - a. House burned
 - b. House flooded
 - c. Tornado or other natural disaster.
6. Explain the type of housing assistance you are applying for. _____

7. If repair assistance is needed, do you own _____ or rent _____ this house?
If renting is the owner Indian? ___ No ___ Yes. If yes provide name of owner(s): _____
8. To your knowledge has HIP assistance ever been provided for this house or have you ever received
HIP assistance? ___ No ___ Yes. If yes list amount received \$ _____, the year it was received ___
who received it _____, and the location of the house _____
9. Is electricity available? ___ No ___ Yes. If yes provide name of electric company _____
10. Type of sewer system: (CIRCLE TYPE) City sewer Septic tank Outside toilet
11. Water source: (CIRCLE TYPE) City water Private well Community water tank
Other please describe _____
12. Number of bedrooms _____
13. Bathroom facilities in existing house (please circle what you have); Flush toilet Bath tub Sink.
14. Do you own the land on which you wish to renovate or build this home? ___ No ___ Yes
If no, provide the name of the owner(s): _____
15. What is the current status of the land?

Native/Restricted	Tribal Fee	Public Domain
Individual Trust Land	Tribal Trust Land	Other: _____
Individual restricted	Tribally restricted	
16. If you do not own the land, do you have: _____ Leasehold Interest? ___ Use permit?
Indefinite assignment of joint ownership? If so explain _____
17. Do you own any other house not occupied by your family? _____ If yes who occupies it?
_____ Where is it located? _____
18. If you are requesting assistance for a new housing unit or purchase of an existing standard unit, have
you applied for assistance from:

Indian Housing Authority?	If yes provide date of application: _____
Tribal Credit Program?	If yes provide date of application: _____
Private Lending Institution?	If yes provide date of application: _____
19. Does anyone in your family, who is a permanent resident listed on this application have a severe health
problem, handicap or permanent disability? ___ No ___ Yes. If yes provide name _____
and brief description of condition with certified documentation from doctor, Department of Veterans
Affairs, others. _____

20. Have you or any other person named on the application as intending to reside in the unit, ever been
convicted for using, dealing or manufacturing illegal drugs? (Circle) YES or NO.

PLEASE READ BEFORE SIGNING APPLICATION.

**Warning: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make
willful false statements of misrepresentation to any Department or Agency of the U.S. to
any matter within its jurisdiction.**

APPLICANT CERTIFICATION

I/We certify that the information given on this application in reference to household composition, income, net
family assets, allowances and deductions is accurate and complete to the best of my/our knowledge and
belief. I/We understand that false statements or information are punishable under Federal Law. I/We also
understand that false statements or information are grounds for termination of housing assistance and
termination of tenancy. This application will not be valid unless completely filled out.
Incomplete applications will be returned.

Signature of Head of Household

Date

Signature of Spouse

Date

BRIEFING CHECKLIST RENTAL ASSISTANCE PROGRAM

Facts about the Rental Assistance Program (RAP)

Family Obligations

How To Find a Rental Unit

Security Deposit

Watch For Lead Paint Poisoning

Additional Adult added to the Household

RAP Fraud Letters

Housing Discrimination Complaint Form

Fair Housing/A Good Place to Live Pamphlets

Housing Quality standards

RAP Coupons

Request for Lease Approval

a. Owner Information form
d. Lease Addendum

b. W-9
e. Owner Information

c. Owner certification

Information About 30% of Adjusted and Tenant Rent

Office Information

Lease Addendum/Lease Agreement

Rental Assistance Payments Contract

Jurisdictional Boundaries

I have received a briefing/coupon and fully understand the items listed above.

Signature

Date

OBLIGATIONS OF THE FAMILY

When the family's unit is approved and the RAP contract is executed, the family must follow the rules listed below in order to continue participating in the Rental Assistance Program. The family must:

1. Supply any information that the IHA or HUD determines to be necessary including evidence of citizenship or eligible immigration status, and information for use in a regularly scheduled and reexamination or interim reexamination of family income and composition.
2. Disclose and verify all social security numbers and sign and submit consent forms for obtaining information.
3. Supply any information requested by the IHA to verify that the family is living in the unit or information related to family absence from the unit.
4. Promptly notify the IHA in writing when the family is away from the unit for an extended period of time in accordance with IHA policies.
5. Allow the IHA to inspect the unit at reasonable times and after reasonable notice.
6. Notify the IHA and the owner in writing before moving out of the unit or terminating the lease.
7. Use the assisted unit for residence by the family. The unit must be the family's only residence.
8. Promptly notify the IHA in writing of the birth, adoption, or court-awarded custody of a child.
9. Request IHA written approval to add any other family member as an occupant of the unit.
10. Promptly notify the IHA in writing if any family member no longer lives in the unit.
11. Give the IHA a copy of any owner eviction notice.
12. Pay utility bills and supply appliances that the owner is not required to in supply under the lease.

The family (including each family member) shall not:

1. Own or have any interest in the unit (other than in a cooperative, or the owner of a manufactured home leasing a manufactured home space).
2. Commit any serious or repeated violation of the lease.
3. Commit fraud, bribery or any other corrupt or criminal act in connection with the program.
4. Participate in illegal drug or violent criminal activity.
5. Sublease or let the unit or assign the lease or transfer the unit.
6. Receive NAHASDA rental assistance while receiving another housing subsidy, for the same unit or a different unit under any other Federal, State or local housing assistance program.
7. Damage the unit or premises (other than damage from ordinary wear and tear) or permit any guest to damage the unit or premises.

Revised 1-14-99

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To: Participants of Housing Constructed Prior to 1978

If a unit was constructed before 1950, there is a possibility that it may contain lead based paint. Please read the following information concerning lead paint poisoning.

WATCH OUT FOR LEAD PAINT POISONING!!

Children get lead paint poisoning when they eat bits of paint that may contain lead. If a child eats enough lead paint his/her brain will be damaged. He/she may become mentally retarded or even die.

Older units often have layers of lead paint on the walls, ceilings and woodwork. When the paint chips off or when the plaster breaks, there is a real danger for babies and young children. Outdoors, lead paint and primers may have been used in many places, such as on walls, fences, porches, and fire escapes.

If you have seen your child putting pieces of paint or plaster in his/her mouth, you should take him/her to a doctor, clinic or hospital as soon as you can. In the beginning stages of lead poisoning, a child may not seem really sick. Do not wait for signs of poisoning.

Of course, a child may eat paint chips or chew on painted railing or window sills while parents are not around. Has your child been especially cranky? Is he/she eating very little? Does he/she throw up or have stomach aches often? These could be signs of lead poisoning. Take him to a doctor's office or clinic.

Be sure to tell the rest of the family and people who babysit for you about the danger of lead poisoning.

Look at your walls, ceilings and woodwork. Are there pieces where the paint is peeling? If so, get a broom or stiff brush and remove all the pieces of paint and plaster. Put them in a paper bag or wrap them in a newspaper and put the package in the trash can. Always keep the floor clean of loose bits of paint and plaster. Children will pick loose paint off the walls, so be extra careful about keeping the lower parts of the walls free of loose paint. Report peeling paint to the landlord/manager immediately.

If you want to know more about how to keep your children safe from lead paint poisoning, talk to your doctor, public health nurse or social worker at the clinic or health department.

=====

I have received a copy of Form HUD-52951, Watch out for Lead Paint Poisoning

Signature of Participant

Date



ADULT OR ADDITIONAL MEMBER ADDED TO THE HOUSEHOLD

The Housing Authority of the Cherokee Nation's Section 8 Policy states that no adult person(s) or other persons other than those listed on the lease and application shall live/stay in the unit other than on a temporary basis and/or not exceeding thirty (30) days. This is to insure that the Gross Family contribution is accurately based on the total monthly income of the household unit.

If my situation should change during the term of the lease, I agree to contact the Housing Authority with the additional information. I realize that failure to do this could result in eviction, lifetime loss of the IHA program, repayment of rent, and possible theft and fraud charges under state and federal law.

I understand the above statement. There is no other adult living/staying in the unit now other than whose name is on the application and lease. I agree to notify the Housing Authority within thirty (30) days if my situation should change.

Signature of Participant

Date



RAP TENANT FRAUD LETTER

Dear Participant:

The Department of Housing and Urban Development is seriously concerned about fraud violations in the rental assistance programs and has asked the Housing Authority of Cherokee Nation to send reminders to all the families on the programs. Following these simple rules will help you stay on the program and help all of the programs run fairly and honestly. Not following these rules could result in referral of the matter for investigation and your being accused of a federal crime.

Whenever appropriate, we will ask for information about your income and your family size so we can make sure you are paying the right rent amount to your landlord and that your unit is the right size for your family. When we ask for this information, be sure to:

- 1. Let us know about all income received by all members of the household and the income that you expect to receive in the next year. Many people forget to report incomes from second jobs, overtime, part time jobs, income received for child support and income received from doing odd jobs, such as babysitting and selling aluminum cans.**
- 2. Let us know the name(s) of everyone expected to live in the household the next year. Any person that moves in or out of the assisted unit needs to be reported to the Housing Authority.**

Your rent payment to your landlord shall not be any more than the amount listed in your lease that we calculated at the time of the move in or annual review. If you are now paying or if the landlord has asked for any money in addition to this payment, REPORT THIS TO US IMMEDIATELY. We will determine if these extra side payments are legal. Most of these payments are illegal and appropriate action will be taken against the landlord. We will review the case and notify you of the results.

If is very important that you report all income changes and all changes in the number of people living in the unit. We urge you to be sure that you are meeting your responsibilities so that you will continue to receive assistance and the programs can serve as many families as possible.

If you know of any cases of fraud by landlords, employees of the Housing Authority of Cherokee Nation, or any other persons, contact the manager of the programs. You may also come by the office during regular business hours of 8:00 to 4:30 Monday through Friday. We appreciate your cooperation in the matter.

Signature

Date



RENTAL ASSISTANCE FRAUD LETTER

Dear Owner:

The Department of Housing and Urban Development has conveyed to us serious concerns about violations in the rental assistance programs. The HUD Office of Inspector General (IG) has recently identified cases of fraud by public housing agencies and their employees, owners/managers and tenants participating on the rental programs.

In order that the department may provide rental assistance to as many needy families as we can, all participants of the HUD sponsored programs must properly utilize government funds and follow departmental policy requirements. Incidence of fraud, willful misrepresentations or intent to deceive in regard to the rental assistance programs are criminal acts. If you are suspected of committing fraudulent acts, we are required to refer the matter to the proper authorities for appropriate action. This could lead to an investigation of the allegations and could result in your being accused of a federal crime and termination from the program.

Some examples of fraud involving owners/managers identified by the IG's investigation includes:

1. Requiring extra side payments in excess of the family's share of the rent. Any payments in excess of the rent must receive prior approval by the Housing Authority.
2. Collecting assistance payments for unit not occupied by the assisted tenant. If a unit becomes vacant, it must be reported immediately.
3. Bribing Housing Authority employees to certify substandard units as standard.

We urge you to report any violations of the rental assistance programs. These violations should be reported immediately rather than to continue in noncompliance with program requirements.

If you know of any violations of fraud committed by any persons, you may contact the manager of the program or come by the office during the hours of 8:00 to 4:30 Monday through Friday.

We are, in addition to your letter, writing to tenants who are receiving assistance requesting their help in preventing program abuse. We will take any action warranted to ensure cases of fraud are prevented or prosecuted and are working with HUD to accomplish this task. We appreciate your cooperation in this matter.

Please sign and date below. Retain a copy for your records. Return the original to this office.

Signature

Date

Housing Discrimination Complaint

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity



Please type or print this form - Don't write in the shaded area

OMB Approval No. 2529-0011 (exp. 1/31/92)

Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2529-0011), Washington, D.C. 20503.

Instructions: Read this form and the instructions on reverse carefully before completing. All questions should be answered. However, if you do not know the answer or if a question is not applicable, leave the question unanswered and fill out as much of the form as you can. Your complaint should be signed and dated. Where more than one individual or organization is filing the same complaint, and all information is the same, each additional individual or organization should complete boxes 1 and 7 of a separate complaint form and attach it to the original form. Complaints may be presented in person or mailed to the Regional Office covering the State where the complaint arose (see list on back of form), any local HUD Field Office, or to the Office of Fair Housing and Equal Opportunity, U.S. Department of HUD, Washington, D.C. 20410.

This section is for HUD use only.

Number :	(check <input checked="" type="checkbox"/> applicable box) :	Jurisdiction :	Signature of HUD personnel who established jurisdiction:
Filing Date :	<input type="checkbox"/> Referral and Agency (specify)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Systemic <input type="checkbox"/> Military Referral	<input type="checkbox"/> Additional Info	

1. Name of Aggrieved Person or Organization (last name, first name, middle initial) (Mr.Mrs.Miss.Ms.)

Home Phone : ()

Business Phone : ()

Street Address (city, county, State & zip code)

2. Against whom is this complaint being filed? Name (last name, first name, middle initial)

Phone No.: ()

Street Address (city, county, State & zip code)

Check (✓) the applicable box or boxes which describe(s) the party named above.

Builder Owner Broker Salesperson Supt. or Manager Bank or other Lender Other

If you named an individual above who appeared to be acting for a company in this case, check (✓) this box and write the name and address of the company in this space:

Name: Address:

Name and identify others (if any) you believe violated the law in this case

3. What did the person you are complaining against do? Check (✓) all that apply and give the most recent date these act(s) occurred in block No. 6a below.

Refuse to rent, sell, or deal with you

Falsely deny housing was available

Engage in blockbusting

Discriminate in broker's services

Other (explain)

Discriminate in the conditions or terms of sale, rental occupancy, or in services or facilities

Advertise in a discriminatory way

Discriminate in financing

Intimidated, interfered, or coerced you to keep you from the full benefit of the Federal Fair Housing Law

4. Do you believe that you were discriminated against because of your race, color, religion, sex, handicap, the presence of children under 18, or a pregnant female in the family or your national origin? Check (✓) all that apply:

Race or Color Religion (specify) Sex Handicap Familial Status National Origin

Black Male Physical Presence of children under 18 in the family Hispanic American Indian or Alaskan Native Other (specify)

White Female Mental Pregnant female Asian or Pacific Islander

Other

5. What kind of house or property was involved? Did the owner live there? Is the house or property: What is the address of the house or property? (street, city, county, State & zip code)

Single-family house Yes Being sold?

A house or building for 2, 3, or 4 families No Being rented?

A building for 5 families or more Unknown

Other, including vacant land held for residential use (explain)

6. Summarize in your own words what happened. Use this space for a brief and concise statement of the facts. Additional details may be submitted on an attachment. Note: HUD will furnish a copy of the complaint to the person or organization against whom the complaint is made.

6a. When did the act(s) checked in Item 3 occur? (include the most recent date if several dates are involved)

7. I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.

Signature & Date :

X

What Does the Fair Housing Amendments Act of 1988 Provide?

The Fair Housing Act declares that it is national policy to provide fair housing throughout the United States and prohibits eight specific kinds of discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, handicap, familial status or national origin.

1. Refusal to sell or rent or otherwise deal with a person.
2. Discriminating in the conditions or terms of sale, rental, or occupancy.
3. Falsely denying housing is available.
4. Discriminatory advertising.
5. "Blockbusting" -causing person(s) to sell or rent by telling them that members of a minority group are moving into the area.
6. Discrimination in financing housing by a bank, savings and loan association, or other business.
7. Denial of membership or participation in brokerage, multiple listing, or other real estate services.
8. Interference, coercion, threats or intimidation to keep a person from obtaining the full benefits of the Federal Fair Housing Law and/or filing a complaint.

What does the Law Exempt?

The first three acts listed above do not apply (1) to any single family house where the owner in certain circumstances does not seek to rent or sell it through the use of a broker or through discriminatory advertising, nor (2) to units in houses for two-to-four families if the owner lives in one of the units.

What Can You Do About Violations of the Law?

Remember, the Fair Housing Act applies to discrimination based on race, color, religion, sex, handicap, familial status, or national origin. If you believe you have been or are about to be, discriminated against or otherwise harmed by the kinds of discriminatory acts which are prohibited by law, you have a right, within 1 year after the discrimination occurred to:

1. Complain to the Secretary of HUD by filing this form by mail or in person. HUD will investigate. If it finds the complaint is covered by the law and is justified, it will try to end the discrimination by conciliation. If conciliation fails, other steps will be taken to enforce the law. In cases where State or local laws give the same rights as the Federal Fair Housing Law, HUD must first ask the State or local agency to try to resolve the problem.
2. Go directly to Court even if you have not filed a complaint with the Secretary. The Court may sometimes be able to give quicker, more effective, relief than conciliation can provide and may also, in certain cases, appoint an attorney for you (without cost).

You Should Also Report All Information about violations of the Fair Housing Act to HUD even though you don't intend to complain or go to court yourself.

Additional Details. If you wish to explain in detail in an attachment what happened, you should consider the following:

1. If you feel that others were treated differently from you, please explain the facts and circumstances.
2. If there were witnesses or others who know what happened, give their names, addresses, and telephone numbers.
3. If you have made this complaint to other government agencies or to the courts, state when and where and explain what happened.

Racial/Ethnic Categories

1. **White (Non Hispanic)** - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.
2. **Black (Non Hispanic)** - A person having origins in any of the black racial groups of Africa.

3. **Hispanic** - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.
4. **American Indian or Alaskan Native** - A person having origins in any of the original peoples of North America, and who maintains, cultural identification through tribal affiliation or community recognition.
5. **Asian or Pacific Islander** - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

You can obtain assistance (a) in learning about the Fair Housing Act, or (b) in filing a complaint at the HUD Regional Offices listed below:

Region I - BOSTON (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)
HUD - Fair Housing and Equal Opportunity (FHEO)
Boston Federal Office Building, 10 Causeway Street
Boston, Massachusetts 02222-1092

Region II - NEW YORK (New Jersey, New York, Puerto Rico, Virgin Islands)
HUD-Fair Housing and Equal Opportunity (FHEO)
26 Federal Plaza
New York, New York 10278-0068

Region III - PHILADELPHIA (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)
HUD - Fair Housing and Equal Opportunity (FHEO)
Liberty Square Building, 105 S. 7th Street
Philadelphia, Pennsylvania 19106-3392

Region IV - ATLANTA (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)
HUD- Fair Housing and Equal Opportunity (FHEO)
Richard B. Russell Federal Building, 75 Spring Street, S.W.
Atlanta, Georgia 30303-3388

Region V - CHICAGO (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)
HUD - Fair Housing and Equal Opportunity (FHEO)
626 West Jackson Boulevard
Chicago, Illinois 60606-6765

Region VI - FORT WORTH (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)
HUD - Fair Housing and Equal Opportunity (FHEO)
1600 Throckmorton, P.O. Box 2905
Fort Worth, Texas 76113-2905

Region VII - KANSAS CITY (Iowa, Kansas, Missouri, Nebraska)
HUD - Fair Housing and Equal Opportunity (FHEO)
Professional Building, 1103 Grand Avenue
Kansas City, Missouri 64106-2496

Region VIII - DENVER (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
HUD - Fair Housing and Equal Opportunity (FHEO)
Executive Tower Building, 1405 Curtis Street
Denver, Colorado 80202-2349

Region IX - SAN FRANCISCO (Arizona, California, Hawaii, Nevada, Guam, American Samoa)
HUD - Fair Housing and Equal Opportunity (FHEO)
450 Golden Gate Avenue
San Francisco, California 94102-3448

Region X - SEATTLE (Alaska, Idaho, Oregon, Washington)
HUD - Fair Housing and Equal Opportunity (FHEO)
Arcade Plaza Building, 1321 Second Avenue
Seattle, Washington 98101-2058

Privacy Act of 1974 (P.L. 93-579)

Authority: Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, (P.L. 100-430).

Purpose: The information requested on this form is to be used to investigate and to process housing discrimination complaints.

Use: The information may be disclosed to the United States Department of Justice for its use in the filing of pattern or practice suits of housing discrimination or the prosecution of the person who committed the discrimination where violence is involved; and to state or local fair housing agencies which administer substantially equivalent fair housing laws for complaint processing.

Penalty: Failure to provide some or all of the requested information will result in delay or denial of HUD assistance.

Disclosure of this information is voluntary.

**RAP COUPON
RENTAL ASSISTANCE PROGRAM**

**NATIVE AMERICAN HOUSING ASSISTANCE
AND SELF-DETERMINATION ACT OF 1996**

Please read entire document before completing form. Fill in all blanks below. Type or print clearly.		Coupon Number
1. Insert unit size in number of bedrooms. (This is the no. of bedrooms the family qualifies for and is used in determining subsidy standards to avoid overcrowding).		1. Maximum Subsidy Per RAP Chart \$
2. Date Coupon issued. Insert actual date the Coupon is issued to the Family.		2. Issue Date
3. Date Coupon Expires. Insert date sixty days after date Coupon is issued.		3. Expiration Date
4. Date Extensions Expire, if applicable.	4a. 1 st Suspension/Expiration Date	4b. 2 nd Suspension/Expiration Date
5. Name of Family Representative	6. Signature of Family Representative	Date Signed
7. Name of Housing Agency (HA) HOUSING AUTHORITY OF CHEROKEE NATION		
8. Name and Title of HA Official	9. Signature of HA Official	Date signed

1. RENTAL ASSISTANCE PROGRAM

- A. The HACN has determined the above named family (item 5) is eligible to participate in the Rental Assistance Program. Under this program, the family chooses a decent, safe and sanitary unit to live in. If the owner agrees to lease the unit to the family under the Rental Assistance Program, and if the HACN approves the unit, the HACN will enter into a contract with the owner to make monthly payments to the owner to help the family with the rent.
- B. The HACN determines the amount of subsidy to be paid.

2. COUPON

- A. When issuing the coupon, the HACN expects the family to submit an acceptable lease for an eligible unit; the HACN will have the money available to enter into a Rental Assistance payments (HAP) contract with the owner. However, the HACN is under no obligation to the family, to the owner, or to any other person, to approve any unit or lease. The HACN does not have any liability to any party by the issuance of this Coupon.
- B. The Coupon does not give the family any right to participate in the HACN's Rental Assistance Program. The family becomes a participant in the HACN's Rental Assistance Program when the HAP contract between the HACN and the owner takes effect.
- C. During any initial or any extended term of this Coupon, the HACN may require the family to report progress in leasing a unit at such intervals and times as determined by the HACN.

3. HACN APPROVAL OR DISAPPROVAL OF UNIT LEASE

- A. When the family finds a suitable unit where the owner is willing to participate on the program, the family must give the HACN the Request for Lease Approval (on the form supplied by the HACN), signed by the owner and the family, and a copy of the proposed lease. **Note: Both documents must be given to the HACN no later than the expiration date signed in item 3 or 4 at top of page one of this Coupon.**
- B. The family must submit these documents in the manner that is required by the HACN. HACN policy prohibits the family from submitting more than one Request for Lease Approval at a time.
- C. The owner's lease must include, word-for-word, all provisions of the lease addendum as required by the HACN lease addendum. If there is a difference between any provisions of the HACN lease addendum and any provisions of the owner's lease, the provisions of the HACN lease addendum shall control.

- D. After receiving the request for lease approval and the proposed lease, the HACN will inspect the unit. The HACN will not give an approval for the family to lease the unit or execute the HAP contract until the HACN has determined that all of the following program requirements are met: the unit is eligible, the unit has been inspected by the HACN and passes the Housing Quality Standards (HQS), and the lease is approved and includes the HACN lease addendum.
- E. If the HACN approves the unit and the lease, the HACN will notify the family and owner and will furnish a copy of the HAP contract to the owner.
 - 1. The owner and the family must execute the HACN approved lease.
 - 2. The owner and HACN must execute the HAP contract.
- F. If the HACN determines that the unit or lease cannot be approved for any reasons, the HACN will notify the owner and the family that: 1. The proposed unit or lease is disapproved for specified reasons; and 2. If the conditions requiring disapproval are remedied to the satisfaction of the HACN on or before the date specified by the HACN, the unit or lease will be approved.

4. OBLIGATIONS OF THE FAMILY

- A. When the family's unit is approved and the HAP contract executed, the family must follow the rules listed below as a requirement for participation on the Rental Assistance Program.
- B. The family must:
 - 1. Supply any information that the HACN determines to be necessary including evidence of citizenship or eligible immigration status and any information for use in a regularly scheduled certification of family income and composition.
 - 2. Disclose and verify social security numbers and sign and submit consent forms for obtaining information.
 - 3. Supply any information requested by the HACN to verify that the family is living in the unit or information related to family absence from the unit.
 - 4. Promptly notify the HACN in writing when the family is away from the unit for an extended period of time in accordance with HACN policies.
 - 5. Allow the HACN to inspect the unit at reasonable times and after reasonable notice.
 - 6. Notify the HACN and the owner in writing before moving out of the unit or terminating the lease.
 - 7. Use the assisted unit for residence by the family. The unit must be the only residence.
 - 8. Promptly notify the HACN in writing of the birth, adoption, or court-awarded custody of a child.
 - 9. Request HACN written approval to add any other family member as an occupant of the unit.
 - 10. Promptly notify the HACN in writing if any family member no longer lives in the unit.
 - 11. Give the HACN a copy of any owner eviction notice.
 - 12. Pay utility bills and supply appliances that the owner is not required to supply under the lease.
 - 13. Any information the family supplies must be true and complete.
 - 14. Must obtain HA approval to have a foster child or live in aide reside in the unit.
 - 15. Supply any information requested by HA for use in a regularly scheduled annual certification of family income and composition.
 - 16. Family composition must be approved by HACN.
- C. The family (including each family member) must not:
 - 1. Own or have any interest in the unit.
 - 2. Commit any serious or repeated violation of the lease.
 - 3. Commit fraud, bribery or any other corrupt or criminal act in connection with the program.
 - 4. Participate in illegal drug or violent criminal activity.
 - 5. Sublease or let the unit or assign the lease or transfer the unit.
 - 6. Receive Section 8 tenant-based program housing assistance while receiving another housing subsidy, for the same unit or a different unit under any other Federal, State or local housing assistance program.
 - 7. Damage the unit or premises (other than damage from ordinary wear and tear) or permit any guest to damage the unit or premises.

5. ILLEGAL DISCRIMINATION

If the family has reason to believe that it has been discriminated against on the basis of age, race, color, religion, sex, disability, national origin, or familial status; the family may file a housing discrimination complaint with any HUD Field Office in person, by mail or by telephone. The HACN will give the family information on how to fill out and file a complaint.

6. EXPIRATION AND EXTENSION OF COUPON

The Coupon will expire on the date stated in item 3 on the top of page one of this Coupon unless the family requests an extension in writing and the HACN grants a written extension of the Coupon, in which case the Coupon will expire on the date stated in item 4.

**Request for Lease Approval
Rental Assistance Program**

**Housing Authority of the Cherokee Nation
Native American Housing Assistance and Self
Determination Act of 1996**

1. Physical address of the unit (street or route, apartment number or box, city, state and zip code)

2. Give directions to the unit if the unit is hard to find or has a route and a box number.

3. Type of Unit.
 House Apartment (1-story or 2 story) Duplex Mobile Home Other _____

4. # of Brm. _____ 5. Rent charged by Owner \$ _____ 6. Security Deposit \$ _____ 7. Yr. Constructed. _____

8. What types of utilities are in the unit? Circle one. Who pays the utility bills? Circle "O" if the owner pays or circle "T" if the tenant pays. Who supplies the range and/or refrigerator?

HEAT	Natural gas	Propane	Electric	Who pays the bill?	O or T
COOK STOVE	Natural gas	Propane	Electric	Who pays the bill?	O or T
WATER HEATER	Natural gas	Propane	Electric	Who pays the bill?	O or T
WATER				Who pays the bill?	O or T
SEWER / SEPTIC				Who pays the bill?	O or T
TRASH				Who pays the bill?	O or T
RANGE				Furnished by?	O or T
REFRIGERATOR				Furnished by?	O or T

9. Owner's Certification. By executing this request, the owner certifies that: I will advise the HACN and family of any lead-based paint on the surface of the unit of which I have knowledge prior to or during the initial housing quality standards (HQS) inspection of the unit.

10. HACN Determination:

- The HACN has not screened the family's behavior or suitability for tenancy. Such screening is the owner's own responsibility.
- The owner's lease must include word-for-word all provisions of the HACN lease addendum.
- The HACN will arrange for inspection of the unit and will notify the owner and the family as to whether or not the lease and unit will be approved.

Print or Type Name of Owner or Other Party Authorized to Execute Lease		Print or Type Name of Family	
Signature		Signature	
Telephone Number	Date	Telephone Number	Date
Mailing Address		Mailing Address	

The Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996 became effective October 1, 1998, which designated the Housing Authority of Cherokee Nation as a Tribally Designated Housing Entity. PIH Notice 98-58 states Housing Agencies are encouraged to operate a similar program to the HUD Section 8 Tenant-Based Programs but is not required. Effective February 1, 1999, HACN is operating a Rental Assistance Program (RAP) which is similar to the Section 8 Tenant-Based program

Name of Family:		Date of Request
Inspector:	Neighborhood/Census Tract:	Date of Inspection:
Type of Inspection: <input type="checkbox"/> Initial <input type="checkbox"/> Special <input type="checkbox"/> Reinspection	Date of Last Inspection:	IHA: Housing Authority of Cherokee Nation

A. General Information

Inspected Unit	Year Constructed:	Housing Types: (check as appropriate) <input type="checkbox"/> House <input type="checkbox"/> Apartment (1-story or 2-story) <input type="checkbox"/> Duplex <input type="checkbox"/> Mobile Home <input type="checkbox"/> Other _____ _____ _____ _____	
Street Address:	City:		
County:	State:		Zip:
Number of Children in Family Under 6:	Number of Children in Family with Elevated Blood Lead Level:		
Owner			
Name of Owner or Agent Authorized to Lease Unit Inspected:		Phone Number:	
Address of Owner or Agent:			

B. Summary Decision On Unit (To be completed after form has been filled out)

<input type="checkbox"/> Pass <input type="checkbox"/> Fail <input type="checkbox"/> Inconclusive	No. of Bedrooms for Purposes of Subsidy Standards:	No. of Sleeping Rooms:	
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Inspection Checklist

Item No.	1. Living Room	Yes Pass	No Fail	In-Conc.	Comment	Final Approval Date
1.1	Living Rm. Present					
1.2	Electricity					
1.3	Electrical Hazards					
1.4	Security					
1.5	Window Condition					
1.6	Ceiling Condition					
1.7	Wall Condition					
1.8	Floor Condition					
1.9	Lead Paint				<input type="checkbox"/> Not Applicable	

Room Codes: 1 = Bedroom or Any Other Room Used for Sleeping (regardless of the type of room); 2 = Dining Room or Area; 3 = Second living Room, Family Room, Den, Playroom, TV Room; 4 = Entrance Halls, Corridors, Halls, Staircases; 5 = Additional Bathroom; 6 = Other

Item No.	2. Kitchen	Yes Pass	No Fail	In-Conc	Comment	Final Approval Date
2.1	Kitchen Area Present					
2.2	Electricity					
2.3	Electrical Hazards					
2.4	Security					
2.5	Window Condition					
2.6	Ceiling Condition					
2.7	Wall Condition					
2.8	Floor Condition					
2.9	Lead Paint				<input type="checkbox"/> Not Applicable	
2.10	Stove or Range w/oven					
2.11	Refrigerator					
2.12	Sink					
2.13	Space for Storage, Preparation / serving of food.					
Item No.	3. Bathroom	Yes Pass	No Fail	In-Conc	Comment	Final Approval Date
3.1	Bathroom present					
3.2	Electricity					
3.3	Electrical Hazards					
3.4	Security					
3.5	Window Condition					
3.6	Ceiling Condition					
3.7	Wall Condition					
3.8	Floor Condition					
3.9	Lead Paint				<input type="checkbox"/> Not Applicable	
3.10	Flush toilet in encl. room in unit					
3.11	Fixed Wash Basin or Lavatory in Unit					
3.12	Tub or Shower in Unit					
3.13	Ventilation					
Item No.	4. Other Rooms used for Living and Halls	Yes Pass	No Fail	In-Conc	Comment	Final Approval Date
4.1	Room Code and Room Location <input type="checkbox"/>				(Circle One) Right/Center/Left (Circle One) Right/Center/Left _____ Floor Level	
4.2	Electricity					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead Paint				<input type="checkbox"/> Not Applicable	
4.10	Smoke Detectors					

Item No.	4. Other Rooms Used for Living and Halls	Yes Pass	No Fail	In-Conc	Comment	Final Approval Date
4.1	Room Code and Room Location <input type="checkbox"/>				(Circle One) Right/Center/Left (Circle One) Right/Center/Left Floor Level	
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead Paint				<input type="checkbox"/> Not Applicable	
4.1	Room Code and Room Location <input type="checkbox"/>				(Circle One) Right/Center/Left (Circle One) Right/Center/Left Floor Level	
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead Paint				<input type="checkbox"/> Not Applicable	
4.1	Room Code and Room Location <input type="checkbox"/>				(Circle One) Right/Center/Left (Circle One) Right/Center/Left Floor Level	
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
2.6	Ceiling Condition					
2.7	Wall Condition					
2.8	Floor Condition					
2.9	Lead Paint				<input type="checkbox"/> Not Applicable	
4.1	Room Code and Room Location <input type="checkbox"/>				(Circle One) Right/Center/Left (Circle One) Right/Center/Left Floor Level	
4.2	Electricity/Illumination					
2.3	Electrical Hazards					
2.4	Security					
2.5	Window Condition					
2.6	Ceiling Condition					
2.7	Wall Condition					
2.8	Floor Condition					
2.9	Lead Paint				<input type="checkbox"/> Not Applicable	

Item No.	5. All Secondary/Rooms (Not Ned for Living)	Yes Pass	No Fail	In-Conc	Comment	Final Approval Date
5.1	None <input type="checkbox"/> Go to Part 6					
5.2	Security					
5.3	Window Condition					
5.4	Other Potentially Hazardous features in the rooms					
Item No.	6. Building Exterior	Yes Pass	No Fail	In-Conc	Comment	Final Approval Date
6.1	Condition of Foundation					
6.2	Condition of Stairs, Rails, and Porches					
6.3	Condition of Roof/Gutters					
6.4	Condition of Exterior Surfaces					
6.5	Condition of Chimney				<input type="checkbox"/> Not Applicable	
6.6	Lead Paint: Exterior Surfaces				<input type="checkbox"/> Not Applicable	
6.7	Manufactured Home: Tie Downs				<input type="checkbox"/> Not Applicable	
Item No.	7. Heating and Plumbing	Yes Pass	No Fail	In-Conc	Comment	Final Approval Date
7.1	Adequacy of Heating Equipment					
7.2	Safety of Heating Equipment					
7.3	Ventilation/Cooling					
7.4	Water Heater					
7.5	Approvable Water Supply					
7.6	Plumbing					
7.7	Sewer Connection					
Item No.	8. General Health and Safety	Yes Pass	No Fail	In-Conc	Comment	Final Approval Date
8.1	Access to Unit					
8.2	Fire Exits					
8.3	Evidence Infestation					
8.4	Garbage and Debris					
8.5	Refuse Disposal					
8.6	Interior Stairs and Common Halls					
8.7	Other Interior Hazards					
8.8	Elevators				<input type="checkbox"/> Not Applicable	
8.9	Interior Air Quality					
8.10	Site and Neighborhood Conditions					
8.11	Lead Paint: Owner's Certification				<input type="checkbox"/> Not Applicable	

8.11 Lead Paint: Owner's Certification If the owner is required to treat any interior or exterior surfaces, the IHA must obtain certification that the work has been done in accordance as such requirements prior to the execution or renewal of RAP contract.

The undersigned hereby certifies that the property located at (give full address) has
 Owner Signature _____ Date _____

PART A: Contract Information:

This Housing Assistance Payments contract consists of Part A and Part B. (Fill in all contract information below).

1. **Contract Unit:** (enter address of unit, including apartment number, if any):

2. **Tenant** (enter the full name of the tenant):

3. **Beginning of the Term**

The term of the HAP contract begins on (Enter the first day of the lease term):

4. **Family Members** (Enter the full names of all family members):

5. **Rental Assistance Payment**

The amount of the monthly housing assistance payment by the IHA to the owner is \$_____ per month for a one year period unless RAP requirements change or participant's qualifications change during the life of the agreement or the contract or lease is terminated.

SIGNATURES

HOUSING AGENCY

OWNER

HOUSING AUTHORITY OF CHEROKEE NATION	
Print or Type Name of IHA	Print or Type Name of Owner
Signature	Signature
Print or Type Name and Title of Signatory	Print or Type Name and Title of Signatory
Date	Date

B. Contract Terms

1. Definitions

Rental Assistance Program. Under this program, the HACN provides a housing assistance payment on behalf of an eligible family.

Contract Unit. The housing unit rented by the tenant. (The contract unit described in Part A.)

Family, Persons who may reside in the unit with assistance under the program.

HACN, Housing Authority of the Cherokee Nation of Oklahoma.

HAP contract.. The housing assistance payments contract. The contract consists of Part A and Part B.

Housing Quality Standards (HQS). The minimum quality standards for housing assisted under the Rental Assistance Program.

Lease Addendum. The lease language required by the HACN.

Premises. The building or complex where the contracted unit is located which includes common areas and grounds.

Tenant. The tenant is the family member who leases the contract unit from the owner.

2. Purpose

a. This contract is between the HACN and the owner.

b. The family is a participant on the Rental Assistance Program. The purpose of the RAP contract is to assist the tenant to lease a dwelling unit from the owner for occupancy by the family.

c. The HACN must pay housing assistance payments to the owner in accordance with the RAP contract. The HACN has received funds under the Native American Housing Assistance and Self Determination Act of 1996 to pay housing assistance for eligible families.

3. Lease of Contract Unit

a. The owner has leased the contract unit to the tenant for occupancy by the family with assistance under the Rental Assistance Program.

b. The lease must include word-for word all provisions of the lease addendum that is required by the HACN. If there is a conflict between the lease addendum and any of the provisions of the lease, the language of the HACN required lease addendum shall control.

c. The lease has been approved by the HACN. The owner certifies that the lease has been executed by the tenant and the owner in the form approved by the HACN. The lease may not be revised unless the HACN gives notice that the lease revision has been approved.

d. The HACN has not screened the family's behavior or suitability for tenancy. Such screening is the owner's own responsibility.

4. Use and Occupancy of Contract Unit

a. The RAP contract only applies to the family and the contract unit.

b. The composition of the family residing in the contract unit must be approved by the HACN. The members of the family approved by the HACN at execution of the RAP contract are listed in Part A of the RAP contract.

5. Maintenance and Inspection

a. The owner must maintain the contract unit and premises in accordance with HQS.

b. The lease must specify what utilities and appliances are to be supplied by the owner and what utilities and appliances are to be supplied by the tenant.

- c. The owner is not responsible for a breach of the HQS that is caused by any of the following:
 - (i) The family fails to pay for any utilities that the owner is not required to pay for under the lease, but which are to be paid by the tenant;
 - (ii) The family fails to provide and maintain any appliances that the owner is not required to provide for under the lease, but which are to be provided by the tenant;
 - (iii) Any member of the household or guest damages the contract unit or the premises (damages beyond ordinary wear and tear).
- d. If the owner does not maintain the unit in accordance with the HQS, HACN remedies for such breach of the HQS include suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments and termination of RAP contract. The HACN may not exercise such remedies against the owner because of an HQS breach for which the family is responsible (as described in Section 5.c), and that is not caused by the owner.
- e. The HACN will not make any housing assistance payments for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by the HACN and the HACN verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within the period specified by the HACN.
- f. The HACN will inspect the contract unit and the premises at least annually and at such other times as the HACN determines necessary, to assure that the unit is in accordance with the HQS.
- g. The HACN must notify the owner of defects shown by the inspection.
- h. Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

6. Term of RAP Contract

- a. **Relation to lease term.** The term of the RAP contract begins on the first day of the term of the lease and terminates on the last day of the term of the lease.
- b. **When RAP contract terminates.** The term of the RAP contract terminates if any of the following occurs:
 - (i) The lease terminates; or
 - (ii) The RAP contract terminates, or
 - (iii) The HACN terminates program assistance for the family, or
 - (iv) The HACN determines the landlord has violated the agreement.
- c. **Termination of RAP contract.**
 - (i) The HACN may terminate program assistance for the family for any grounds authorized in accordance with HACN requirements. If the HACN terminates program assistance for the family, the RAP contract terminates automatically.
 - (ii) If the family moves out of the unit, the RAP contract terminates automatically
 - (iii) The HACN may terminate the RAP contract if the HACN determines that available program funding is not sufficient to support continued assistance for families in the program.
 - (iv) The HACN may terminate the RAP contract if the HACN determines that:
 - (1) The contract unit does not meet the HQS space standards because of an increase in family size or a change in family composition.
 - (2) The contract unit is larger than appropriate for the family size and composition.
 - (v) If the family breaks up, the HACN has discretion to determine which members of the family continue to receive assistance in the program. The HACN may terminate the RAP contract, or may continue housing assistance payments on behalf of family members who remain in the contract unit.
 - (vi) The HACN may terminate the RAP contract if the HACN determines that the owner has breached the RAP contract.

7. Termination of Tenancy by Owner

- a. The owner may only terminate the tenancy in accordance with the lease.
- b. The owner must give a notice of termination in accordance with HACN requirements.
- c. The owner must give the HACN a copy of any owner eviction notice to the tenant at the same time that the owner gives notice to the tenant. Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under State or local law to commence the eviction action.

8. Rental Assistance Payment

a. When paid

- (i) During the term of the RAP contract, the HACN must make rental assistance payments to the owner in behalf of the family. Rental Assistance payments will only be paid to the owner during the lease term and while the family is residing in the unit.
- (ii) The HACN must pay the rental assistance payment promptly when due the owner.
- (iii) The payment to the landlord may change if the RAP program requirements change or a participant's qualification change during the life of the agreement

b. Amount of payment. The amount of the housing assistance payment will be determined by the HACN in accordance with their requirements.

c. Pro-ration. The housing assistance payment for the first and last month of the RAP contract term will be pro-rated for partial month.

d. Limit of HACN responsibility. The HACN will not pay any claim by the owner against the family. The HACN is only responsible for making rental assistance payments to the owner in accordance with the RAP contract.

e. Application of payment. The housing assistance payment is credited toward the monthly rent to the owner.

f. Family move out. If the family moves out of the unit, the HACN will not make any rental assistance payment to the owner for any month after the month when the family moves out.

g. Conditions for housing assistance payments. Unless the owner complies with all provisions of the RAP contract the owner does not have a right to receive the rental assistance payments.

h. Overpayment to owner. If the HACN determines that the owner is not entitled to the housing assistance Payments, or any part of it, the HACN, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner (including amounts due under any other Rental Assistance Payments contract).

i. Family not responsible for RAP. The family is not responsible for payment of the housing assistance payment under the RAP contract between the owner and the HACN. The owner may not terminate tenancy or the family for nonpayment of the HACN housing assistance payment.

9. Owner Certification

During the term of this contract, the owner certifies that:

- a. The owner is maintaining the contract unit in accordance with the HQS.
- b. The contract unit is leased to the tenant. The lease is in accordance with the contract and program requirements.
- c. The owner has not received and will not receive any payments or other consideration (from the family, the HACN, HUD, or any other public or private source) as rent for the contract unit.
- d. The family does not own or have any interest in the contract unit. If the owner is a cooperative, the family may be a member of the cooperative.
- e. To the best of the owner's knowledge, the members of the family reside in the contract unit and the unit is the family's only residence.

10. Security Deposit

- a. The owner may collect a security deposit from the tenant.
- b. When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit or other amounts that the tenant owes under the lease.
- c. The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount, if any, used for reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant

11. Prohibition of Discrimination

In accordance with applicable equal opportunity statutes, Executive Orders and regulations:

- a. The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status or disability in connection with this contract.
- b. The owner must cooperate with the HACN in conducting equal opportunity compliance reviews and complaint investigations.

12. Rights of HACN if Owner Breaches the HAP Contract

- a. Any of the following actions by the owner (including a principal or other interested party) is a breach of the RAP contract:
 - (i) If the owner has violated any obligations under this RAP contract, including the owner's obligation to maintain the contract unit in accordance with the HQS.
 - (ii) If the owner has violated any obligation under any other rental assistance payments contract under Rental Assistance Program.
 - (iii) If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.
 - (iv) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement: or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the program.
- b. If the HACN determines that a breach has occurred, the HACN may exercise any of its rights or remedies under the RAP contract. The HACN shall notify the owner of such determination, including a brief statement of the reasons for the determination. The notice by the HACN to the owner may require the owner to take corrective action (as verified by the HACN) by a time prescribed in the notice.
- c. The HACN's rights and remedies against the owner under the RAP contract include suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the RAP contract.
- d. The HACN's exercise or non-exercise of any remedy for owner breach of the RAP contract shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

13. HACN and HUD Access to Premises and Owner Records

- a. The owner must provide any information pertinent to the RAP contract the HACN may reasonably require.
- b. The HACN, HUD and Comptroller General of the United States shall have full and free access to the contract unit and the premises, to all accounts and other records of the owner pertinent to the RAP contract; including the right to examine or audit the records and to make copies. The owner must grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and must provide any information or assistance needed to access the records.

14. Exclusion of Third Party Rights

- a. The HACN does not assume any responsibility for injury to or any liability to any person injured as a result of the owner's action or failure to act in connection with the implementation of the RAP contract, or as a result of any other action or failure to act by the owner.
- b. The owner is not the agent of the HACN and the RAP contract does not create or affect any relationship between the HACN and any lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with implementation of the RAP contract.
- c. Nothing in the RAP contract shall be construed as creating any right of the family or other third party (other than HUD) to enforce any provision of the RAP contract, or to assert any claims against HUD, the HACN or the owner under the RAP contract.

15. Conflict of Interest

a. Prohibited Interest.

The following classes of persons may not have any direct or indirect interest in the RAP contract:

- (i) Any present or former member or officer of the HACN (except a participant commissioner);
- (ii) Any employee of the HACN, or any contractor or subcontractor or agent of the HACN, who formulates policy or who influences decisions with respect to the programs;
- (iii) Any public official, member of a governing body, or State or local legislator who exercises functions or responsibilities with respect to the programs; or
- (iv) Any member of the congress of the United States.

b. When prohibition applies. The prohibition of such interest shall apply during tenure as a member of such classes and for one year thereafter.

c. Owner Certification. Owner certifies that no person has or will have a prohibited interest, at execution of the RAP contract or during the RAP contract term.

d. Disclosure. The owner shall be responsible for assuring that any member of such classes promptly discloses their interest or prospective interest to the HACN.

e. Waiver. The conflict of interest prohibition under this section may be waived by the HUD Field Office for good cause.

16. Assignment of the RAP Contract.

a. The owner may not assign the RAP contract to a new owner without the prior written consent of the HACN. The HACN may deny approval to assign the RAP contract to a new owner (in whole or in part):

(i) If directed by HUD because:

- (1) The federal government has instituted an administrative or judicial action against the owner for violation of the Fair Housing Act or other federal equal opportunity requirements, and such action is pending; or
- (2) A court of administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements.

(ii) If the proposed assignee

- (1) Has violated obligations under a housing assistance payments contract under Section 8 (42 U.S.C.1437f) or Rental Assistance Program;
- (2) Has committed fraud bribery or any other corrupt or criminal act in connection with any federal housing program;
- (3) Has engaged in drug-trafficking;
- (4) Has a history or practice of non-compliance with the HQS for units leased under the Section 8 tenant-based programs or Rental Assistance Program or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;
- (5) Has a history or practice of renting units that fail to meet State or Local Housing Codes, or
- (6) Has not paid State or local real estate taxes, fines or assessments.

b. The assignee must agree to comply with the RAP contract. The agreement must be in writing and in a form acceptable to the HACN. The transferee must give the HACN a copy of the executed agreement.

17. Written Notices

When the RAP contract requires any notice by the HACN or the owner, the notice must be in writing.

18. Entire Agreement: Interpretation

a. The RAP contract contains the entire agreement between the owner and the HACN.

b. The RAP contract shall be interpreted and implemented in accordance with HACN requirements.

19. Warranty of Capacity

The party who is executing this RAP contract warrants that such party has authority to execute the RAP contract on behalf of the owner.

**LEASE ADDENDUM
RENTAL ASSISTANCE PROGRAM**

**NATIVE AMERICAN HOUSING ASSISTANCE
AND SELF-DETERMINATION ACT OF 1996**

The following provisions are incorporated as the lease between the "Landlord"

_____ and the "Tenant" _____

for the following dwelling unit: _____

The following persons will be occupying the unit and are included in this lease:

- | | |
|----------|-----------|
| 1. _____ | 6. _____ |
| 2. _____ | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

1. Term of Lease

A. Initial term of lease. (Enter first and last date of initial term. The initial term must be for at least one year.)

The initial term begins on _____
The initial term ends on _____

B. Rent. Initially and until such change, the Tenant agrees to pay \$_____ per month to the landlord as the Tenant Rent. The total rent shall be \$_____ per month. Of this amount, \$_____ shall be payable by the IHA as assistance payments on behalf of the Tenant, and \$_____ shall be payable by the Tenant directly to the Landlord.

Following the initial term, the lease will be renewed automatically on a month to month basis until: (1) a termination of the lease by the owner in accordance with section 7 of this lease, (2) a termination of the lease by the tenant in accordance with the lease or by mutual agreement during the term of the lease, or (3) a termination of the Housing Assistance Payments Contract by the IHA, or (4) the IHA terminates assistance for the family.

2. Definitions

Contract Unit. The assisted unit rented by the tenant.

Family. A person or persons who may reside in an assisted unit under the program.

HACN. Housing Authority of the Cherokee Nation of Oklahoma.

RAP Contract. The rental assistance payments contract. The RAP contract is a contract between the HACN and the owner. The HACN pays housing assistance payments to the owner in accordance with the RAP Contract.

Housing Quality Standards (HQS). The minimum quality standards for housing assisted under the Rental Assistance Program.

Lease. The lease is between the owner and tenant. The lease includes the lease addendum.

Lease addendum. The lease language required by the HACN.

Native American Housing Assistance and self-determination Act of 1996 (NAHASDA). A block grant program. Funds are allocated based upon a funding formula.

Premises. The building or complex in which the contract unit is located, including common areas and grounds.

Program. The Rental Assistance Program.

Rental Assistance Program (RAP). Under this program, the HACN provides housing assistance on behalf of an eligible family.

Tenant. The tenant is the family member who leases the contract unit from the owner.

3. Purpose

This is a lease between the tenant and the owner. The family is a participant on the Rental Assistance Program. The tenant is a family member who leases the contract unit from the owner. The owner has leased the contract unit to the tenant for occupancy by the family with assistance under the Rental Assistance program.

The owner will enter into a RAP contract with the HACN under the Rental Assistance Program. The purpose of the RAP contract is to assist the tenant to lease a dwelling unit from the owner for occupancy by the family.

4. Use and Occupancy of Contract Unit

The family must use the contract unit for residence by the family. The unit must be the family's only residence. The

composition of the family residing in the contract unit must be approved by the HACN. The family must not sublease or let the unit. The family must not assign the lease or transfer the unit.

5. Maintenance and Utilities. Owner and Family Responsibilities

The owner must maintain the contract unit and premises in accordance with HQS. The owner is not responsible for a breach of HQS that is caused by any of the following:

- The family fails to pay for any utilities that the owner is not required to pay for under the lease, but which are to be paid by the tenant.
- The family fails to provide and maintain any appliances that the owner is not required to provide under the lease, but which are to be provided by the tenant; or
- Any member of the household or guest damages the contract unit or the premises (damages beyond ordinary wear and tear).

The family must pay for any utilities and provide any appliances that the owner is not required to pay for or provide under the lease.

a. Utilities and Appliances

(1) The landlord shall provide the utilities listed in column 1 below for the dwelling unit without any additional charge to the Tenant. The utilities listed in column 2 below are not included in Contract rent and are paid by the Tenant.

Type of Utility	Column 1 Landlord	Column 2 Tenant
Garbage Collection	_____	_____
Water	_____	_____
Heat	_____	_____
Lights, electric	_____	_____
Cooking	_____	_____
Other _____	_____	_____
Other _____	_____	_____

- (2) (i) The range for the dwelling unit shall be provided by the _____, L is for landlord or T is for tenant. If it is not specified, the Landlord shall provide the range.
(ii) The refrigerator for the dwelling unit shall be provided by the _____, L is for Landlord or T is for Tenant. If not specified, the Landlord shall provide the refrigerator.
- (3) The Landlord shall provide the following appliances for the dwelling unit (if nothing is specified, no additional appliances are provided).
-

(4) The Tenant shall pay all charges incurred in the furnishing of public utilities not included in the rent as noted not included in the rent as noted above, including deposits required for the furnishing of said utilities.

b. Maintenance and Services

- (1) The Landlord shall maintain the dwelling unit, equipment, appliances, common area and facilities, provide decent, safe and sanitary housing in accordance with the housing quality standards, including the provision all the services, maintenance and utilities set forth in the Lease.
- (2) Landlord shall respond in a reasonable time to calls by the Tenant for services to maintain the dwelling unit Maintenance with respect to common areas, facilities and equipment shall include cleaning maintenance of lighting and equipment, maintenance of grounds, lawns, shrubs, and removal of snow and ice.

Where security equipment and services are to be provided by the Landlord; they are as follows, if none are specified, it is assumed there are none.

- (3) Landlord shall provide extermination services as conditions may require. If such services is to be provided on a scheduled basis, the schedule is as follows (no schedule is assumed if not noted).
-
- (4) Landlord shall provide repainting, as conditions require. If such a service is to be provided On a scheduled basis, the schedule is as follows (no schedule is assumed if not noted).
-

6. Term of Lease

a. When lease terminates.

The term of the lease terminates if any of the following occurs:

- The lease terminates (as provided in paragraph b)
- The RAP contract terminates; or
- The HACN terminates program assistance for the family.

b. Termination of Lease.

- The owner terminates the tenancy;
- The tenant terminates the lease; or

- The owner and the tenant agree to terminate the lease.
- c. Termination of assistance.**
The HACN may terminate program assistance for the family for any grounds authorized in accordance with the HACN requirements. If the HACN terminates the program assistance for the family, the RAP contract terminates automatically.

7. Termination of Tenancy by Owner

a. Grounds.

During the term of the lease, the owner may only terminate the tenancy on the following grounds:

- Serious or repeated violation of the terms and conditions of the Lease;
- Violation of Federal, State or local law which imposes obligations on tenant in connection with the occupancy or use of the dwelling unit and surrounding premises;
- Criminal activity (as provided in paragraph b); or
- Other good cause.

The requirement to terminate tenancy for such grounds: Only applies during the term of the lease, including the initial term of and any extension term; and Does not apply if the owner terminates the tenancy at the end of the initial term, or at the end of any successive definite term.

b. Criminal Activity

Any of the following types of criminal activity by the tenant, any member of the household, a guest or another person under the tenant's control shall be cause for termination of tenancy;

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other resident;
- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or
- Any drug-related criminal activity on or off the premises.

c. Other good cause.

"Other good cause" for termination of tenancy by owner may include, but is not limited to, any of the following examples:

- Failure by the tenant family to accept the offer of a new lease or revision;
- A family history of disturbance of neighbors or destruction of property or of living or housekeeping habits resulting in damage to the unit or property;
- The owner's desire to utilize the unit for personal or family use or for a purpose other than use as a residential unit; or
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental).

During the first year of the lease term, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do. For example: during this period the owner may not terminate the tenancy for "other good cause" based on any of the following grounds:

- Failure by the family to accept the offer of a new lease or revision;
- The owner's desire to use the unit for person or family use; or for a purpose other than use as a residential rent unit; or
- A business or economic reason for termination of tenancy.

d. Nonpayment by HACN: Not grounds for termination of tenancy.

The tenant is not responsible for the rental assistance payment under the RAP contract between the owner and the HACN.

A HACN failure to pay the housing assistance payment to the owner is not a violation of the lease. During the term of the lease, the owner may not terminate the tenancy of the family for nonpayment of the HACN housing assistance payment.

e. Eviction by court action.

The owner may evict the Tenant from the unit only by instituting a court action.

8. Owner Termination Notice

a. Notice of Grounds.

The owner must give the tenant a notice that specifies the grounds for termination of tenancy. The notice of grounds must be given at or before commencement of the eviction action. The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

b. State or local eviction notices.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action. The owner must give the HACN a copy of any owner eviction notice to the tenant at the same time that the owner gives notice to the tenant.

9. Offer of New Lease

The owner may offer the family a new lease, for a term beginning at any time after the initial term. The owner must give the tenant written notice of the offer, with copy to the HACN, at least sixty days before the proposed beginning date of the new lease term. The offer may specify a reasonable time limit for acceptance by the family.

10. Lease Termination or Move Out by Family

The tenant may terminate the lease without cause any time after the first year. The lease may not require the tenant to give more than sixty calendar days written notice of such termination to the owner (with a copy to the HACN). The tenant must notify the HACN and the owner before the family moves out of the unit.

11. Execution of RAP Contract

The parties on the expectation that the HACN will promptly execute a RAP contract with the owner have signed this lease. This lease shall not become effective unless the HACN has executed a RAP contract with the owner effective on the first day of the term of the lease. The owner will enter into a Rental Assistance Payments Contract ("Contract") with the HACN under the Rental Assistance Program of the Native American Housing Assistance and Self-Determination Act of 1996. Under the Contract, the HACN will make housing assistance payments to the HACN to assist the family of which the tenant is the legal representative, to lease the dwelling unit from the owner.

12. Housing Assistance Payment

Each month the HACN will make a housing assistance payment to the owner on behalf of the tenant family in accordance with the RAP contract.

13. Prohibited Lease Provisions

HUD prohibits the following types of lease provisions. If there is any prohibited provisions in this lease, the provision shall be void.

a. Agreement to be sued.

Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.

b. Treatment of personal property.

Agreement by tenant that the owner may take holds or sells personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property left in the contract unit after the tenant has moved out. The owner may dispose of this personal property in accordance with State and local law.

c. Excusing owner from responsibility.

Agreement by the tenant not to hold the owner or owner's agent legally responsibility for any action or failure to act, whether intentional or negligent.

d. Waiver of Notice.

Agreement by the tenant that the owner may institute a lawsuit against the tenant without notice to the tenant.

e. Waiver of legal proceedings.

Agreement by the tenant that the owner may evict the tenant or household members: (i) without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or (ii) before a decision by the court on the rights of the parties.

f. Waiver of Jury Trial.

Authorization to the owner to waive any right to a trial by jury.

g. Waiver of right to appeal court decision.

Agreement by the tenant to waive any right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.

h. Tenant chargeable with cost of legal actions regardless of outcome.

Agreement by the tenant to pay the owner's attorney fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. However, the tenant may be obligated to pay costs if the tenant loses.

14. Security Deposit

The owner may collect a security deposit from the tenant.

a. The tenant has deposited \$ _____ with the owner as a security deposit. The owner will comply with state and local law regarding security deposits from a tenant, and shall not collect a security deposit, which is not more than the maximum amount permitted under the regulations.

b. The owner will hold the security deposit during the period the tenant occupied the dwelling unit under the lease. The owner shall comply with State and local laws regarding interest payments on security deposits.

c. After the family has moved from the dwelling unit, the owner may (subject to State and local law) use the security deposit, including any interest on the deposit, as reimbursement for any unpaid tenant rent or other amounts which the tenant owes under the Lease. The owner will give the tenant a written list of all of the items charged against the security deposit and the amount of each item. After deducting the amount used as reimbursement to the owner, the owner shall promptly refund the full amount of the balance to the tenant.

15. Discrimination

In accordance with applicable equal opportunity statutes, executive orders, and regulations, the owner must not discriminate against any person because of race, color, religion, sex, national original, age, familial status or disability in connection with the lease.

16. Conflict with Other Provisions of Lease.

In case of any conflict between the provisions of the section of the lease addendum and any other provisions of the lease, the provisions of this section shall prevail.

17. Written Notices

When this lease addendum requires any notice by the tenant or the owner, the notice must be in writing.

18. Combining Notices

Any notices from sections 7, 9, and 10 may be combined and run concurrently with any notice required under State or local law.

19. Tenant's Obligations

a. Tenant shall keep the dwelling unit in a clean and sanitary condition and on termination of the Lease, surrender the dwelling unit to Lessor in as good condition as it is on the beginning date of this Lease, reasonable wear and tear and damage by the elements excepted.

b. Tenant shall immediately notify owner of any defects, dilapidation or dangerous conditions and promptly reimburse owner for the costs of any repairs to the dwelling unit caused by tenant's negligence or misuse, or the negligence or misuse of any tenant's guest, invitees or licensees.

20. Inspection of Unit

The owner or his agent may enter the dwelling unit only for the following purposes: (a) in case of emergency, (b) to make repairs, (c), to exhibit the unit to prospective purchasers, mortgagees, tenants and workman, (d) when the tenant has abandoned or surrendered the dwelling unit or (e) pursuant to court order. Tenant shall not unreasonably withhold consent to the owner to enter for such purposes.

However, owner shall, except in an emergency such as fire, give the tenant at least twenty-four hours notice of his intent to enter and may then enter only during reasonable business hours. If an emergency occurs, the owner shall, within two days thereafter, notify tenant in writing of the date, time, purpose and results of such entry.

21. Pets

Tenants may not keep a pet on the premises unless noted: Tenant may ___ may not ___ keep a pet on the premises.

22. Noise

Tenant agrees not to allow on his/her premises any excessive noise or other activity that materially disturbs the peace and quiet of other tenants in the building. Landlord agrees to prevent other tenants and other persons in the building or common areas from similarly disturbing tenant's peace and quiet.

23. Changes

This lease, together with any future adjustments, evidences the entire agreement between the owner and Tenant. No change therein shall be made except in writing, signed and dated by both parties and approved by the IHA.

24. Time of Essence

Time is expressly declared to be of the essence of the Lease.

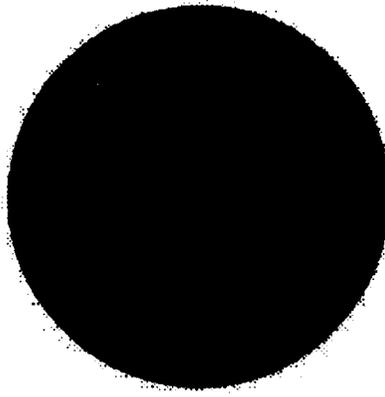
25. Destruction of Premises.

Should any part of the dwelling unit or the building in which it is located be destroyed by fire, casualty or other cause not the fault of the tenant, the owner shall promptly repair and restore the dwelling unit or building to its former condition at the Landlord's sole cost and expense. During the making of the repairs and restoration work, the housing assistance payment payable under this lease shall be abated for the time and the extent.

Tenant is prevented from fully occupying said premises under this lease in tenant's usual and normal manner. Provided, however, that in lieu of making such repairs and performing such restoration work; the Landlord may terminate this lease where either (a) the necessary repair or restoration work cannot reasonably be completed under the applicable governmental laws and regulations within thirty working days after it is commenced, or (b) the loss is not covered by landlord's then existing fire and extended coverage insurance policies.

SIGNATURES

TENANT	OWNER
Print or Type Name of Tenant	Print or Type Name of Owner
Signature	Signature
Signature	Print or Type Name and Title of Signatory
Date	Date



OWNER CERTIFICATION

I hereby certify that by accepting each monthly RAP payment from the HACN, that the rent charged on the unit is not more than the rent charged for comparable unassisted units.

I further certify that I must give the HACN information requested regarding rents charged for other units.

I hereby agree that upon the request of the Housing Authority of the Cherokee Nation that I will submit Rent Comparable Unit information on units in the area comparable to this unit. I further understand that HACN reserves the right to accept or reject any or all Rent Comparable Units.

Property located at:

(Property Address)

(Owner's Signature)

(Print Name)

(Date)



OWNER CERTIFICATION OF RELATIONSHIP TO OCCUPANT

I, _____, owner of the property (or person having an interest in the property) located at

Contracted under The Housing Authority of the Cherokee Nation's Rental Assistance Program, certify that I am not the parent, child, grandparent, grandchild, sister, or brother of any member of the family occupying the unit.

Signature

Date

information reporting. Only payees described in items (2) through (6) are exempt from backup withholding for barter exchange transactions, patronage dividends, and payments by certain fishing boat operators.

- (1) A corporation.
- (2) An organization exempt from tax under section 501(a), or an individual retirement plan (IRA), or a custodial account under 403(b)(7).
- (3) The United States or any of its agencies or instrumentalities.
- (4) A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities.
- (5) A foreign government or any of its political subdivisions, agencies or instrumentalities.
- (6) An international organization or any of its agencies or instrumentalities.
- (7) A foreign central bank of issue.
- (8) A dealer in securities or commodities required to register in the U.S. or a possession of the U.S.
- (9) A futures commission merchant registered with the Commodity Futures Trading Commission.
- (10) A real estate investment trust.
- (11) An entity registered at all times during the tax year under the Investment Company Act of 1940.
- (12) A common trust fund operated by a bank under section 584(a).
- (13) A financial institution.
- (14) A middleman known in the investment community as a nominee or listed in the most recent publication of the American Society of Corporate Secretaries, Inc., Nominee List.
- (15) A trust exempt from tax under section 664 or described in section 4947.

Payments of dividends and patronage dividends generally not subject to backup withholding also include the following:

- Payments to nonresident aliens subject to withholding under section 1441.
- Payments to partnerships not engaged in a trade or business in the U.S. and that have at least one nonresident partner.
- Payments of patronage dividends not paid in money.
- Payments made by certain foreign organizations.

Payments of interest generally not subject to backup withholding include the following:

- Payments of interest on obligations issued by individuals. **Note:** You may be subject to backup withholding if this interest is \$600 or more and is paid in the course of the payer's trade or business and you have not provided your correct TIN to the payer.
- Payments of tax-exempt interest (including exempt-interest dividends under section 852).
- Payments described in section 6049(b)(5) to nonresident aliens.
- Payments on tax-free covenant bonds under section 1451.
- Payments made by certain foreign organizations.
- Mortgage interest paid by you.

Payments that are not subject to information reporting are also not subject to backup withholding. For details, see sections 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, and 6050N, and the regulations under such sections.

Penalties

Failure To Furnish TIN.—If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Failure To Include Certain Items on Your Tax Return.—If you fail to properly include on your tax return certain items reported to IRS, such failure will be treated as being due to negligence, and you will be subject to a penalty of 5% on any part of an underpayment of tax attributable to that failure unless there is clear and convincing evidence to the contrary.

Civil Penalty for False Information With Respect to Withholding.—If you make a false statement with no reasonable basis that results in no imposition of backup withholding, you are subject to a penalty of \$500.

Criminal Penalty for Falsifying Information.—Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Specific Instructions

Name.—If you are an individual, generally provide the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage, without informing the Social Security Administration of the name change, please enter your first name and both the last name shown on your social security card and your new last name.

Signing the Certification.—

(1) Interest, Dividend, and Barter Exchange Accounts Opened Before 1984 and Broker Accounts That Were Considered Active During 1983.—You are not required to sign the certification; however, you may do so. You are required to provide your correct TIN.

(2) Interest, Dividend, Broker and Barter Exchange Accounts Opened After 1983 and Broker Accounts That Were Considered Inactive During 1983.—You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item (2) in the certification before signing the form.

(3) Real Estate Transactions.—You must sign the certification; you may cross out item (2) of the certification if you wish.

(4) Other Payments.—You are required to furnish your correct TIN, but you are not required to sign the certification unless you have been notified of an incorrect TIN. Other payments include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services, payments to a nonemployee for services (including attorney and accounting fees), and payments to certain fishing boat crew members.

(5) Mortgage Interest Paid by You, Acquisition or Abandonment of Secured Property, or IRA Contributions.—You are required to furnish your correct TIN, but you are not required to sign the certification.

(6) Exempt Payees and Payments.—If you are exempt from backup withholding, you should complete this form to avoid possible erroneous backup withholding. Enter your correct TIN in Part I, write "EXEMPT" in the block in Part II, sign and date the form. If you are a nonresident alien or foreign entity not subject to backup withholding, give the requester a completed Form W-8, Certificate of Foreign Status.

(7) TIN "Applied For."—Follow the instructions under *How To Obtain a TIN*, on page 1, sign and date this form.

Signature.—For a joint account, only the person whose TIN is shown in Part I should sign the form.

Privacy Act Notice.—Section 6109 requires you to furnish your correct taxpayer identification number (TIN) to persons who must file information returns with IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, or contributions you made to an individual retirement arrangement (IRA). IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 20% of taxable interest, dividend, and certain other payments to a payee who does not furnish a TIN to a payer. Certain penalties may also apply.

What Name and Number To Give the Requester

For this type of account:	Give the name and SOCIAL SECURITY number of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship	The owner ³
For this type of account:	Give the name and EMPLOYER IDENTIFICATION number of:
6. A valid trust, estate, or pension trust	Legal entity (Do not furnish the identification number of the personal representative or trustee unless the legal entity itself is not designated in the account title.) ⁴
7. Corporate	The corporation
8. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
9. Partnership	The partnership
10. A broker or registered nominee	The broker or nominee
11. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

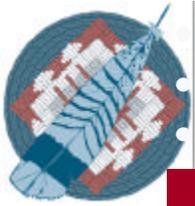
¹ List first and circle the name of the person whose number you furnish.

² Circle the minor's name and furnish the minor's social security number.

³ Show the name of the owner.

⁴ List first and circle the name of the legal trust, estate, or pension trust.

Note: If no name is circled when there is more than one name, the number will be considered to be that of the first name listed.



What will be discussed?

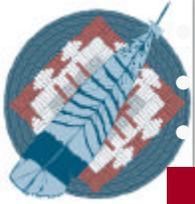
- ❑ How to set up a Rental Assistance Program
- ❑ Using Rental Assistance to finance homeownership for families with very low income



Section 8 Program

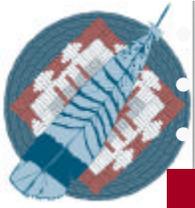
□ What is Section 8?

- Section 8 Housing is a public housing program that assists families with rental payments
- Amount of rent subsidy is based on income and contract rent
- Contract rent has to be reasonable



Rental Assistance Program

- Why do you need it?
 - Tribe/TDHE can no longer administer Section 8
 - Funding will continue if you administer a rental assistance program similar to Section 8
 - If you do not administer a similar program, you lose the funding



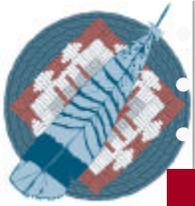
Problems with Section 8

- FMR's - Fair Market Rents
 - Determined by HUD
 - Published yearly in the Federal Register
- Inflated rental prices
- Made landlords rich
- Administrative fee is too low



Rental Assistance Program (RAP)

- Things to consider in setting up post Section 8 Program:
 - Funding - \$275 per month
 - Eligibility - Must serve Native Americans
 - Income - Less than 80% of median
 - Priorities - What are the needs of your tribe?



Documentation Requirement

- You decide
- See hand-out for suggestions
- Include those required by policy and NAHASDA



Payment of Check

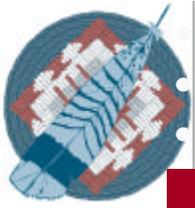
- Check payable to landlord
 - Never to tenant
 - After inspection - Housing Quality Standards

- Yourself ?



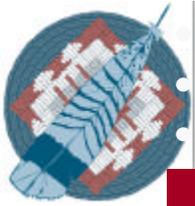
Rental Assistance to Homeownership

- Stop making landlords rich
- Construct or purchase home
- Family rent contribution based on debt to income ratio not to exceed 30% of income
- Less than 35% of the median income
- Tribe/TDHE sets contract rent



Rent Payment Example

- ❑ $\$400 - \$175 = \$225$
- ❑ $\$175 =$ tenant amount
- ❑ $\$225 =$ subsidy amount
- ❑ $\$150$ to Admin/Maintenance account
- ❑ Balance to escrow account



Resident Initiative Program

- Family signs contract
- Receive training
- Better income
- Use escrow account for down payment



Do The Math

- \$50,000 = Initial cost of home
- 8,100 = Escrow account \$225
- \$41,900 = Total of mortgage
- Mortgage payment
 - \$50,000 @ 6% for 25 years, \$325
 - \$41,900 @ 6% for 25 years, \$270
 - ✓ \$55 per month savings



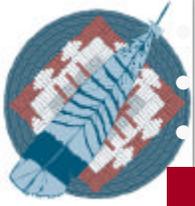
Closing Remarks

- Two most important tasks
 - Find outside funding
 - Spend NAHASDA dollars wisely



RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

Shared Visions: The Native American Homeownership, Legal and Economic Development Summit I



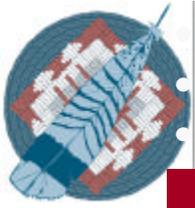
RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

□ LIHTC PROGRAM FUNDAMENTALS

□ LIHTC & NAHASDA

□ TYPICAL PROJECT COSTS

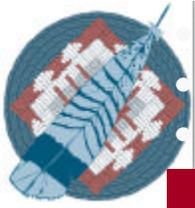
□ LIHTC RESOURCES



RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

□ LIHTC Program Fundamentals

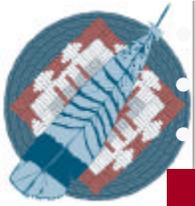
- Housing Credits
- Allocation
- Syndication
- Compliance



RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

□ LIHTC and NAHASDA

- Rental Housing
- Homeownership Opportunity
- Elderly & Assisted Living
 - ✓ Disabled
- Students Housing



RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

Typical Project Costs

\$ 950,000	Total Development Costs
<u>75,000</u>	Ineligible Costs
\$ 875,000	Eligible Basis
<u>X 130%</u>	Adjustment for QCT/DDA
\$ 1,137,500	Adjusted Eligible Basis



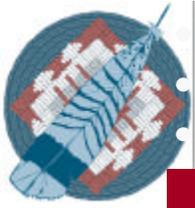
RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

\$ 1,137,500	Adjusted Eligible Basis
<u>X 100%</u>	Applicable Percentage
\$ 1,137,500	Qualified Basis
<u>X 8.16%</u>	New Construction Credit
\$ 92,820	Annual TC Allocation



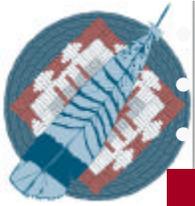
RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

\$ 92,820	Annual TC Allocation
<u>X 10</u>	10-Year Credit Period
\$ 928,200	Total Amount of Credits
<u>X 99%</u>	LP Share of Credits
\$918,918	Total Credits to LP
<u>X \$.75</u>	Amount/Tax Credit Dollar
\$ 689,189	Tax Credit Equity



RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

Tax Credit Equity	\$ 689,189
NAHASDA Funds & Other	\$ <u>260,811</u>
TOTAL	\$ 950,000
NAHASDA/Unit	\$ 26,081
Leveraging Ratio	3.64 : 1



RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

□ LIHTC Resources

- Development Team
- Permanent Debt Financing
- Construction & Gap Financing
- Internet
- The Essential Guide to Housing Credit Compliance



RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

□ Development Team

- Allocating Agency
- Investors
- Consultants
- Attorneys
- Accountants



RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

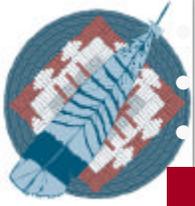
□ Permanent Debt Financing

- NAHSDA
- HOME
- Rural Housing & Economic Development Office
- Rural Development Section 515
- Affordable Housing Program



RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

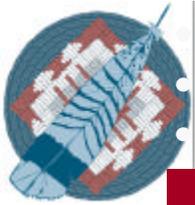
- ❑ Construction & Gap Financing
 - Housing Assistance Council
 - Mercy Housing Loan Fund
 - McCauley Loan Fund



RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

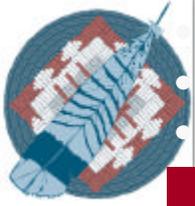
Internet

- <http://www.hud.gov>
- <http://www.rurdev.gov>
- <http://www.fhlbanks.com/index.htm>
- <http://www.travois.com>
- <http://www.leonard.com>
- <http://govinfo.kerr.orst.edu/stateis.html>
- <http://www.timevalue.com/afrindex.htm>



RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

- ❑ The Essential Guide to Housing Credit Compliance
 - Written by Anthony Freedman
 - Published by the National Council State Housing Agencies
 - <http://www.ncsha.org>
- ❑ Managing Housing Credit Apartments
 - Written by Heegaard, & Wilkins
 - Published by the Compass Group, LLC



RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM

RENTAL HOUSING: INCORPORATING LIHTC IN YOUR RENTAL HOUSING PROGRAM



LIHTC

Glossary of Terms

4 Percent Credit

The credit percentage available for existing housing or for federally subsidized new construction or rehabilitation.

9 Percent Credit

The credit percentage available for new construction or rehabilitation.

15-40 Test

See Deep Rent Skewing Set-Aside.

20-50 Test

The 20-50 test is a minimum set-aside test used to determine if a building is a qualified low-income housing project. Under the test, a building is generally a qualified low-income building if at least 20 percent of the units are both rent restricted and are occupied by tenants whose income is less than or equal to 50 percent of area median gross income.

25-60 Test

The 25-60 test is a minimum set-aside test used to determine if a building is a qualified low-income housing project. Under the test, a building is generally a qualified low-income building if at least 25 percent of the units are both rent restricted and are occupied by tenants whose income is less than or equal to 60 percent of area median gross income. This test is applicable to New York City only, and is applied in lieu of the 40-60 minimum set-aside test.

30 Percent Credit

See 4 Percent Credit.

LOW-INCOME HOUSING TAX CREDIT

40-60 Test

The 40-60 test is a minimum set-aside test used to determine if a building is a qualified low-income housing project. Under the test, a building is generally a qualified low-income building if at least 40 percent of the units are both rent restricted and are occupied by tenants whose income is less than or equal to 60 percent of area median gross income.

70 Percent Credit

See 9 Percent Credit.

Acquisition Cost

The cost of acquiring an existing building.

Adjusted Basis

The cost basis of a building adjusted for capital improvements minus depreciation allowable.

Adjusted Investor Equity

The aggregate amount of cash taxpayers invested increased by cost-of-living adjustment.

Allocations Agency

See Housing Credit Agency.

Applicable Federal Rate (AFR)

A short term, mid-term, and long-term rate debt rate that is redetermined on a monthly basis.

Applicable Fraction

The percentage of the building that is treated as low-income use and generally eligible for the LIHC. The applicable fraction is the lesser of the unit fraction or the floor space fraction.

Applicable Percentage

The technical term for the credit percentage that a qualified low-income housing project is eligible for.

Area Median Gross Income

The gross income level that half the families in an area are below.

At-Risk Rule

The rule that limits the ability to include in eligible basis property purchased with nonrecourse financing. An exception exists for nonrecourse financing that meets the definition of Qualified Commercial Financing.

Below Market Federal Loan

Any loan funded by federal funds if the interest rate payable on such loan is less than the applicable federal rate.

Compliance Period

The compliance period is the 15 year period over which a project must continue to satisfy the various LIHC requirements in order to avoid tax credit recapture. The compliance period begins with the first taxable year of the credit period.

Constitutional Home Rule Subdivision

A political subdivision with home rule powers under the state constitution; these subdivisions receive special treatment under the LIHC state allocation rules.

Credit Period

The ten year period over which the LIHC is claimed. Generally begins on the date a property is placed in service, but a taxpayer may elect to start the credit period as of the beginning of the year following the year the LIHC property is placed in service.

Credit Recapture Amount

The amount of credit that is recaptured upon disposition of the LIHC project during the compliance period; maximum recapture is two-thirds of the previously claimed credit; an interest charge also applies.

Deep Rent Skewing Set-Aside

A special set-aside test that applies for purposes of determining if existing tenants qualify as, low-income tenants; this special test is elective and must be met in addition to the general set-aside test (i.e. 20-50, 40-60, and 25-60).

Difficult Development Area

Any area designated by HUD which has high construction, land or utility costs relative to area median gross income.

Eligible Basis

A component of the Qualified Basis of an LIHC project, the eligible basis is generally equal to the adjusted basis of the building, excluding land but including most amenities and common areas.

Existing Building

A building that has been previously placed in service.

Federally Assisted Building

Any building that is substantially assisted, financed, or operated under laws in effect the date of enactment of the Tax Reform Act of 1986.

Extended Low-Income Housing Commitment

Any agreement between the taxpayer and the housing credit agency that extends the low-income housing requirements for a full 30 years.

Extended Use Period

The period beginning on the first day that the building is part of a qualified low-income housing project and ending on the date specified by the agency or fifteen years after the close of the compliance period.

Federally Subsidized

A building that is financed with a below-market federal loan or with a loan for which the interest income earned by the holder of the loan is exempt from tax under IRC §103.

Floor Space Fraction

The fraction obtained by dividing the total floor space of the low-income units in the building by the total floor space of all residential rental units in the building (whether or not occupied).

Grant

Amounts received from the federal, state or local government that do not have to be repaid.

Gross Income

All income from whatever source derived, including the value of property or services as well as cash.

Gross Rent

Does not include any amounts received from a rental assistance program, any utility allowance, or any fee paid to the owner of the unit by any governmental program of assistance.

Housing Credit Agency

The state or local housing agency that has the authority to allocate and commit federal low-income housing tax credits to a building.

Imputed Income Limitation

The income limit that would apply to a unit based on an assumed family size that is a function of the number of bedrooms in the unit.

Low-Income Occupancy Percentage

See Applicable Fraction.

Low-Income Unit

A unit that (1) is rent-restricted and (2) has individuals occupying it who meet the income limitation applicable under the elected minimum set-aside test.

Minimum Set-Aside Test

The test that is generally used to determine if a building is a qualified low-income housing project. There are three different Minimum Set-Aside Tests with varying applicability. They are the 20-50 test, the 40-60 test, and the 25-60 test.

New Building

A new building is a building the original use of which begins with the taxpayer. A new building also includes qualifying substantial rehabilitation costs incurred with respect to existing buildings.

Nonqualified Nonrecourse Financing

Nonrecourse financing that is not Qualified Commercial Financing; this definition is used for purposes of the LIHC at-risk rules.

Nonqualified Substantial Improvement

A term used in determining if an existing building is eligible for the acquisition credit; is any substantial improvement for which Section 167(k) was elected or pre-86 Act depreciation rules apply.

Placed In Service Date

Generally marks the beginning of the credit period. Is defined as the date the property is ready for occupancy.

Qualified Basis

Is the base that is multiplied by the credit percentage to determine the annual credit. The Qualified Basis equals the applicable fraction times the eligible basis.

Qualified Census Tract

Any census tract in which 50 percent or more of the households have an income which is less than 60 percent of area median gross income.

Qualified Commercial Financing

The exception to the at-risk rules. To qualify, financing must generally be nonrecourse, the lender must generally be actively engaged in the business of lending, the lender must not have previously owned the property, and the lender must not earn a fee in connection with the acquisition of the property.

Qualified Contract

A bona fide contract to acquire a low-income housing tax credit project for the sum of the existing debt, adjusted investor equity and other capital contributions, less project cash distributions.

Qualified Low-Income Building

A building that is part of a Qualified Low-Income Housing Project throughout the compliance period and for which prior law depreciation rules do not apply.

Qualified Low-Income Housing Project

A residential rental project that satisfies the elected minimum set-aside test.

Qualified Nonprofit Organization

An organization that is described in Section 501(c)(3) or (4), that is exempt from tax under Section 501(a), and has as one of its exempt purposes the fostering of low-income housing.

Regulation D

A securities law regulation that explains the rules for three private offering exemptions from the general rules that require securities registration.

Rehabilitation Expenditures

Amounts incurred in improving or making additions to property in connection with the rehabilitation of an existing building.

Rent-Restricted Unit

A unit for which the rent charged to tenants is limited to 30 percent of the income limitation applicable under the elected minimum set-aside test.

Scattered Site Project

A qualified low-income housing project located on multiple sites.

Section 167(k) Election

Any election available before the Tax Reform Act of 1986 that allowed building owners to amortize rehabilitation costs over 60 months.

State Housing Credit Ceiling

The maximum amount of LIHC a state may allocate in a given year, is calculated at \$1.25 a resident for the 1987 to 1989 calendar years. In 1990, the maximum LIHC amount is calculated at \$.9375 a resident.

Substantial Improvement

Used in connection with determining the eligibility of an existing building for the LIHC is any amount incurred during a 24 month period if the costs incurred over the 24 month period equal or exceed 25 percent of the adjusted basis of the building as of the first day of such period.

Supportive Service

Any service provided under a planned program of services designed to enable residents to remain independent and avoid placement in a hospital, nursing home or intermediate care facility.

Tax Shelter Registration

Certain partnerships or other investments with significant tax benefits must register as tax shelters with the Internal Revenue Service and certain state tax agencies.

Unit Fraction

The unit fraction is the fraction obtained by dividing the number of low-income units in a building by the total number of units in the building (whether or not occupied).

Utility Allowance

Amount determined by the Secretary of the Treasury to be the average cost of tenant utilities.

Internal Revenue Code

Section 42: Low-Income Housing Credit

STATUTE

(a) In general

For purposes of section 38, the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to -

- (1) the applicable percentage of
- (2) the qualified basis of each qualified low-income building.

(b) Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings

For purposes of this section -

(b)(1) Building placed in service during 1987

In the case of any qualified low-income building placed in service by the taxpayer during 1987, the term 'applicable percentage' means -

- (A) 9 percent for new buildings which are not federally subsidized for the taxable year, or
- (B) 4 percent for -
 - (i) new buildings which are federally subsidized for the taxable year, and
 - (ii) existing buildings.

(b)(2) Buildings placed in service after 1987

(b)(2)(A) In general

In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term 'applicable percentage' means the appropriate percentage prescribed by the Secretary for the earlier of -

- (i) the month in which such building is placed in service, or
- (ii) at the election of the taxpayer -

(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

(b)(2)(B) Method of prescribing percentages

The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to -

- (i) 70 percent of the qualified basis of a building described in paragraph (1)(A), and
- (ii) 30 percent of the qualified basis of a building described in paragraph (1)(B).

(b)(2)(C) Method of discounting

The present value under subparagraph (B) shall be determined -

- (i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (B),
- (ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section [1274\(d\)\(1\)](#) to the month applicable under clause (i) or (ii) of subparagraph (A) and compounded annually, and
- (iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

(b)(3) Cross references

(A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).

(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).

(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7).

(c) Qualified basis; qualified low-income building

For purposes of this section -

(c)(1) Qualified basis

(c)(1)(A) Determination

The qualified basis of any qualified low-income building for any taxable year is an amount equal to -

- (i) the applicable fraction (determined as of the close of such taxable year) of
- (ii) the eligible basis of such building (determined under subsection (d)(5)).

(c)(1)(B) Applicable fraction

For purposes of subparagraph (A), the term 'applicable fraction' means the smaller of the unit fraction or the floor space fraction.

(c)(1)(C) Unit fraction

For purposes of subparagraph (B), the term 'unit fraction' means the fraction -

- (i) the numerator of which is the number of low-income units in the building, and
- (ii) the denominator of which is the number of residential rental units (whether or not occupied) in such building.

(c)(1)(D) Floor space fraction

For purposes of subparagraph (B), the term 'floor space fraction' means the fraction -

- (i) the numerator of which is the total floor space of the low-income units in such building, and
- (ii) the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

(c)(1)(E) Qualified basis to include portion of building used to provide supportive services for homeless

In the case of a qualified low-income building described in subsection (i)(3)(B)(iii), the qualified basis of such building for any taxable year shall be increased by the lesser of -

- (i) so much of the eligible basis of such building as is used throughout the year to provide supportive services designed to assist tenants in locating and retaining permanent housing, or
- (ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

(c)(2) Qualified low-income building

The term 'qualified low-income building' means any building -

- (A) which is part of a qualified low-income housing project at all times during the period -
 - (i) beginning on the 1st day in the compliance period on which such building is part of such a project, and
 - (ii) ending on the last day of the compliance period with respect to such building, and

(B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) (FOOTNOTE 1) of the United States Housing Act of 1937 (other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence)).

(FOOTNOTE 1) See References in Text note below. (d) Eligible basis

For purposes of this section -

(1) New buildings

The eligible basis of a new building is its adjusted basis as of the close of the 1st taxable year of the credit period.

(2) Existing buildings

(A) In general

The eligible basis of an existing building is -

(i) in the case of a building which meets the requirements of subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and

(ii) zero in any other case.

(B) Requirements

A building meets the requirements of this subparagraph if -

(i) the building is acquired by purchase (as defined in section 179(d)(2)),

(ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and the later of -

(I) the date the building was last placed in service, or

(II) the date of the most recent nonqualified substantial improvement of the building,

(iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time previously placed in service, and

(iv) except as provided in subsection (f)(5), a credit is allowable under subsection (a) by reason of subsection (e) with respect to the building.

(c)(2)(C) Adjusted basis

For purposes of subparagraph (A), the adjusted basis of any building shall not include so much of the basis of such building as is determined by reference to the basis of other property held at any time by the person acquiring the building.

(c)(2)(D) Special rules for subparagraph (B)

(c)(2)(D)(i) Nonqualified substantial improvement

For purposes of subparagraph (B)(ii) -

(c)(2)(D)(i)(I) In general

The term 'nonqualified substantial improvement' means any substantial improvement if section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) was elected with respect to such improvement or section

[168](#) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such improvement.

(c)(2)(D)(i)(II) Date of substantial improvement

The date of a substantial improvement is the last day of the 24-month period referred to in subclause (III).

(c)(2)(D)(i)(III) Substantial improvement

The term 'substantial improvement' means the improvements added to capital account with respect to the building during any 24-month period, but only if the sum of the amounts added to such account during such period equals or exceeds 25 percent of the adjusted basis of the building (determined without regard to paragraphs (2) and (3) of section [1016\(a\)](#)) as of the 1st day of such period.

(c)(2)(D)(ii) Special rules for certain transfers

For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service -

(I) in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,

(II) by a person whose basis in such building is determined under section [1014\(a\)](#) (relating to property acquired from a decedent),

(III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation,

(IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure, or

(V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence.

(c)(2)(D)(iii) Related person, etc.

(c)(2)(D)(iii)(I) Application of section 179

For purposes of subparagraph (B)(i), section [179\(d\)](#) shall be applied by substituting '10 percent' for '50 percent' in section (FOOTNOTE 2) 267(b) and 707(b) and in section 179(b)(7).

(FOOTNOTE 2) So in original. Probably should be 'sections'.

(c)(2)(D)(iii)(II) Related person

For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the 'related person') is related to any person if the related person bears a relationship to such person specified in section 267(b) or 707(b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section [52](#)). For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), '10 percent' shall be substituted for '50 percent'.

(c)(3) Eligible basis reduced where disproportionate standards for units

(c)(3)(A) In general

Except as provided in subparagraph (B), the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

(c)(3)(B) Exception where taxpayer elects to exclude excess costs

(c)(3)(B)(i) In general

Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if -

- (I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II), and
- (II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

(c)(3)(B)(ii) Excess

The excess described in this clause with respect to any unit is the excess of -

- (I) the cost of such unit, over
- (II) the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit.

The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs.

(c)(4) Special rules relating to determination of adjusted basis

For purposes of this subsection -

(c)(4)(A) In general

Except as provided in subparagraph (B), the adjusted basis of any building shall be determined without regard to the adjusted basis of any property which is not residential rental property.

(c)(4)(B) Basis of property in common areas, etc., included

The adjusted basis of any building shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in such building.

(c)(4)(C) No reduction for depreciation

The adjusted basis of any building shall be determined without regard to paragraphs (2) and (3) of section [1016\(a\)](#).

(c)(5) Special rules for determining eligible basis

(c)(5)(A) Eligible basis reduced by Federal grants

If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded.

(c)(5)(B) Eligible basis not to include expenditures where section 167(k) elected

The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(c)(5)(C) Increase in credit for buildings in high cost areas

(c)(5)(C)(i) In general

In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph -

(I) in the case of a new building, the eligible basis of such building shall be 130 percent of such basis determined without regard to this subparagraph, and

(II) in the case of an existing building, the rehabilitation expenditures taken into account under subsection (e) shall be 130 percent of such expenditures determined without regard to this subparagraph.

(c)(5)(C)(ii) Qualified census tract

(c)(5)(C)(ii)(I) In general

The term 'qualified census tract' means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.

(c)(5)(C)(ii)(II) Limit on MSA's designated

The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.

(c)(5)(C)(ii)(III) Determination of areas

For purposes of this clause, each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

(c)(5)(C)(iii) Difficult development areas

(c)(5)(C)(iii)(I) In general

The term 'difficult development areas' means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.

(c)(5)(C)(iii)(II) Limit on areas designated

The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule shall apply to nonmetropolitan areas.

(c)(5)(C)(iv) Special rules and definitions

For purposes of this subparagraph -

- (I) population shall be determined on the basis of the most recent decennial census for which data are available,
- (II) area median gross income shall be determined in accordance with subsection (g)(4),
- (III) the term 'metropolitan statistical area' has the same meaning as when used in section 143(k)(2)(B), and
- (IV) the term 'nonmetropolitan area' means any county (or portion thereof) which is not within a metropolitan statistical area.

(c)(6) Credit allowable for certain federally-assisted buildings acquired during 10-year period described in paragraph

(2)(B)(ii)

(c)(6)(A) In general

On application by the taxpayer, the Secretary (after consultation with the appropriate Federal official) may waive paragraph (2)(B)(ii) with respect to any federally-assisted building if the Secretary determines that such waiver is necessary -

- (i) to avert an assignment of the mortgage secured by property in the project (of which such building is a part) to the Department of Housing and Urban Development or the Farmers Home Administration, or

(ii) to avert a claim against a Federal mortgage insurance fund (or such Department or Administration) with respect to a mortgage which is so secured.

The preceding sentence shall not apply to any building described in paragraph (7)(B).

(c)(6)(B) Federally-assisted building

For purposes of subparagraph (A), the term 'federally-assisted building' means any building which is substantially assisted, financed, or operated under -

- (i) section 8 of the United States Housing Act of 1937,
- (ii) section 221(d)(3) or 236 of the National Housing Act, or
- (iii) section 515 of the Housing Act of 1949,

as such Acts are in effect on the date of the enactment of the Tax Reform Act of 1986.

(c)(6)(C) Low-income buildings where mortgage may be prepaid

A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to a federally-assisted building described in clause (ii) or (iii) of subparagraph (B) if -

- (i) the mortgage on such building is eligible for prepayment under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 or under section 502(c) of the Housing Act of 1949 at any time within 1 year after the date of the application for such a waiver,
- (ii) the appropriate Federal official certifies to the Secretary that it is reasonable to expect that, if the waiver is not granted, such building will cease complying with its low-income occupancy requirements, and
- (iii) the eligibility to prepay such mortgage without the approval of the appropriate Federal official is waived by all persons who are so eligible and such waiver is binding on all successors of such persons.

(c)(6)(D) Buildings acquired from insured depository institutions in default

A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

(c)(6)(E) Appropriate Federal official

For purposes of subparagraph (A), the term 'appropriate Federal official' means -

- (i) the Secretary of Housing and Urban Development in the case of any building described in subparagraph (B) by reason of clause (i) or (ii) thereof, and
- (ii) the Secretary of Agriculture in the case of any building described in subparagraph (B) by reason of clause (iii) thereof.

(c)(7) Acquisition of building before end of prior compliance period

(c)(7)(A) In general

Under regulations prescribed by the Secretary, in the case of a building described in subparagraph (B) (or interest therein) which is acquired by the taxpayer -

(i) paragraph (2)(B) shall not apply, but

(ii) the credit allowable by reason of subsection (a) to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have been allowable under subsection (a) for such period to the prior owner referred to in subparagraph (B) had such owner not disposed of the building.

(c)(7)(B) Description of building

A building is described in this subparagraph if -

(i) a credit was allowed by reason of subsection (a) to any prior owner of such building, and

(ii) the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

(e) Rehabilitation expenditures treated as separate new building

(1) In general

Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building.

(2) Rehabilitation expenditures

For purposes of paragraph (1) -

(A) In general

The term 'rehabilitation expenditures' means amounts chargeable to capital account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building.

(B) Cost of acquisition, etc, (FOOTNOTE 3) not included

(FOOTNOTE 3) So in original. Probably should be 'etc.,'.

Such term does not include the cost of acquiring any building (or interest therein) or any amount not permitted to be taken into account under paragraph (3) or (4) of subsection (d).

(3) Minimum expenditures to qualify

(A) In general

Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if -

(i) the expenditures are allocable to 1 or more low-income units or substantially benefit such units, and

(ii) the amount of such expenditures during any 24-month period meets the requirements of whichever of the following

subclauses requires the greater amount of such expenditures:

(I) The requirement of this subclause is met if such amount is not less than 10 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)).

(II) The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is \$3,000 or more.

(B) Exception from 10 percent rehabilitation

In the case of a building acquired by the taxpayer from a governmental unit, at the election of the taxpayer, subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under subsection (b)(2)(B)(ii).

(C) Date of determination

The determination under subparagraph (A) shall be made as of the close of the 1st taxable year in the credit period with respect to such expenditures.

(4) Special rules

For purposes of applying this section with respect to expenditures which are treated as a separate building by reason of this subsection -

(A) such expenditures shall be treated as placed in service at the close of the 24-month period referred to in paragraph (3)(A), and

(B) the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1)) with respect to which the expenditures were incurred.

Nothing in subsection (d)(2) shall prevent a credit from being allowed by reason of this subsection.

(5) No double counting

Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i) but not under both such subsections.

(6) Regulations to apply subsection with respect to group of units in building

The Secretary may prescribe regulations, consistent with the purposes of this subsection, treating a group of units with respect to which rehabilitation expenditures are incurred as a separate new building.

(f) Definition and special rules relating to credit period

(1) Credit period defined

For purposes of this section, the term 'credit period' means, with respect to any building, the period of 10 taxable years beginning with -

(A) the taxable year in which the building is placed in service, or

(B) at the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B), once made, shall be irrevocable.

(2) Special rule for 1st year of credit period

(A) In general

The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction -

(i) the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and

(ii) the denominator of which is 12.

(B) Disallowed 1st year credit allowed in 11th year

Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

(3) Determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period

(A) In general

In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if -

(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to 2/3 of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

(B) 1st year computation applies

A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase.

(4) Dispositions of property

If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a), such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j).

(5) Credit period for existing buildings not to begin before rehabilitation credit allowed

(A) In general

The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

(B) Acquisition credit allowed for certain buildings not allowed a rehabilitation credit

(i) In general

In the case of a building described in clause (ii) -

(I) subsection (d)(2)(B)(iv) shall not apply, and

(II) the credit period for such building shall not begin before the taxable year which would be the 1st taxable year of the credit period for rehabilitation expenditures with

respect to the building under the modifications described in clause (ii)(II).

(ii) Building described

A building is described in this clause if -

(I) a waiver is granted under subsection (d)(6)(C) with respect to the acquisition of the building, and

(II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if subsection (e)(3)(A)(ii)(II) were applied by substituting '\$2,000' for '\$3,000'.

(g) Qualified low-income housing project

For purposes of this section -

(1) In general

The term 'qualified low-income housing project' means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

(A) 20-50 test

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40-60 test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Rent-restricted units

(A) In general

For purposes of paragraph (1), a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

(B) Gross rent

For purposes of subparagraph (A), gross rent -

(i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),

(ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,

(iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any

governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and

(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

For purposes of clause (iii), the term 'supportive service' means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.

(C) Imputed income limitation applicable to unit

For purposes of this paragraph, the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

(i) In the case of a unit which does not have a separate bedroom, 1 individual.

(ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142(a)(7), the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii).

(D) Treatment of units occupied by individuals whose incomes rise above limit

(i) In general

Except as provided in clause (ii), notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1), such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent-restricted.

(ii) Next available unit must be rented to low-income tenant if income rises above 140 percent of income limit

If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting '170 percent' for '140 percent' and by substituting 'any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income' for 'any residential unit in the building (of a size

comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation'.

(E) Units where Federal rental assistance is reduced as tenant's income increases

If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if -

(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if -

(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and

(II) such units were rent-restricted within the meaning of subparagraph (A).

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

(3) Date for meeting requirements

(A) In general

Except as otherwise provided in this paragraph, a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 1st year of the credit period for such building.

(B) Buildings which rely on later buildings for qualification

(i) In general

In determining whether a building (hereinafter in this subparagraph referred to as the 'prior building') is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

(ii) Treatment of elected buildings

In the case of a building which the taxpayer elects to take into account under clause (i), the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

(iii) Date prior building is treated as placed in service

For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

(C) Special rule

A building -

(i) other than the 1st building placed in service as part

of a project, and

(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building,

shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.

(D) Projects with more than 1 building must be identified

For purposes of this section, a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

(4) Certain rules made applicable

Paragraphs (2) (other than subparagraph (A) thereof), (3), (4), (5), (6), and (7) of section 142(d), and section 6652(j), shall apply for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term 'gross rent' shall have the meaning given such term by paragraph (2)(B) of this subsection.

(5) Election to treat building after compliance period as not part of a project

For purposes of this section, the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

(6) Special rule where de minimis equity contribution

Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if -

(A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

(B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located.

Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent-restricted.

(7) Scattered site projects

Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

(h) Limitation on aggregate credit allowable with respect to projects located in a State

(1) Credit may not exceed credit amount allocated to building

(A) In general

The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed

the housing credit dollar amount allocated to such building under this subsection.

(B) Time for making allocation

Except in the case of an allocation which meets the requirements of subparagraph (C), (D), (E), or (F), an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

(C) Exception where binding commitment

An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

(D) Exception where increase in qualified basis

(i) In general

An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii).

(ii) Limitation

The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of -

(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

(iii) Housing credit dollar amount reduced by full allocation

Notwithstanding clause (i), the full amount of the allocation shall be taken into account under paragraph (2).

(E) Exception where 10 percent of cost incurred

(i) In general

An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

(ii) Qualified building

For purposes of clause (i), the term 'qualified building' means any building which is part of a project if the taxpayer's basis in such project (as of the close of the calendar year in which the allocation is made) is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

(F) Allocation of credit on a project basis

(i) In general

In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if -

(I) the allocation is made to the project for a calendar year during the project period,

(II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and

(III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.

(ii) Project period

For purposes of clause (i), the term 'project period' means the period -

(I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and

(II) ending with the calendar year the last building is placed in service as part of such project.

(2) Allocated credit amount to apply to all taxable years ending during or after credit allocation year

Any housing credit dollar amount allocated to any building for any calendar year -

(A) shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

(B) shall reduce the aggregate housing credit dollar amount of the allocating agency only for such calendar year.

(3) Housing credit dollar amount for agencies

(A) In general

The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the State housing credit ceiling allocated under this paragraph for such calendar year to such agency.

(B) State ceiling initially allocated to State housing credit agencies

Except as provided in subparagraphs (D) and (E), the State housing credit ceiling for each calendar year shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

(C) State housing credit ceiling

The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of -

(i) \$1.25 multiplied by the State population,

(ii) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

(iii) the amount of State housing credit ceiling returned in the calendar year, plus

(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (ii), the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (i) and (iii) over the

aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

(D) Unused housing credit carryovers allocated among certain States

(i) In general

The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

(ii) Unused housing credit carryover

For purposes of this subparagraph, the unused housing credit carryover of a State for any calendar year is the excess (if any) of the unused State housing credit ceiling for such year (as defined in subparagraph (C)(ii)) over the excess (if any) of -

(I) the aggregate housing credit dollar amount allocated for such year, over

(II) the sum of the amounts described in clauses (i) and (iii) of subparagraph (C).

(iii) Formula for allocation of unused housing credit carryovers among qualified States

The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

(iv) Qualified State

For purposes of this subparagraph, the term 'qualified State' means, with respect to a calendar year, any State -

(I) which allocated its entire State housing credit ceiling for the preceding calendar year, and

(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

(E) Special rule for States with constitutional home rule cities

For purposes of this subsection -

(i) In general

The aggregate housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as -

(I) the population of such city, bears to

(II) the population of the entire State.

(ii) Coordination with other allocations

In the case of any State which contains 1 or more

constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

(iii) Constitutional home rule city

For purposes of this paragraph, the term 'constitutional home rule city' has the meaning given such term by section 146(d)(3)(C).

(F) State may provide for different allocation

Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph.

(G) Population

For purposes of this paragraph, population shall be determined in accordance with section 146(j).

(4) Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account

(A) In general

Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if -

(i) such obligation is taken into account under section 146, and

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.

(B) Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap

For purposes of subparagraph (A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

(5) Portion of State ceiling set-aside for certain projects involving qualified nonprofit organizations

(A) In general

Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be allocated to projects other than qualified low-income housing projects described in subparagraph (B).

(B) Projects involving qualified nonprofit organizations

For purposes of subparagraph (A), a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period.

(C) Qualified nonprofit organization

For purposes of this paragraph, the term 'qualified nonprofit organization' means any organization if -

(i) such organization is described in paragraph (3) or (4)

of section 501(c) and is exempt from tax under section 501(a),

(ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; (FOOTNOTE 4) and

(FOOTNOTE 4) So in original. The semicolon probably should be a comma.

(iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.

(D) Treatment of certain subsidiaries

(i) In general

For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation

For purposes of clause (i), the term 'qualified corporation' means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

(E) State may not override set-aside

Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing

(A) In general

No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

(B) Extended low-income housing commitment

For purposes of this paragraph, the term 'extended low-income housing commitment' means any agreement between the taxpayer and the housing credit agency -

(i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii),

(ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i),

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,

(iv) which is binding on all successors of the taxpayer,

and

(v) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

(C) Allocation of credit may not exceed amount necessary to support commitment

(i) In general

The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii) Buildings financed by tax-exempt bonds

If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

(D) Extended use period

For purposes of this paragraph, the term 'extended use period' means the period -

(i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii) ending on the later of -

(I) the date specified by such agency in such agreement, or

(II) the date which is 15 years after the close of the compliance period.

(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status

(i) In general

The extended use period for any building shall terminate -

(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

(ii) Eviction, etc. of existing low-income tenants not permitted

The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination -

(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II) any increase in the gross rent with respect to such unit not otherwise permitted under this section.

(F) Qualified contract

For purposes of subparagraph (E), the term 'qualified contract' means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the nonlow-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of -

(i) the sum of -

(I) the outstanding indebtedness secured by, or with respect to, the building,

(II) the adjusted investor equity in the building, plus

(III) other capital contributions not reflected in the amounts described in subclause (I) or (II), reduced by

(ii) cash distributions from (or available for distribution from) the project.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including regulations to prevent the manipulation of the amount determined under the preceding sentence.

(G) Adjusted investor equity

(i) In general

For purposes of subparagraph (E), the term 'adjusted investor equity' means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to -

(I) such amount, multiplied by

(II) the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting the base calendar year for 'calendar year 1987'.

An amount shall be taken into account as an investment in the project only to the extent there was an obligation to invest such amount as of the beginning of the credit period and to the extent such amount is reflected in the adjusted basis of the project.

(ii) Cost-of-living increases in excess of 5 percent not taken into account

Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1(f)(4)) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i).

(iii) Base calendar year

For purposes of this subparagraph, the term 'base calendar year' means the calendar year with or within which the 1st taxable year of the credit period ends.

(H) Low-income portion

For purposes of this paragraph, the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.

(I) Period for finding buyer

The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the

taxpayer's interest in the low-income portion of the building.

(J) Effect of noncompliance

If, during a taxable year, there is a determination that an extended low-income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.

(K) Projects which consist of more than 1 building

The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary.

(7) Special rules

(A) Building must be located within jurisdiction of credit agency

A housing credit agency may allocate its aggregate housing credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

(B) Agency allocations in excess of limit

If the aggregate housing credit dollar amounts allocated by a housing credit agency for any calendar year exceed the portion of the State housing credit ceiling allocated to such agency for such calendar year, the housing credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

(C) Credit reduced if allocated credit dollar amount is less than credit which would be allowable without regard to placed in service convention, etc.

(i) In general

The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

(ii) Determination of percentage

For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which -

(I) the housing credit dollar amount allocated to such building bears to

(II) the credit amount determined in accordance with clause (iii).

(iii) Determination of credit amount

The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if -

(I) this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

(II) subsection (f)(3)(A) were applied without regard to 'the percentage equal to 2/3 of'.

(D) Housing credit agency to specify applicable percentage and maximum qualified basis

In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken

into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection.

(c)(8) Other definitions

For purposes of this subsection -

(c)(8)(A) Housing credit agency

The term 'housing credit agency' means any agency authorized to carry out this subsection.

(c)(8)(B) Possessions treated as States

The term 'State' includes a possession of the United States.

(i) Definitions and special rules

For purposes of this section -

(1) Compliance period

The term 'compliance period' means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

(2) Determination of whether building is federally subsidized

(A) In general

Except as otherwise provided in this paragraph, for purposes of subsection (b)(1), a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103, or any below market Federal loan, the proceeds of which are or were used (directly or indirectly) with respect to such building or the operation thereof.

(B) Election to reduce eligible basis by balance of loan or proceeds of obligations

A loan or tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d) -

(i) in the case of a loan, the principal amount of such loan, and

(ii) in the case of a tax-exempt obligation, the proceeds of such obligation.

(C) Special rule for subsidized construction financing

Subparagraph (A) shall not apply to any tax-exempt obligation or below market Federal loan used to provide construction financing for any building if -

(i) such obligation or loan (when issued or made) identified the building for which the proceeds of such obligation or loan would be used, and

(ii) such obligation is redeemed, and such loan is repaid, before such building is placed in service.

(D) Below market Federal loan

For purposes of this paragraph, the term 'below market Federal loan' means any loan funded in whole or in part with

Federal funds if the interest rate payable on such loan is less than the applicable Federal rate in effect under section 1274(d)(1) (as of the date on which the loan was made). Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence).

(3) Low-income unit

(A) In general

The term 'low-income unit' means any unit in a building if -

(i) such unit is rent-restricted (as defined in subsection (g)(2)), and

(ii) the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

(B) Exceptions

(i) In general

A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

(ii) Suitability for occupancy

For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

(iii) Transitional housing for homeless

For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building -

(I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

(II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

(iv) Single-room occupancy units

For purposes of clause (i), a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

(C) Special rule for buildings having 4 or fewer units

In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by -

(i) any individual who occupies a residential unit in such building, or

(ii) any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.

(D) Certain students not to disqualify unit

A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is -

(i) a student and receiving assistance under title IV of the Social Security Act, or

(ii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws.

(E) Owner-occupied buildings having 4 or fewer units eligible for credit where development plan

(i) In general

Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).

(ii) Limitation on credit

In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

(iii) Certain unrented units treated as owner-occupied

In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

(4) New building

The term 'new building' means a building the original use of which begins with the taxpayer.

(5) Existing building

The term 'existing building' means any building which is not a new building.

(6) Application to estates and trusts

In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(7) Impact of tenant's right of 1st refusal to acquire property

(A) In general

No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B).

(B) Minimum purchase price

For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of -

(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii).

(j) Recapture of credit

(1) In general

If -

(A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than

(B) the amount of such basis as of the close of the preceding taxable year,

then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.

(2) Credit recapture amount

For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of -

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount described in paragraph (1)(A), plus

(B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) Accelerated portion of credit

For purposes of paragraph (2), the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of -

(A) the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over

(B) the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) Only basis for which credit allowed taken into account

Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.

(C) No recapture of additional credit allowable by reason of subsection (f)(3)

Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason

of subsection (f)(3).

(D) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, D, or G of this part.

(E) No recapture by reason of casualty loss

The increase in tax under this subsection shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(F) No recapture where de minimis changes in floor space

The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if -

(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and

(ii) the building is a qualified low-income building after such change.

(5) Certain partnerships treated as the taxpayer

(A) In general

For purposes of applying this subsection to a partnership to which this paragraph applies -

(i) such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,

(ii) the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,

(iii) paragraph (4)(A) shall not apply, and

(iv) the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.

(B) Partnerships to which paragraph applies

This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.

(C) Special rules

(i) Husband and wife treated as 1 partner

For purposes of subparagraph (B)(i), a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election irrevocable

Any election under subparagraph (B), once made, shall be irrevocable.

(6) No recapture on disposition of building (or interest therein) where bond posted

In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if -

(A) the taxpayer furnishes to the Secretary a bond in an amount satisfactory (FOOTNOTE 5) to the Secretary and for the period required by the Secretary, and

(FOOTNOTE 5) So in original. Probably should be 'satisfactory'.

(B) it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

(k) Application of at-risk rules

For purposes of this section -

(1) In general

Except as otherwise provided in this subsection, rules similar to the rules of section 49(a)(1) (other than subparagraphs (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2), and section 49(b)(1) shall apply in determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

(2) Special rules for determining qualified person

For purposes of paragraph (1) -

(A) In general

If the requirements of subparagraphs (B), (C), and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization -

(i) is actively and regularly engaged in the business of lending money, or

(ii) is a person described in section 49(a)(1)(D)(iv)(II).

(B) Financing secured by property

The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if -

(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

(ii) the proceeds from the financing (if any) are applied to acquire or improve such building.. (FOOTNOTE 6)

(FOOTNOTE 6) So in original.

(C) Portion of building attributable to financing

The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wrap-around mortgage involving such financing).

(D) Repayment of principal and interest

The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of -

- (i) the date on which such financing matures,
- (ii) the 90th day after the close of the compliance period with respect to the qualified low-income building, or
- (iii) the date of its refinancing or the sale of the building to which such financing relates.

In the case of a qualified nonprofit organization which is not described in section 49(a)(1)(D)(iv)(II) with respect to a building, clause (ii) of this subparagraph shall be applied as if the date described therein were the 90th day after the earlier of the date the building ceases to be a qualified low-income building or the date which is 15 years after the close of a compliance period with respect thereto.

(3) Present value of financing

If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

(4) Failure to fully repay

(A) In general

To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period -

- (i) beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and
- (ii) ending with the due date for the taxable year in which such failure occurs,

determined by using the underpayment rate and method under section 6621.

(B) Applicable portion

For purposes of subparagraph (A), the term 'applicable portion' means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable years which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D).

(C) Certain rules to apply

Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection.

(1) Certifications and other reports to Secretary

(1) Certification with respect to 1st year of credit period

Following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes) -

- (A) the taxable year, and calendar year, in which such building was placed in service,
- (B) the adjusted basis and eligible basis of such building as

of the close of the 1st year of the credit period,

(C) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h),

(D) the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and

(E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

(2) Annual reports to the Secretary

The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth -

(A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

(B) the information described in paragraph (1)(C) for the taxable year, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

(3) Annual reports from housing credit agencies

Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying -

(A) the amount of housing credit amount allocated to each building for such year,

(B) sufficient information to identify each such building and the taxpayer with respect thereto, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

(m) Responsibilities of housing credit agencies

(1) Plans for allocation of credit among projects

(A) In general

Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless -

(i) such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part, and

(ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project.

(B) Qualified allocation plan

For purposes of this paragraph, the term 'qualified allocation plan' means any plan -

(i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,

(ii) which also gives preference in allocating housing credit dollar amounts among selected projects to -

(I) projects serving the lowest income tenants, and

(II) projects obligated to serve qualified tenants for the longest periods, and

(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of.

(C) Certain selection criteria must be used

The selection criteria set forth in a qualified allocation plan must include

(i) project location,

(ii) housing needs characteristics,

(iii) project characteristics,

(iv) sponsor characteristics,

(v) participation of local tax-exempt organizations,

(vi) tenant populations with special housing needs, and

(vii) public housing waiting lists.

(D) Application to bond financed projects

Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

(2) Credit allocated to building not to exceed amount necessary to assure project feasibility

(A) In general

The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

(B) Agency evaluation

In making the determination under subparagraph (A), the housing credit agency shall consider -

(i) the sources and uses of funds and the total financing planned for the project,

(ii) any proceeds or receipts expected to be generated by reason of tax benefits, and

(iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries.

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(C) Determination made when credit amount applied for and when building placed in service

(i) In general

A determination under subparagraph (A) shall be made as of each of the following times:

(I) The application for the housing credit dollar amount.

(II) The allocation of the housing credit dollar amount.

(III) The date the building is placed in service.

(ii) Certification as to amount of other subsidies

Prior to each determination under clause (i), the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

(D) Application to bond financed projects

Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B).

(n) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations -

(1) dealing with -

(A) projects which include more than 1 building or only a portion of a building,

(B) buildings which are placed in service in portions,

(2) providing for the application of this section to short taxable years,

(3) preventing the avoidance of the rules of this section, and

(4) providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

(o) Termination

(1) In general

Except as provided in paragraph (2), for any calendar year after 1991 -

(A) clause (i) of subsection (h)(3)(C) shall not apply, and

(B) subsection (h)(4) shall not apply to any building placed in service after 1991.

(2) Exception for bond-financed buildings in progress

For purposes of paragraph (1)(B), a building shall be treated as placed in service before 1992 if -

(A) the bonds with respect to such building are issued before 1992,

(B) the taxpayer's basis in the project (of which the building is a part) as of December 31, 1991, is more than 10 percent of the taxpayer's reasonably expected basis in such project as of December 31, 1993, and

(C) such building is placed in service before January 1, 1994.

SOURCE

(Added Pub. L. 99-514, title II, Sec. 252(a), Oct. 22, 1986, 100 Stat. 2189, and amended Pub. L. 99-509, title VIII, Sec. 8072(a), Oct. 21, 1986, 100 Stat. 1964; Pub. L. 100-647, title I, Sec. 1002(1)(1)-(25), (32), 1007(g)(3)(B), title IV, Sec. 4003(a), (b)(1), (3), 4004(a), Nov. 10, 1988, 102 Stat. 3373-3381, 3435, 3643, 3644; Pub. L. 101-239, title VII, Sec. 7108(a)(1),

(b)-(e)(2), (f)-(m), (n)(2)-(q), 7811(a), 7831(c), 7841(d)(13)-(15), Dec. 19, 1989, 103 Stat. 2306-2321, 2406, 2426, 2429; Pub. L. 101-508, title XI, Sec. 11407(a)(1), (b)(1)-(9), 11701(a)(1)-(3)(A), (4), (5)(A), (6)-(10), 11812(b)(3), 11813(b)(3), Nov. 5, 1990, 104 Stat. 1388-474, 1388-475, 1388-505 to 1388-507, 1388-535, 1388-551.)

REFTEXT

References In Text

Section 8 of the United States Housing Act of 1937, referred to in subsecs. (c)(2), (d)(6)(B)(i), and (g)(2)(B), is classified to section 1437f of Title 42, The Public Health and Welfare. Section 8(e)(2) of the Act was repealed by Pub. L. 101-625, title II, Sec. 289(b)(1), Nov. 28, 1990, 104 Stat. 4128, effective Oct. 1, 1991, but to remain in effect with respect to single room occupancy dwellings as authorized by subchapter IV (Sec. 11361 et seq.) of chapter 119 of Title 42. See section 12839(b) of Title 42.

The Stewart B. McKinney Homeless Assistance Act of 1988, referred to in subsec. (c)(2), probably means the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (Sec. 11301 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

The date of the enactment of this sentence, referred to in subsec. (c)(2), is the date of the enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

Section 201(a) of the Tax Reform Act of 1986, referred to in subsec. (c)(2)(B), is section 201(a) of Pub. L. 99-514, which amended section [168](#) of this title generally.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (d)(2)(D)(i)(I), (6)(B), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (d)(2)(D)(i)(I), (5)(B), is the date of the enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

Sections 221(d)(3) and 236 of the National Housing Act, referred to in subsec. (d)(6)(B)(ii), are classified to sections 1715l(d)(3) and 1715z-1, respectively, of Title 12, Banks and Banking.

Sections 515 and 502(c) of the Housing Act of 1949, referred to in subsecs. (d)(6)(B)(iii), (C)(i) and (g)(2)(B)(iv), are classified to sections 1485 and 1472(c), respectively, of Title 42, The Public Health and Welfare.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (d)(6)(C)(i), now the Low-Income Housing Preservation and Resident Homeownership Act of 1990, is title II of Pub. L. 100-242, Feb. 5, 1988, 101 Stat. 1877, as amended. Subtitle B of title II, which was formerly set out as a note under section 1715l of Title 12, Banks and Banking, and which amended section 1715z-6 of Title 12, was amended generally by Pub. L. 101-625 and is classified to chapter 42 (Sec. 4101 et seq.) of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

Section 3 of the Federal Deposit Insurance Act, referred to in subsec. (d)(6)(D), is classified to section 1813 of Title 12.

The date of the enactment of this subparagraph, referred to in subsec. (g)(2)(E), is the date of enactment of Pub. L. 100-647, which was approved Nov. 10, 1988.

Sections 106, 107, and 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence), referred to in subsec. (i)(2)(D), are classified to sections 5306, 5307, and 5308 of Title 42, The Public Health and Welfare, as in effect on the date of enactment of Pub. L. 101-239, which was approved Dec. 19, 1989.

The date of the enactment of this clause, referred to in subsec. (i)(3)(B)(iii)(I), is date of enactment of Pub. L. 101-239, which was approved Dec. 19, 1989.

The Social Security Act, referred to in subsec. (i)(3)(D)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title IV of the Act is classified generally to subchapter IV (Sec. 601 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Job Training Partnership Act, referred to in subsec. (i)(3)(D)(ii), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, which is classified generally to chapter 19 (Sec. 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

MISC2

Prior Provisions

A prior section 42, added Pub. L. 94-12, title II, Sec. 203(a), Mar. 29, 1975, 89 Stat. 29, and amended Pub. L. 94-164, Sec. 3(a)(1), Dec. 23, 1975, 89 Stat. 972; Pub. L. 94-455, title IV, Sec. 401(a)(2)(A), (B), title V, Sec. 503(b)(4), title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1555, 1562, 1834; Pub. L. 95-30, title I, Sec. 101(c), May 23, 1977, 91 Stat. 132, which related to the general tax credit allowed to individuals in an amount equal to the greater of (1) 2% of taxable income not exceeding \$9,000 or (2) \$35 multiplied by each exemption the taxpayer was entitled to, expired Dec. 31, 1978 pursuant to the terms of: (1) Pub. L. 94-12, Sec. 209(a) as amended by Pub. L. 94-164, Sec. 2(e), set out as an Effective and Termination Dates of 1975 Amendment note under section [56](#) of this title; (2) Pub. L. 94-164, Sec. 3(b) as amended by Pub. L. 94-455, Sec. 401(a)(1) and Pub. L. 95-30, Sec. 103(a); and (3) Pub. L. 94-455, Sec. 401(e), as amended by Pub. L. 95-30, Sec. 103(c) and Pub. L. 95-600, title I, Sec. 103(b), Nov. 6, 1978, 92 Stat. 2771, set out as an Effective and Termination Dates of 1976 Amendment note under section [32](#) of this title.

Another prior section [42](#) was renumbered section [35](#) of this title.

Amendments

1990 - Subsec. (b)(1). Pub. L. 101-508, Sec. 11701(a)(1)(B), struck out at end 'A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937.'

Subsec. (c)(2). Pub. L. 101-508, Sec. 11701(a)(1)(A), inserted at end 'Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States

Housing Act of 1937.'

Pub. L. 101-508, Sec. 11407(b)(5)(A), inserted before period at end of last sentence '(other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence))'.

Subsec. (d)(2)(D)(i)(I). Pub. L. 101-508, Sec. 11812(b)(3), inserted '(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)' after 'section 167(k).'

Subsec. (d)(2)(D)(ii)(V). Pub. L. 101-508, Sec. 11407(b)(8), added subcl. (V).

Subsec. (d)(5)(B). Pub. L. 101-508, Sec. 11812(b)(3), inserted '(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)' after 'section 167(k).'

Subsec. (d)(5)(C)(ii)(I). Pub. L. 101-508, Sec. 11407(b)(4), inserted at end 'If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.'

Pub. L. 101-508, Sec. 11701(a)(2)(B), inserted before period at end 'for such year'.

Pub. L. 101-508, Sec. 11701(a)(2)(A), which directed the insertion of 'which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract,' after 'census tract', was executed by making the insertion after 'any census tract' to reflect the probable intent of Congress.

Subsec. (g)(2)(B)(iv). Pub. L. 101-508, Sec. 11407(b)(3), added cl. (iv).

Subsec. (g)(2)(D)(i). Pub. L. 101-508, Sec. 11701(a)(3)(A), inserted before period at end 'and such unit continues to be rent-restricted'.

Subsec. (g)(2)(D)(ii). Pub. L. 101-508, Sec. 11701(a)(4), inserted at end 'In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting '170 percent' for '140 percent' and by substituting 'any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income' for 'any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation'.'

Subsec. (g)(3)(A). Pub. L. 101-508, Sec. 11701(a)(5)(A), substituted 'the 1st year of the credit period for such building' for 'the 12-month period beginning on the date the building is placed in service'.

Subsec. (h)(3)(C). Pub. L. 101-508, Sec. 11701(a)(6)(A), substituted 'the sum of the amounts described in clauses (i) and (iii)' for 'the amount described in clause (i)' in second sentence.

Subsec. (h)(3)(D)(ii)(II). Pub. L. 101-508, Sec. 11701(a)(6)(B), substituted 'the sum of the amounts described in clauses (i) and (iii)' for 'the amount described in clause (i)'.

Subsec. (h)(5)(B). Pub. L. 101-508, Sec. 11407(b)(9)(A), inserted 'own an interest in the project (directly or through a partnership) and' after 'nonprofit organization is to'.

Subsec. (h)(5)(C)(i) to (iii). Pub. L. 101-508, Sec. 11407(b)(9)(B), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (h)(5)(D)(i). Pub. L. 101-508, Sec. 11407(b)(9)(C), inserted 'ownership and' before 'material participation'.

Subsec. (h)(6)(B)(i). Pub. L. 101-508, Sec. 11701(a)(7)(A), inserted before comma at end 'and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii)'.

Subsec. (h)(6)(B)(ii). Pub. L. 101-508, Sec. 11701(a)(7)(B), substituted 'requirement and prohibitions' for 'requirement'.

Subsec. (h)(6)(B)(iii) to (v). Pub. L. 101-508, Sec. 11701(a)(8)(A), added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

Subsec. (h)(6)(E)(i)(I). Pub. L. 101-508, Sec. 11701(a)(9), inserted before comma 'unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period'.

Subsec. (h)(6)(E)(ii)(II). Pub. L. 101-508, Sec. 11701(a)(8)(C), inserted before period at end 'not otherwise permitted under this section'.

Subsec. (h)(6)(F). Pub. L. 101-508, Sec. 11701(a)(8)(D), inserted 'the nonlow-income portion of the building for fair market value and' before 'the low-income portion' in introductory provisions.

Subsec. (h)(6)(J) to (L). Pub. L. 101-508, Sec. 11701(a)(8)(B), redesignated subpars. (K) and (L) as (J) and (K), respectively, and struck out former subpar. (J) which related to sales of less than the low-income portions of a building.

Subsec. (i)(3)(D). Pub. L. 101-508, Sec. 11407(b)(6), substituted 'Certain students' for 'Students in government-supported job training programs' in heading and amended text generally. Prior to amendment, text read as follows: 'A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws.'

Subsec. (i)(7). Pub. L. 101-508, Sec. 11701(a)(10), redesignated par. (8) as (7).

Subsec. (i)(7)(A). Pub. L. 101-508, Sec. 11407(b)(1), substituted 'the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency' for 'the tenants of such building'.

Subsec. (i)(8). Pub. L. 101-508, Sec. 11701(a)(10), redesignated par. (8) as (7).

Subsec. (k)(1). Pub. L. 101-508, Sec. 11813(b)(3)(A), substituted '49(a)(1)' for '46(c)(8)', '49(a)(2)' for '46(c)(9)', and '49(b)(1)' for '47(d)(1)'.

Subsec. (k)(2)(A)(ii), (D). Pub. L. 101-508, Sec. 11813(b)(3)(B), substituted '49(a)(1)(D)(iv)(II)' for '46(c)(8)(D)(iv)(II)'.

Subsec. (m)(1)(B)(ii) to (iv). Pub. L. 101-508, Sec. 11407(b)(7)(B), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: 'which gives the highest priority to those projects as to which the highest percentage of the housing credit dollar amount is to be used for project costs other than the cost of intermediaries unless granting such priority would impede the development of projects in hard-to-develop areas,'.

Pub. L. 101-508, Sec. 11407(b)(2), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: 'which provides a procedure that the agency will follow in notifying the Internal

Revenue Service of noncompliance with the provisions of this section which such agency becomes aware of.'

Subsec. (m)(2)(B). Pub. L. 101-508, Sec. 11407(b)(7)(A), added cl. (iii) and inserted provision that cl. (iii) not be applied so as to impede the development of projects in hard-to-develop areas.

Subsec. (o)(1). Pub. L. 101-508, Sec. 11407(a)(1)(A), substituted '1991' for '1990' wherever appearing.

Subsec. (o)(2). Pub. L. 101-508, Sec. 11407(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: 'For purposes of paragraph (1)(B), a building shall be treated as placed in service before 1990 if -

'(A) the bonds with respect to such building are issued before 1990,

'(B) such building is constructed, reconstructed, or rehabilitated by the taxpayer,

'(C) more than 10 percent of the reasonably anticipated cost of such construction, reconstruction, or rehabilitation has been incurred as of January 1, 1990, and some of such cost is incurred on or after such date, and

'(D) such building is placed in service before January 1, 1992.'

1989 - Subsec. (b)(1). Pub. L. 101-239, Sec. 7108(h)(5), inserted at end 'A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937.'

Subsec. (b)(3)(C). Pub. L. 101-239, Sec. 7108(c)(2), which directed amendment of subpar. (C) by substituting 'subsection (h)(7)' for 'subsection (h)(6))', was executed by substituting 'subsection (h)(7)' for 'subsection (h)(6)', as the probable intent of Congress.

Subsec. (c)(1)(E). Pub. L. 101-239, Sec. 7108(i)(2), added subpar. (E).

Subsec. (d)(1). Pub. L. 101-239, Sec. 7108(l)(1), inserted 'as of the close of the 1st taxable year of the credit period' before period at end.

Subsec. (d)(2)(A). Pub. L. 101-239, Sec. 7108(l)(2), substituted 'subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and' for 'subparagraph (B), the sum of -

'(I) the portion of its adjusted basis attributable to its acquisition cost, plus

'(II) amounts chargeable to capital account and incurred by the taxpayer (before the close of the 1st taxable year of the credit period for such building) for property (or additions or improvements to property) of a character subject to the allowance for depreciation, and'.

Subsec. (d)(2)(B)(iv). Pub. L. 101-239, Sec. 7108(d)(1), added cl. (iv).

Subsec. (d)(2)(C). Pub. L. 101-239, Sec. 7108(l)(3)(A), substituted 'Adjusted basis' for 'Acquisition cost' in heading and 'adjusted basis' for 'cost' in text.

Subsec. (d)(5). Pub. L. 101-239, Sec. 7108(l)(3)(B), substituted 'Special rules for determining eligible basis' for 'Eligible basis determined when building placed in service' in heading.

Subsec. (d)(5)(A). Pub. L. 101-239, Sec. 7108(l)(3)(B), redesignated subpar. (B) as (A) and struck out former subpar. (A)

which read as follows: 'Except as provided in subparagraphs (B) and (C), the eligible basis of any building for the entire compliance period for such building shall be its eligible basis on the date such building is placed in service (increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II)).'

Subsec. (d)(5)(B). Pub. L. 101-239, Sec. 7108(l)(3)(B), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (d)(5)(C). Pub. L. 101-239, Sec. 7108(l)(3)(B), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Pub. L. 101-239, Sec. 7811(a)(1), inserted 'section' before '167(k)' in heading.

Subsec. (d)(5)(D). Pub. L. 101-239, Sec. 7108(l)(3)(B), redesignated subpar. (D) as (C).

Pub. L. 101-239, Sec. 7108(g), added subpar. (D).

Subsec. (d)(6)(A)(i). Pub. L. 101-239, Sec. 7841(d)(13), substituted 'Farmers Home Administration' for 'Farmers' Home Administration'.

Subsec. (d)(6)(C) to (E). Pub. L. 101-239, Sec. 7108(f), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (d)(7)(A). Pub. L. 101-239, Sec. 7831(c)(6), inserted '(or interest therein)' after 'subparagraph (B)' in introductory provisions.

Subsec. (d)(7)(A)(ii). Pub. L. 101-239, Sec. 7841(d)(14), substituted 'under subsection (a)' for 'under subsection (a)''.

Subsec. (e)(2)(A). Pub. L. 101-239, Sec. 7841(d)(15), substituted 'to capital account' for 'to capitial account'.

Subsec. (e)(3). Pub. L. 101-239, Sec. 7108(d)(3), substituted 'Minimum expenditures to qualify' for 'Average of rehabilitation expenditures must be \$2,000 or more' in heading, added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: 'Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if the qualified basis attributable to such expenditures incurred during any 24-month period, when divided by the low-income units in the building, is \$2,000 or more.'

Subsec. (e)(5). Pub. L. 101-239, Sec. 7108(l)(3)(C), substituted 'subsection (d)(2)(A)(i)' for 'subsection (d)(2)(A)(i)(II)''.

Subsec. (f)(4). Pub. L. 101-239, Sec. 7831(c)(4), added par. (4).

Subsec. (f)(5). Pub. L. 101-239, Sec. 7108(d)(2), added par. (5).

Subsec. (g)(2)(A). Pub. L. 101-239, Sec. 7108(e)(2), inserted at end 'For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.'

Pub. L. 101-239, Sec. 7108(e)(1)(B), substituted 'the imputed income limitation applicable to such unit' for 'the income limitation under paragraph (1) applicable to individuals occupying such unit'.

Subsec. (g)(2)(B). Pub. L. 101-239, Sec. 7108(h)(2), added cl. (iii) and concluding provisions which defined 'supportive service'.

Subsec. (g)(2)(C) to (E). Pub. L. 101-239, Sec. 7108(e)(1)(A), added subpars. (C) and (D) and redesignated former subpar. (C) as

(E).

Subsec. (g)(3)(D). Pub. L. 101-239, Sec. 7108(m)(3), added subpar. (D).

Subsec. (g)(4). Pub. L. 101-239, Sec. 7108(n)(2), struck out '(other than section 142(d)(4)(B)(iii))' after 'in applying such provisions'.

Subsec. (g)(7). Pub. L. 101-239, Sec. 7108(h)(3), added par. (7).

Subsec. (h)(1)(B). Pub. L. 101-239, Sec. 7108(m)(2), substituted '(E), or (F)' for 'or (E)'.

Subsec. (h)(1)(F). Pub. L. 101-239, Sec. 7108(m)(1), added subpar. (F).

Subsec. (h)(3)(C) to (G). Pub. L. 101-239, Sec. 7108(b)(1), added subpars. (C) and (D), redesignated former subpars. (D) to (F) as (E) to (G), respectively, and struck out former subpar. (C) which read as follows: 'The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to \$1.25 multiplied by the State population.'

Subsec. (h)(4)(B). Pub. L. 101-239, Sec. 7108(j), substituted '50 percent' for '70 percent' in heading and in text.

Subsec. (h)(5)(D)(ii). Pub. L. 101-239, Sec. 7811(a)(2), substituted 'clause (i)' for 'clause (ii)'.

Subsec. (h)(5)(E). Pub. L. 101-239, Sec. 7108(b)(2)(A), substituted 'subparagraph (F)' for 'subparagraph (E)'.

Subsec. (h)(6). Pub. L. 101-239, Sec. 7108(c)(1), added par. (6). Former par. (6) redesignated (7).

Subsec. (h)(6)(B) to (E). Pub. L. 101-239, Sec. 7108(b)(2)(B), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which provided that the housing credit dollar amount could not be carried over to any other calendar year.

Subsec. (h)(7), (8). Pub. L. 101-239, Sec. 7108(c)(1), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (i)(2)(D). Pub. L. 101-239, Sec. 7108(k), inserted at end 'Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence).'

Subsec. (i)(3)(B). Pub. L. 101-239, Sec. 7108(i)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: 'A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy (as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes) and used other than on a transient basis. For purposes of the preceding sentence, a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.'

Pub. L. 101-239, Sec. 7831(c)(1), inserted '(as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes)' after 'suitable for occupancy'.

Pub. L. 101-239, Sec. 7108(h)(1), inserted at end 'For purposes of the preceding sentence, a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.'

Subsec. (i)(3)(D). Pub. L. 101-239, Sec. 7831(c)(2), added subpar. (D).

Subsec. (i)(3)(E). Pub. L. 101-239, Sec. 7108(h)(4), added

subpar. (E).

Subsec. (i)(6). Pub. L. 101-239, Sec. 7831(c)(3), added par. (6).

Subsec. (i)(8). Pub. L. 101-239, Sec. 7108(q), added par. (8).

Subsec. (k)(2)(D). Pub. L. 101-239, Sec. 7108(o), added provision at end relating to the applicability of cl. (ii) to qualified nonprofit organizations not described in section 46(c)(8)(D)(iv)(II) with respect to a building.

Subsec. (l)(1). Pub. L. 101-239, Sec. 7108(p), in introductory provisions, substituted 'Following' for 'Not later than the 90th day following' and inserted 'at such time and' before 'in such form'.

Subsec. (m). Pub. L. 101-239, Sec. 7108(o), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (m)(4). Pub. L. 101-239, Sec. 7831(c)(5), added par. (4).

Subsec. (n). Pub. L. 101-239, Sec. 7108(o), redesignated subsec. (m) as (n). Former subsec. (n) redesignated (o).

Pub. L. 101-239, Sec. 7108(a)(1), amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: 'The State housing credit ceiling under subsection (h) shall be zero for any calendar year after 1989 and subsection (h)(4) shall not apply to any building placed in service after 1989.'

Subsec. (o). Pub. L. 101-239, Sec. 7108(o), redesignated subsec. (n) as (o).

1988 - Subsec. (b)(2)(A). Pub. L. 100-647, Sec. 1002(l)(1)(A), substituted 'for the earlier of - ' for 'for the month in which such building is placed in service' and added cls. (i) and (ii) and concluding provisions.

Subsec. (b)(2)(C)(ii). Pub. L. 100-647, Sec. 1002(l)(1)(B), substituted 'the month applicable under clause (i) or (ii) of subparagraph (A)' for 'the month in which the building was placed in service'.

Subsec. (b)(3). Pub. L. 100-647, Sec. 1002(l)(9)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: 'For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).'

Subsec. (c)(2)(A). Pub. L. 100-647, Sec. 1002(l)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: 'which at all times during the compliance period with respect to such building is part of a qualified low-income housing project, and'.

Subsec. (d)(2)(D)(ii). Pub. L. 100-647, Sec. 1002(l)(3), substituted 'Special rules for certain transfers' for 'Special rule for nontaxable exchanges' in heading and amended text generally. Prior to amendment, text read as follows: 'For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom aquired.'

Subsec. (d)(3). Pub. L. 100-647, Sec. 1002(l)(4), amended par. (3) generally. Prior to amendment, par. (3) read as follows: 'The eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality

standard of the low-income units in the building.'

Subsec. (d)(5)(A). Pub. L. 100-647, Sec. 1002(1)(6)(B), substituted 'subparagraphs (B) and (C)' for 'subparagraph (B)'.

Pub. L. 100-647, Sec. 1002(1)(5), inserted '(increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II))' before period at end.

Subsec. (d)(5)(C). Pub. L. 100-647, Sec. 1002(1)(6)(A), added subpar. (C).

Subsec. (d)(6)(A)(iii). Pub. L. 100-647, Sec. 1002(1)(7), struck out cl. (iii) which related to other circumstances of financial distress.

Subsec. (d)(6)(B)(ii). Pub. L. 100-647, Sec. 1002(1)(8), struck out 'of 1934' after 'Act'.

Subsec. (f)(1). Pub. L. 100-647, Sec. 1002(1)(2)(B), substituted 'beginning with - ' for 'beginning with' and subpars. (A) and (B) and concluding provisions for 'the taxable year in which the building is placed in service or, at the election of the taxpayer, the succeeding taxable year. Such an election, once made, shall be irrevocable.'

Subsec. (f)(3). Pub. L. 100-647, Sec. 1002(1)(9)(A), amended par. (3) generally. Prior to amendment, par. (3) 'Special rule where increase in qualified basis after 1st year of credit period' read as follows:

'(A) Credit increased. - If -

'(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of any building exceeds

'(ii) the qualified basis of such building as of the close of the 1st year of the credit period, the credit allowable under subsection (a) for the taxable year (determined without regard to this paragraph) shall be increased by an amount equal to the product of such excess and the percentage equal to 2/3 of the applicable percentage for such building.

'(B) 1st year computation applies. - A rule similar to the rule of paragraph (2)(A) shall apply to the additional credit allowable by reason of this paragraph for the 1st year in which such additional credit is allowable.'

Subsec. (g)(2)(B)(i). Pub. L. 100-647, Sec. 1002(1)(10), struck out 'Federal' after 'comparable'.

Subsec. (g)(2)(C). Pub. L. 100-647, Sec. 1002(1)(11), added subpar. (C).

Subsec. (g)(3). Pub. L. 100-647, Sec. 1002(1)(12), amended par. (3) generally, substituting subpars. (A) to (C) for former subpars. (A) and (B).

Subsec. (g)(4). Pub. L. 100-647, Sec. 1002(1)(13), inserted ';' except that, in applying such provisions (other than section 142(d)(4)(B)(iii)) for such purposes, the term 'gross rent' shall have the meaning given such term by paragraph (2)(B) of this subsection' before period at end.

Subsec. (g)(6). Pub. L. 100-647, Sec. 1002(1)(32), added par. (6).

Subsec. (h)(1). Pub. L. 100-647, Sec. 1002(1)(14)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: 'No credit shall be allowed by reason of this section for any taxable year with respect to any building in excess of the housing credit dollar amount allocated to such building under this

subsection. An allocation shall be taken into account under the preceding sentence only if it occurs not later than the earlier of

- '(A) the 60th day after the close of the taxable year, or
- '(B) the close of the calendar year in which such taxable year ends.'

Subsec. (h)(1)(B). Pub. L. 100-647, Sec. 4003(b)(1), substituted '(C), (D), or (E)' for '(C) or (D)'.

Subsec. (h)(1)(E). Pub. L. 100-647, Sec. 4003(a), added subpar. (E).

Subsec. (h)(4)(A). Pub. L. 100-647, Sec. 1002(1)(15), substituted 'if - ' for 'and which is taken into account under section 146' and added cls. (i) and (ii).

Subsec. (h)(5)(D), (E). Pub. L. 100-647, Sec. 1002(1)(16), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (h)(6)(B)(ii). Pub. L. 100-647, Sec. 1002(1)(14)(B), struck out cl. (ii) which read as follows:

'(ii) Allocation may not be earlier than year in which building placed in service. - A housing credit agency may allocate its housing credit dollar amount for any calendar year only to buildings placed in service before the close of such calendar year.'

Subsec. (h)(6)(D). Pub. L. 100-647, Sec. 1002(1)(17), amended subpar. (D) generally. Prior to amendment, subpar. (D) 'Credit allowable determined without regard to averaging convention, etc.' read as follows: 'For purposes of this subsection, the credit allowable under subsection (a) with respect to any building shall be determined -

'(i) without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

'(ii) by applying subsection (f)(3)(A) without regard to 'the percentage equal to 2/3 of'.'

Subsec. (h)(6)(E). Pub. L. 100-647, Sec. 1002(1)(18), added subpar. (E).

Subsec. (i)(2)(A). Pub. L. 100-647, Sec. 1002(1)(19)(A), inserted 'or any prior taxable year' after 'such taxable year' and substituted 'is or was outstanding' for 'is outstanding' and 'are or were used' for 'are used'.

Subsec. (i)(2)(B). Pub. L. 100-647, Sec. 1002(1)(19)(B), substituted 'balance of loan or proceeds of obligations' for 'outstanding balance of loan' in heading and amended text generally. Prior to amendment, text read as follows: 'A loan shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude an amount equal to the outstanding balance of such loan from the eligible basis of the building for purposes of subsection (d).'

Subsec. (i)(2)(C). Pub. L. 100-647, Sec. 1002(1)(19)(C), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (i)(2)(D). Pub. L. 100-647, Sec. 1002(1)(19)(C), (D), redesignated former subpar. (C) as (D) and substituted 'this paragraph' for 'subparagraph (A)'

Subsec. (j)(4)(D). Pub. L. 100-647, Sec. 1007(g)(3)(B), substituted 'D, or G' for 'or D'.

Subsec. (j)(4)(F). Pub. L. 100-647, Sec. 1002(1)(20), added subpar. (F).

Subsec. (j)(5)(B). Pub. L. 100-647, Sec. 4004(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

'This paragraph shall apply to any partnership -

'(i) more than 1/2 the capital interests, and more than 1/2 the profit interests, in which are owned by a group of 35 or more partners each of whom is a natural person or an estate, and

'(ii) which elects the application of this paragraph.'

Subsec. (j)(5)(B)(i). Pub. L. 100-647, Sec. 1002(l)(21), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: 'which has 35 or more partners each of whom is a natural person or an estate, and'.

Subsec. (j)(6). Pub. L. 100-647, Sec. 1002(l)(22), inserted '(or interest therein)' after 'disposition of building' in heading, and in text inserted 'or an interest therein' after 'of a building'.

Subsec. (k)(2)(B). Pub. L. 100-647, Sec. 1002(l)(23), inserted before period at end ', except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if - ' and cls. (i) and (ii).

Subsec. (l). Pub. L. 100-647, Sec. 1002(l)(24)(B), substituted 'Certifications and other reports to Secretary' for 'Certifications to Secretary' in heading.

Subsec. (l)(2), (3). Pub. L. 100-647, Sec. 1002(l)(24)(A), added par. (2) and redesignated former par. (2) as (3).

Subsec. (n). Pub. L. 100-647, Sec. 4003(b)(3), amended subsec. (n) generally, substituting a single par. for former pars. (1) and (2).

Subsec. (n)(1). Pub. L. 100-647, Sec. 1002(l)(25), inserted ', and, except for any building described in paragraph (2)(B), subsection (h)(4) shall not apply to any building placed in service after 1989' after 'year after 1989'.

1986 - Subsec. (k)(1). Pub. L. 99-509 substituted 'subparagraphs (D)(ii)(II) and (D)(iv)(I)' for 'subparagraph (D)(iv)(I)'.

Effective Date Of 1990 Amendment

Section 11407(a)(3) of Pub. L. 101-508 provided that: 'The amendments made by this subsection (amending this section and repealing provisions set out below) shall apply to calendar years after 1989.'

Section 11407(b)(10) of Pub. L. 101-508 provided that:

'(A) In general. - Except as otherwise provided in this paragraph, the amendments made by this subsection (amending this section) shall apply to -

'(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990, or

'(ii) buildings placed in service after December 31, 1990, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

'(B) Tenant rights, etc. - The amendments made by paragraphs (1), (6), (8), and (9) (amending this section) shall take effect on the date of the enactment of this Act (Nov. 5, 1990).

'(C) Monitoring. - The amendment made by paragraph (2) (amending this section) shall take effect on January 1, 1992, and shall apply to buildings placed in service before, on, or after such date.

'(D) Study. - The Inspector General of the Department of Housing and Urban Development and the Secretary of the Treasury shall

jointly conduct a study of the effectiveness of the amendment made by paragraph (5) (amending this section) in carrying out the purposes of section 42 of the Internal Revenue Code of 1986. The report of such study shall be submitted not later than January 1, 1993, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.'

Section 11701(a)(3)(B) of Pub. L. 101-508 provided that: 'In the case of a building to which (but for this subparagraph) the amendment made by subparagraph (A) (amending this section) does not apply, such amendment shall apply to -

'(i) determinations of qualified basis for taxable years beginning after the date of the enactment of this Act (Nov. 5, 1990), and

'(ii) determinations of qualified basis for taxable years beginning on or before such date except that determinations for such taxable years shall be made without regard to any reduction in gross rent after August 3, 1990, for any period before August 4, 1990.'

Section 11701(n) of Pub. L. 101-508 provided that: 'Except as otherwise provided in this section, any amendment made by this section (amending this section and sections 148, 163, 172, 403, 1031, 1253, 2056, 4682, 4975, 4978B and 6038 of this title, and provisions set out as notes under this section and section 2040 of this title) shall take effect as if included in the provision of the Revenue Reconciliation Act of 1989 (Pub. L. 101-239, title VII) to which such amendment relates.'

Section 11812(c) of Pub. L. 101-508 provided that:

'(1) In general. - Except as provided in paragraph (2), the amendments made by this section (amending this section and sections 56, 167, 168, 312, 381, 404, 460, 642, 1016, 1250, and 7701 of this title) shall apply to property placed in service after the date of the enactment of this Act (Nov. 5, 1990).

'(2) Exception. - The amendments made by this section shall not apply to any property to which section 168 of the Internal Revenue Code of 1986 does not apply by reason of subsection (f)(5) thereof.

'(3) Exception for previously grandfather expenditures. - The amendments made by this section shall not apply to rehabilitation expenditures described in section 252(f)(5) of the Tax Reform Act of 1986 (Pub. L. 99-514) (as added by section 1002(1)(31) of the Technical and Miscellaneous Revenue Act of 1988 (see Transitional Rules note below)).'

Amendment by section 11813(b)(3) of Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 29 of this title.

Effective Date Of 1989 Amendment

Section 7108(r) of Pub. L. 101-239, as amended by Pub. L. 101-508, title XI, Sec. 11701(a)(11), (12), Nov. 5, 1990, 104 Stat. 1388-507, provided that:

'(1) In general. - Except as otherwise provided in this

subsection, the amendments made by this section (amending this section and section 142 of this title) shall apply to determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989.

'(2) Buildings not subject to allocation limits. - Except as otherwise provided in this subsection, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, the amendments made by this section shall apply to buildings placed in service after December 31, 1989 but only with respect to bonds issued after such date.

'(3) One-year carryover of unused credit authority, etc. - The amendments made by subsection (b) (amending this section) shall apply to calendar years after 1989, but clauses (ii), (iii), and (iv) of section 42(h)(3)(C) of such Code (as added by this section) shall be applied without regard to allocations for 1989 or any preceding year.

'(4) Additional buildings eligible for waiver of 10-year rule. - The amendments made by subsection (f) (amending this section) shall take effect on the date of the enactment of this Act (Dec. 19, 1989).

'(5) Certifications with respect to 1st year of credit period. - The amendment made by subsection (p) (amending this section) shall apply to taxable years ending on or after December 31, 1989.

'(6) Certain rules which apply to bonds. - Paragraphs (1)(D) and (2)(D) of section 42(m) of such Code, as added by this section, shall apply to obligations issued after December 31, 1989.

'(7) Clarifications. - The amendments made by the following provisions of this section shall apply as if included in the amendments made by section 252 of the Tax Reform Act of 1986 (Pub. L. 99-514, enacting this section and amending sections 38 and 55 of this title):

'(A) Paragraph (1) of subsection (h) (relating to units rented on a monthly basis) (amending this section).

'(B) Subsection (l) (relating to eligible basis for new buildings to include expenditures before close of 1st year of credit period) (amending this section).

'(8) Guidance on difficult development areas and posting of bond to avoid recapture. - Not later than 180 days after the date of the enactment of this Act (Dec. 19, 1989) -

'(A) the Secretary of Housing and Urban Development shall publish initial guidance on the designation of difficult development areas under section 42(d)(5)(C) of such Code, as added by this section, and

'(B) the Secretary of the Treasury shall publish initial guidance under section 42(j)(6) of such Code (relating to no recapture on disposition of building (or interest therein) where bond posted).'

Amendment by section 7811(a) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

Amendment by section 7831(c) of Pub. L. 101-239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7831(g) of Pub. L. 101-239, set out as a note under section 1 of this title.

Effective Date Of 1988 Amendment

Amendment by sections 1002(l)(1)-(25), (32) and 1007(g)(3)(B) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section [1](#) of this title.

Section 4003(c) of Pub. L. 100-647 provided that: 'The amendments made by this section (amending this section and provisions set out as a note under section [469](#) of this title) shall apply to amounts allocated in calendar years after 1987.'

Section 4004(b) of Pub. L. 100-647 provided that:

'(1) In general. - The amendment made by subsection (a) (amending this section) shall take effect as if included in the amendments made by section 252 of the Reform Act (section 252 of Pub. L. 99-514, enacting this section and amending sections 38 and 55 of this title).

'(2) Period for election. - The period for electing not to have section 42(j)(5) of the 1986 Code apply to any partnership shall not expire before the date which is 6 months after the date of the enactment of this Act (Nov. 10, 1988).'

Effective Date Of 1986 Amendment

Section 8072(b) of Pub. L. 99-509 provided that: 'The amendment made by subsection (a) (amending this section) shall take effect as if included in the amendment made by section 252(a) of the Tax Reform Act of 1986 (enacting this section).'

Effective Date

Section 252(e) of Pub. L. 99-514 provided that:

'(1) In general. - The amendments made by this section (enacting this section and amending sections 38 and 55 of this title) shall apply to buildings placed in service after December 31, 1986, in taxable years ending after such date.

'(2) Special rule for rehabilitation expenditures. - Subsection (e) of section 42 of the Internal Revenue Code of 1986 (as added by this section) shall apply for purposes of paragraph (1).'

Savings Provision

For provisions that nothing in amendment by sections 11812(b)(3) and 11813(b)(3) of Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section [29](#) of this title.

Election To Accelerate Credit Into 1990

Section 11407(c) of Pub. L. 101-508 provided that:

'(1) In general. - At the election of an individual, the credit determined under section 42 of the Internal Revenue Code of 1986 for the taxpayer's first taxable year ending on or after October 25, 1990, shall be 150 percent of the amount which would (but for this

paragraph) be so allowable with respect to investments held by such individual on or before October 25, 1990.

'(2) Reduction in aggregate credit to reflect increased 1990 credit. - The aggregate credit allowable to any person under section 42 of such Code with respect to any investment for taxable years after the first taxable year referred to in paragraph (1) shall be reduced on a pro rata basis by the amount of the increased credit allowable by reason of paragraph (1) with respect to such first taxable year. The preceding sentence shall not be construed to affect whether any taxable year is part of the credit, compliance, or extended use periods.

(3) Election. - The election under paragraph (1) shall be made at the time and in the manner prescribed by the Secretary of the Treasury or his delegate, and, once made, shall be irrevocable. In the case of a partnership, such election shall be made by the partnership.'

Exception To Time Period For Meeting Project Requirements In Order To Qualify As Low-Income Housing

Section 11701(a)(5)(B) of Pub. L. 101-508 provided that: 'In the case of a building to which the amendment made by subparagraph (A) (amending this section) does not apply, the period specified in section 42(g)(3)(A) of the Internal Revenue Code of 1986 (as in effect before the amendment made by subparagraph (A)) shall not expire before the close of the taxable year following the taxable year in which the building is placed in service.'

State Housing Credit Ceiling For Calendar Year 1990

Section 7108(a)(2) of Pub. L. 101-239, which provided that in the case of calendar year 1990, section 42(h)(3)(C)(i) of the Internal Revenue Code of 1986 be applied by substituting '\$.9375' for '\$1.25', was repealed by Pub. L. 101-508, title XI, Sec. 11407(a)(2), (3), Nov. 5, 1990, 104 Stat. 1388-474, applicable to calendar years after 1989.

Transitional Rules

Section 252(f) of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, Sec. 1002(1)(28)-(31), Nov. 10, 1988, 102 Stat. 3381, provided that:

'(1) Limitation to non-acrs buildings not to apply to certain buildings, etc. -

'(A) In general. - In the case of a building which is part of a project described in subparagraph (B) -

'(i) section 42(c)(2)(B) of the Internal Revenue Code of 1986 (as added by this section) shall not apply,

'(ii) such building shall be treated as not federally subsidized for purposes of section 42(b)(1)(A) of such Code,

'(iii) the eligible basis of such building shall be treated, for purposes of section 42(h)(4)(A) of such Code, as if it were financed by an obligation the interest on which is exempt from tax under section 103 of such Code and which is taken into account under section 146 of such Code, and

'(iv) the amendments made by section 803 (enacting section 263A of this title, amending sections 48, 267, 312, 447, 464,

and 471 of this title, and repealing sections 189, 278, and 280 of this title) shall not apply.

'(B) Project described. - A project is described in this subparagraph if -

'(i) an urban development action grant application with respect to such project was submitted on September 13, 1984,

'(ii) a zoning commission map amendment related to such project was granted on July 17, 1985, and

'(iii) the number assigned to such project by the Federal Housing Administration is 023-36602.

'(C) Additional units eligible for credit. - In the case of a building to which subparagraph (A) applies and which is part of a project which meets the requirements of subparagraph (D), for each low-income unit in such building which is occupied by individuals whose income is 30 percent or less of area median gross income, one additional unit (not otherwise a low-income unit) in such building shall be treated as a low-income unit for purposes of such section 42.

'(D) Project described. - A project is described in this subparagraph if -

'(i) rents charged for units in such project are restricted by State regulations,

'(ii) the annual cash flow of such project is restricted by State law,

'(iii) the project is located on land owned by or ground leased from a public housing authority,

'(iv) construction of such project begins on or before December 31, 1986, and units within such project are placed in service on or before June 1, 1990, and

'(v) for a 20-year period, 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

'(E) Maximum additional credit. - The maximum present value of additional credits allowable under section 42 of such Code by reason of subparagraph (C) shall not exceed 25 percent of the eligible basis of the building.

'(2) Additional allocation of housing credit ceiling. -

'(A) In general. - There is hereby allocated to each housing credit agency described in subparagraph (B) an additional housing credit dollar amount determined in accordance with the following table:

	The additional
'For calendar year:	allocation is:
1987	\$3,900,000
1988	\$7,600,000
1989	\$1,300,000.

'(B) Housing credit agencies described. - The housing credit agencies described in this subparagraph are:

'(i) A corporate governmental agency constituted as a public benefit corporation and established in 1971 under the provisions of Article XII of the Private Housing Finance Law of the State.

'(ii) A city department established on December 20, 1979, pursuant to chapter XVIII of a municipal code of such city for

the purpose of supervising and coordinating the formation and execution of projects and programs affecting housing within such city.

'(iii) The State housing finance agency referred to in subparagraph (C), but only with respect to projects described in subparagraph (C).

'(C) Project described. - A project is described in this subparagraph if such project is a qualified low-income housing project which -

'(i) receives financing from a State housing finance agency from the proceeds of bonds issued pursuant to chapter 708 of the Acts of 1966 of such State pursuant to loan commitments from such agency made between May 8, 1984, and July 8, 1986, and

'(ii) is subject to subsidy commitments issued pursuant to a program established under chapter 574 of the Acts of 1983 of such State having award dates from such agency between May 31, 1984, and June 11, 1985.

'(D) Special rules. -

'(i) Any building -

'(I) which is allocated any housing credit dollar amount by a housing credit agency described in clause (iii) of subparagraph (B), and

'(II) which is placed in service after June 30, 1986, and before January 1, 1987,

shall be treated for purposes of the amendments made by this section as placed in service on January 1, 1987.

'(ii) Section 42(c)(2)(B) of the Internal Revenue Code of 1986 shall not apply to any building which is allocated any housing credit dollar amount by any agency described in subparagraph (B).

'(E) All units treated as low income units in certain cases. - In the case of any building -

'(i) which is allocated any housing credit dollar amount by any agency described in subparagraph (B), and

'(ii) which after the application of subparagraph (D)(ii) is a qualified low-income building at all times during any taxable year,

such building shall be treated as described in section 42(b)(1)(B) of such Code and having an applicable fraction for such year of 1. The preceding sentence shall apply to any building only to the extent of the portion of the additional housing credit dollar amount (allocated to such agency under subparagraph (A)) allocated to such building.

'(3) Certain projects placed in service before 1987. -

'(A) In general. - In the case of a building which is part of a project described in subparagraph (B) -

'(i) section 42(c)(2)(B) of such Code shall not apply,

'(ii) such building shall be treated as placed in service during the first calendar year after 1986 and before 1990 in which such building is a qualified low-income building (determined after the application of clause (i)), and

'(iii) for purposes of section 42(h) of such Code, such building shall be treated as having allocated to it a housing credit dollar amount equal to the dollar amount appearing in the clause of subparagraph (B) in which such building is described.

'(B) Project described. - A project is described in this subparagraph if the code number assigned to such project by the Farmers' Home Administration appears in the following table:

'The code number is:	The housing credit dollar amount is:
(i) 49284553664	\$16,000
(ii) 4927742022446	\$22,000
(iii) 49270742276087	\$64,000
(iv) 490270742387293	\$48,000
(v) 4927074218234	\$32,000
(vi) 49270742274019	\$36,000
(vii) 51460742345074	\$53,000.

'(C) Determination of adjusted basis. - The adjusted basis of any building to which this paragraph applies for purposes of section 42 of such Code shall be its adjusted basis as of the close of the taxable year ending before the first taxable year of the credit period for such building.

'(D) Certain rules to apply. - Rules similar to the rules of subparagraph (E) of paragraph (2) shall apply for purposes of this paragraph.

'(4) Definitions. - For purposes of this subsection, terms used in such subsection which are also used in section 42 of the Internal Revenue Code of 1986 (as added by this section) shall have the meanings given such terms by such section 42.

'(5) Transitional rule. - In the case of any rehabilitation expenditures incurred with respect to units located in the neighborhood strategy area within the community development block grant program in Ft. Wayne, Indiana -

'(A) the amendments made by this section (enacting this section and amending sections 38 and 55 of this title) shall not apply, and

'(B) paragraph (1) of section 167(k) of the Internal Revenue Code of 1986, shall be applied as if it did not contain the phrase 'and before January 1, 1987'.

The number of units to which the preceding sentence applies shall not exceed 150.'

SECRET

Section Referred To In Other Sections

This section is referred to in sections 38, 39, 55, 469 of this title; title 42 sections 1437, 1485, 12745.

Typical Project Costs Worksheet

\$ _____	Total Development Costs
<u>-</u>	Ineligible Costs
\$ _____	Eligible Basis
<u>X</u> <u>130%</u>	Adjustment for QCT/DDA
_____	Adjusted Eligible Basis
<u>X</u> <u>100%</u>	Applicable Percentage
\$ _____	Qualified Basis
<u>X</u> <u>8.16%</u>	New Construction Credit
\$ _____	Annual Tax Credit Allocation Amount
<u>X</u> <u>10</u>	10-Year Credit Period
\$ _____	Total Amount of Credits
<u>X</u> <u>99%</u>	Limited Partner Share of Credits
\$ _____	Total Amount of Credits Available to LP
<u>X</u> <u>\$.75</u>	Amount Paid by Investors/Tax Credit Dollar
\$ _____	Tax Credit Equity
Tax Credit Equity _____	NAHASDA/Unit _____
NAHASDA Funds _____	Leveraging Ratio _____
TOTAL _____	

Typical Project Costs

\$ 950,000 - 75,000 <hr style="width: 100%;"/> \$ 875,000 X 130% <hr style="width: 100%;"/> \$1,137,500 X 100% <hr style="width: 100%;"/> \$1,137,500 X 8.16% <hr style="width: 100%;"/> \$92,820 X 10 <hr style="width: 100%;"/> \$ 928,200 X 99% <hr style="width: 100%;"/> \$ 918,918 X \$.75 <hr style="width: 100%;"/> \$ 689,189	Total Development Costs Ineligible Costs Eligible Basis Adjustment for QCT/DDA Adjusted Eligible Basis Applicable Percentage Qualified Basis New Construction Credit Annual Tax Credit Allocation Amount 10-Year Credit Period Total Amount of Credits Limited Partner Share of Credits Total Amount of Credits Available to Limited Partner Amount Paid by Investors/Tax Credit Dollar Tax Credit Equity
--	---

Tax Credit Equity	\$689,189
NAHASDA Funds	<u>\$260,811</u>
TOTAL	\$950,000

NAHASDA/Unit \$26,081

Leveraging Ratio 3.64 : 1

DESIGNING A STUDENT RENTAL VOUCHER PROGRAM

1. GENERAL CONSIDERATIONS

- Determine available funding
- Develop preferences/wait list policy
- Develop other program policies and procedures
- Devise a formula for determining the amount of assistance to applicants
- Devise an application form and other documents that may be specific to the program
- Develop a grievance or review process
- Determine applicant reporting requirements/ Determine how often you will review files.
- Develop sanctions for program violations

2. ELIGIBILITY ISSUES

- Applicant must be income eligible under NAHASDA
- Tribal affiliation/residency requirements?
- Student status-full time or part time enrollment?
- Grades?

3. LEASING/HOUSING

- Lease or rent agreement off –campus
- Landlord information
- On-campus assistance
- Pro-ration of assistance for roommates off campus
- Assistance for utilities
- Assistance while school is not in session? (Summer?)
- How often will assistance payments be issued ?
- Direct/indirect payments to student

4. DETERMINING AMOUNT OF ASSISTANCE

- Family or student income
- Financial aid – grants, loans, scholarships, etc.
- School Costs
- Housing Costs
- Family/student contribution?

5. PROGRAM BENEFITS

- Allows student to live off-campus. Increases housing choices while going to school
- Provides opportunity for head of household to attend school and live with family
- Pays housing costs while head or spouse is a student with little or no income earning potential
- Reduces the need for financial aid from school loans that must be paid back
- Provides opportunity for individual to attend school where it may not have been financially feasible (lack of adequate financial aid or personal income)

Calculation Sheet for Student Rental Assistance

Student Name: _____

School Year: _____

Step 1. Calculate family/student eligibility by establishing the annual gross income of family/student. If annual gross income of the family/student is below the maximum allowable limits as defined in Exhibit I, proceed to Step 2. If annual gross income of family/student is above the maximum allowable limits, student is ineligible for assistance.

Applicable maximum annual gross income \$ _____
 This student/family's annual gross income \$ _____
 Student is eligible? _____ Yes _____ No

Step 2. Calculate the school year shelter/housing costs for the student. This can be a monthly rental amount times the number of months student will be renting or the amount of the students room/board as verified by the institution of higher education. Note: Proof required of rental amounts (lease or rent agreement) or student room/board (documentation from school).

School Year (19____) Shelter/Housing Costs

\$ _____

Step 3. Calculate the amount of student financial assistance for the school year (proofs required) that can be applied to housing. Do not include amounts specified for tuition, books, and fees. Student loans are exempt.

	<u>Amounts</u>	<u>Types</u>	<u>Purpose</u>
1.	\$ _____	_____	_____
2.	\$ _____	_____	_____
3.	\$ _____	_____	_____
4.	\$ _____	_____	_____
5.	\$ _____	_____	_____
6.	\$ _____	_____	_____

Total financial aid available for housing costs for school year 19____. \$ _____

NAHASDA Rental Assistance Program

Step 4. Subtract the amount in Step 3 from the amount in Step 2.

Step 2. \$ _____
minus Step 3. \$ _____
Balance \$ _____

The balance is the amount of housing/shelter costs not covered by financial aid the student is expected to receive.

Step 5. Determine student/parent income available to help defray student housing costs. The family/student share/contribution shall be considered to be 5% of family/student gross annual income: \$ _____

Step 6. Subtract family/student share in Step 5 from the amount in Step 4.

Step 4. \$ _____
minus Step 5. \$ _____
Balance \$ _____

The balance remaining in Step 6 is the student's unmet housing/shelter cost.

Step 7. Determine monthly amount of student rental housing assistance by dividing the amount in Step 6 by the number of months the student will be renting under a rent agreement, or by the number of semesters the student will be in student housing for the school year.

a. $\frac{\text{_____}}{\text{Step 6}} \div \frac{\text{_____}}{\text{No. of Mos.}} = \frac{\text{_____}}{\text{Monthly rental/housing assistance}}$

OR:

b. $\frac{\text{_____}}{\text{Step 6}} \div \frac{\text{_____}}{\text{No. of Semesters}} = \frac{\text{_____}}{\text{Semester rental/housing assistance}}$

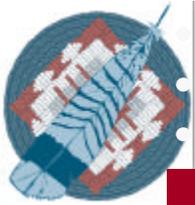
Note: Assistance is to be issued monthly unless school requires that assistance be paid in full for each semester rather than monthly. If so, issue each semester's assistance the first month of the semester.

Prepared by: _____ Date: _____
Staff Representative



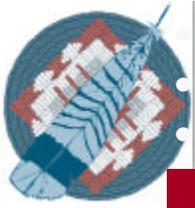
DESIGNING A STUDENT RENTAL VOUCHER PROGRAM

Presented by:
Brenda Bouthot



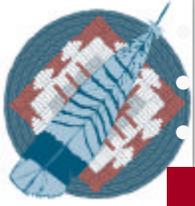
GENERAL CONSIDERATIONS

- Determine available funding
- Develop preferences/wait list policy
- Develop other program policies and procedures
- Devise an application form and other documents that may be specific to the program
- Develop a grievance or review process
- Determine applicant reporting requirements, determine how often you will review files
- Develop sanctions for program violations



ELIGIBILITY ISSUES

- Applicant must be income eligible under NAHASDA
- Tribal affiliation/residency requirements?
- Student status - full or part time enrollment?
- Grades?



LEASING/HOUSING

- Lease or rent agreement off campus
- Landlord information
- On-campus assistance
- Pro-ration of assistance for roommates off campus
- Assistance for utilities
- Assistance while school is not in session?
- How often will assistance payments be issued?
- Direct/indirect payments to students



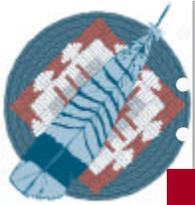
Determining Amount of Assistance

- Family or student income
- Financial aid - grants, loans, scholarships
- School costs
- Family/student contribution?



PROGRAM BENEFITS

- Allows student to live off-campus. Increases housing choices while going to school
- Provides opportunity for head of household to attend school and live with family
- Pays housing costs while head or spouse is a student with little or no income earning potential
- Reduces need for financial aid, loans that must be repaid
- Provides opportunity for individual to attend school where it may not have been financially feasible (lack of adequate financial aid or personal income)



SAMPLE Calculation of Student Rental Assistance

- Student Name: John Doe
- School Year: 1999/2000
- Step 1.** Calculate family/student eligibility by establishing the annual gross income of family/student. If annual gross income of the family/student is below the maximum allowable limits as defined in Exhibit I, proceed to Step 2. If annual gross income of family/student is above the maximum allowable limits, student is ineligible for assistance.
- Applicable maximum annual gross income \$35,120
- Student/family's annual gross income \$23,792
- Student is eligible? X Yes ___ No



Step 2

- ❑ Calculate the school year shelter/housing costs for the student. This can be a monthly rental amount times the number of months student will be renting or the amount of the students room/board as verified by the institution of higher education (documentation from school).

- ❑ School Year (1999/2000) Shelter/Housing Costs

- ❑ \$ 4050 (9 months. X 450)



STEP 3

Calculate the amount of student financial assistance for the school year (proofs required) that can be applied to housing. Do not include amounts specified for tuition, books, and fees. Student loans are exempt.

<u>Amounts</u>	<u>Types</u>	<u>Purpose</u>
1. <u>\$ 3500</u>	<u>Tribal grant</u>	<u>Tuition (exempt)</u>
2. <u>\$ 7000</u>	<u>Student loan</u>	<u>Loans exempt</u>
3. <u>\$ 500</u>	<u>Scholarship</u>	<u>General</u>

Total financial aid available for housing costs for school year 1999/2000 \$ 500.00

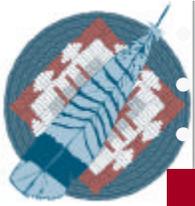


STEP 4

Subtract the amount in Step 3 from the amount in Step 2

	Step 2.	<u>\$ 4050</u>
minus	Step 3.	<u>\$ 500</u>
Balance		<u>\$ 3550</u>

The balance is the amount of housing/shelter costs not covered by financial aid the student is expected to receive.



Step 5

Determine student/parent income available to help defray student housing costs. The family/student share/contribution shall be considered to be 5% of family/student gross annual income.

\$ 1190

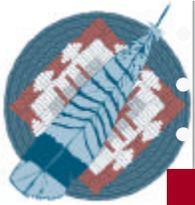


STEP 6

Subtract family/student share in **Step 5** from the amount in Step 4

	Step 4.	<u>\$ 3550</u>
minus	Step 5.	<u>\$ 1190</u>
Balance		<u>\$ 2360</u>

The balance remaining in **Step 6** is the Student's unmet housing/shelter cost.



STEP 7

Determine monthly amount of student rental housing assistance by dividing the amount in Step 6 by the number of months the student will be renting under a rent agreement, or by the number of semesters the student will be in student housing for the school year.

$$\text{A. } \frac{2360}{9} = 262.00$$

Step 6 No. of mos. = Monthly rental/housing assistance

OR

$$\text{B. } \frac{\text{Step 6}}{\text{No. of Semesters}} = \frac{\text{Semester rental/housing assistance}}{\text{assistance}}$$



Note

Assistance is to be issued monthly unless school requires that assistance be paid in full for each semester rather than monthly. If so, issue each semester's assistance the first month of the semester.

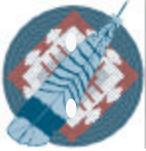
Prepared by: J. Green Date: 03-09-99

Staff Representative



MAKING SUBSTANTIAL CHANGES

- Ramps in place of steps**
- Widening halls and doorways**
- Downstairs bedroom**
- Eliminating obstacles and hazards**



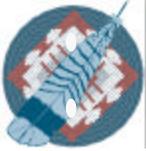
HOME MODIFICATION CHECKLIST

Storage

- Is storage located conveniently? Yes No
- Is storage adequate and useable? Yes No
- Can you easily reach closet items? Yes No
- Have you maximized your space? Yes No

Electrical outlets/switches/alarms

- Are outlets/switches easy to reach
or turn off? Yes No
- Are outlets properly grounded to
prevent shock? Yes No
- Are extension cords in good
condition? Yes No
- Are they needed? Yes No

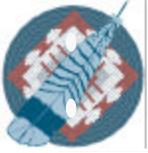


CHECKLIST (continued)

- Do you have smoke detectors in all necessary areas? Yes No
- Do you have an alarm system? Yes No
- Is the telephone readily available for emergencies? Yes No
- Is the telephone equipped for hearing enhancement? Yes No
- Can you hear the doorbell in every part of the house? Yes No

Lighting & Ventilation

- Is lighting sufficient for the area? Yes No
- Is lighting bright enough? Yes No
- Do you have night lights where needed? Yes No
- Is your home well ventilated? Yes No



HOME MODIFICATION DEVICES

<input type="checkbox"/> Handrails	\$30 - \$100
<input type="checkbox"/> Rocker Switches	\$ 3 - \$15
<input type="checkbox"/> Proper lighting	\$ 4 - \$60
<input type="checkbox"/> Lever Doorknobs	\$10 - \$40
<input type="checkbox"/> Adjustable closet rods	\$30 - \$100
<input type="checkbox"/> Smoke detectors	\$ 5 - \$20
<input type="checkbox"/> Grab bars	\$20 - \$100
<input type="checkbox"/> Lever faucets	\$60 - \$100
<input type="checkbox"/> non-slip appliques	\$ 3 - \$10
<input type="checkbox"/> Bath/shower seats	\$30 - \$150
<input type="checkbox"/> Hand-held shower heads	\$30 - \$220



Low Income Housing Tax Credit Program

- ❑ Treasury Dept. Administered (IRS)
- ❑ Section 42 of the Internal Revenue Code
- ❑ 20/50 Test or 40/60 Test
- ❑ 9% Annual Tax Credits for 10 years or
- ❑ 4% Annual Tax Credits for 10 years
- ❑ 15 Year Mandatory Compliance Period
- ❑ 15 Year Extended Use Period
- ❑ Lease-Purchase Provision (Sec. 42, I, 7)



Low Income Housing Tax Credit Program

- ❑ 10% Test and 10 Year Look-Back Rule
- ❑ Limited Partnerships or Limited Liability Companies
- ❑ Investor Equity @ \$0.74-\$0.078 on the 10 Year Credit Total
- ❑ "Soft" or "Hard" Debt
- ❑ CDBG
- ❑ AHP
- ❑ NAHASDA



Low Income Housing Tax Credit Program

- ❑ Tax Credits are Allocated by States on Competitive Basis
- ❑ \$1.25 per capita in Total Credits
- ❑ Qualified Census Tract/DDA
- ❑ Qualified Allocation Plan
 - Must Serve Lowest Income People
 - Serves Needs for the Longest Period of Time
 - Must be Geographically Distributed
 - Give great consideration to “Readiness to Proceed”



Low Income Housing Tax Credit Program

❑ Individual Benefits:

- Affordable Rents (\$250/Month)
- Homeownership Opportunity
- Self-Esteem and Empowerment
- Equity Build-Up (Over 15 years)

❑ Tribal Benefits:

- 20 Affordable Rental Units
- Developers Fee - \$175,000
- Project Income - \$35,000/Year
- Leveraging Scarce NAHASDA \$



Low Income Housing Tax Credit Program

- Lower Land Cost
- Generally in Qualified Census Tracts/DDAs
- Have the Lowest Income Families in States
- Are in Rural Areas Generally
- Have Access to Soft Money through NAHASDA
- Have Very High Demand/Waiting Lists
- Prefer Lease-Purchase Projects

RED LAKE HOMES II INFORMATION

Key Contacts:

Sponsor/Developer Red Lake Reservation Housing Authority
Jane Barrett and Richard Borgstrom

Equity Investor Raymond James Tax Credit Funds, Inc.
Scott Simone

Project Consultant Travois
David W. Bland

Financial Data:

	TOTAL	PER UNIT
Total Development Cost	\$2,521,888	\$120,090
Annual Tax Credits Reserved	\$250,000	\$11,905
10 Year Tax Credit Total	\$2,500,000	\$119,050
Equity Investment	\$1,924,808	\$91,658
Equity Factor	\$0.77	
NAHASDA Debt	\$596,980	\$28,428
Leveraging Ratio	\$4.22 to \$1.00	
Average Rents per month		
1-Bedroom	\$200	
2-Bedroom	\$210	
3-Bedroom	\$220	
4-Bedroom	\$230	
Average Monthly Actual Operating Costs	\$113 per unit per month	

RED LAKE HOMES III
AREA BREAKDOWN-RESIDENTIAL FLOOR AREAS

UNIT:	BDR #:	O.A DIMS (# HOUSE)	FLOOR AREA	# OF UNITS	TOTAL SF
1 BDR	1	24'-0"x24'-0"	576	6	3,456
2 BDR	2	38'-0"x26'-0"	947	2	1,894
3 BDR	3	48'-0"x24'-0"	1,152	7	8,064
4 BDR	4	63'-8"x28'-0"	1,443	11	15,873
				26	29,287SF

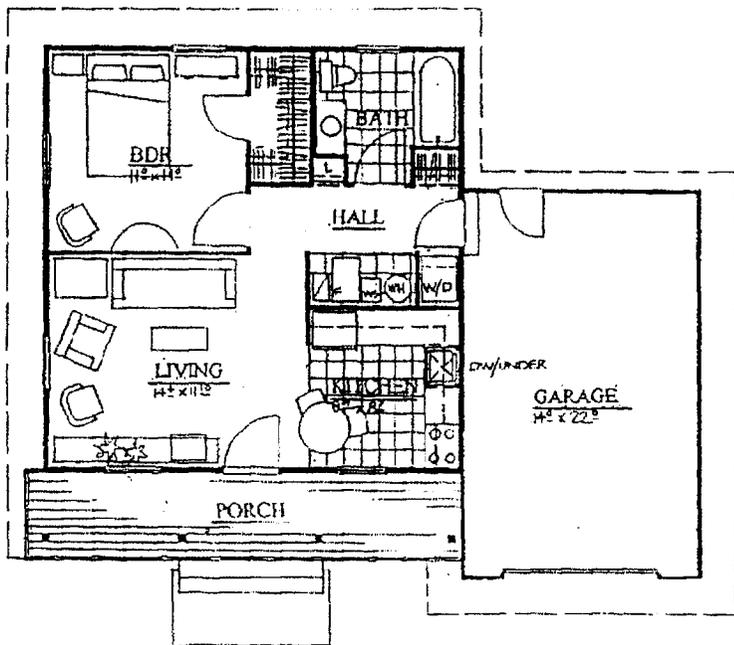
AREA BREAKDOWN-ATTACHED ACCESSORY GARAGES (@1/4 SF Value)

UNIT:	BDR:	O.A DIMS (@ HOUSE)	FLOOR AREA
1 BDR	1	14'-0"x22'-0"	462
2 BDR	2	14'-0"x24'-0"	168
3 BDR	3	22'-0"x24'-0"	868
4 BDR	4	25'-4"x22'-0"	1,518
			3,016 SF

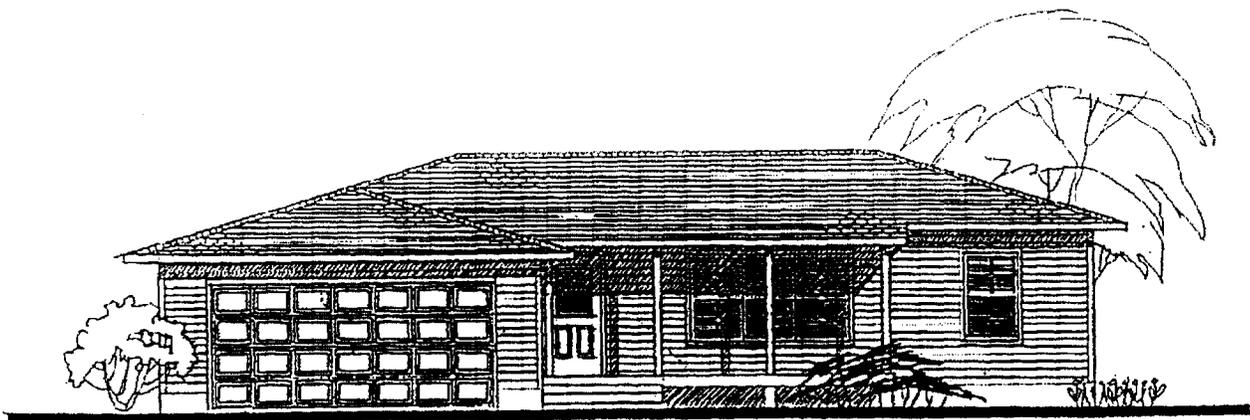
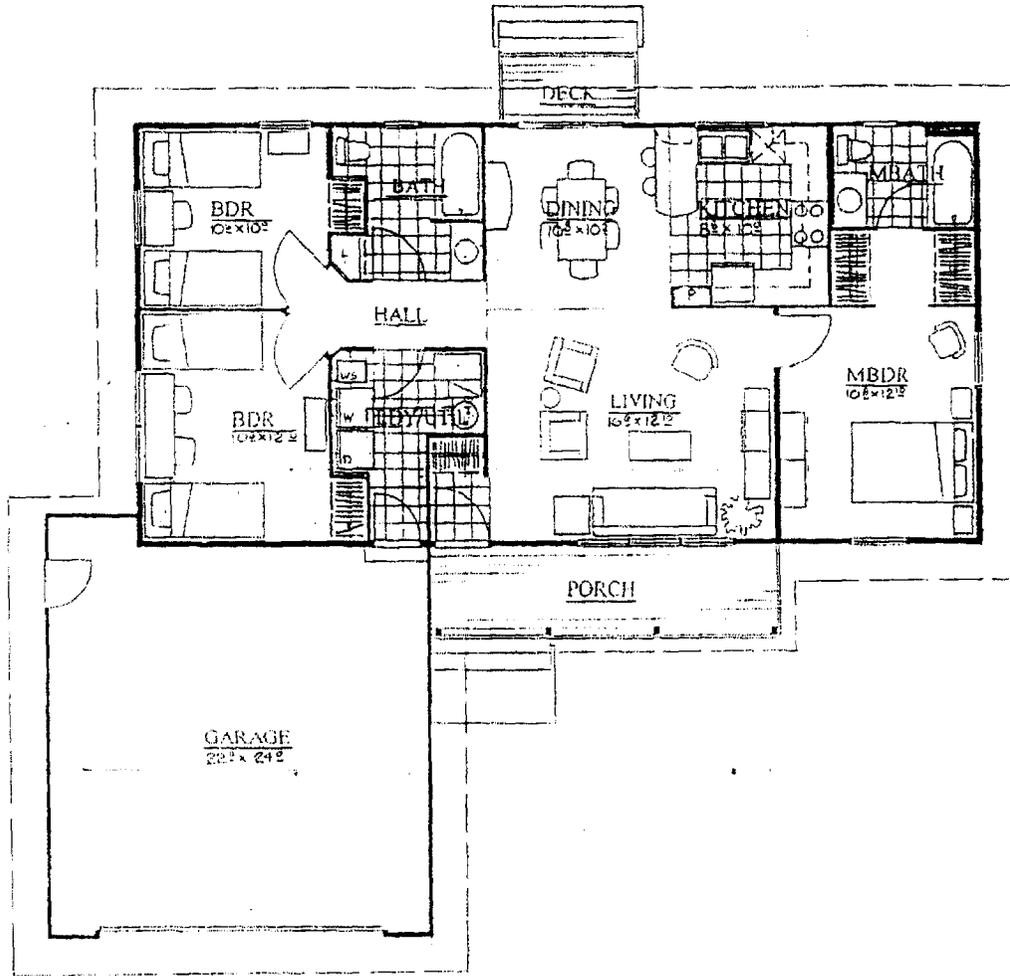
COMMON FEATURES TO ALL UNITS:

- Attached garages with direct, enclosed access
- All units can be HC adaptable with 3'-6" wide halls, 3'-0" wide doors, provision for future grab bars @ toilets
- Residential Equipment in all units:
 - dishwashers
 - range
 - refrigerator
 - washer and dryer
- Mayaire heat recovery ventilator system
- High Efficiency Gas Furnaces w/Sealed Combustion Chamber
- Eat-in Kitchens/counter-bars
- All cabinets-HUD severe use w/Swanstone Vanity Tops
- Marvin's window units, Low-E w/Argon w/ Combo storms
Insulating glass
- Carpet/Pad and sheet vinyl flooring
- Steel insulated entrance door system w/storm unit
- Closet bifold-Landquist prefinished continuous hinge units
- Solid Core wood Interior Doors w/metal frames
- Vaulted ceilings at Living/Dining
- All units will be fabricated at the Red Lake Custom Homes manufacturing plant in Redby, MN.

Post-it® Fax Note	7671	Date	3/18/99	# of pages	4
To	Kimberly Hob	From	Edward Barrett		
Co./Dept	ICE. Dr.	Cd	Red Lake Homes		
Phone #	703/934-3919	Phone #	218/619-3368		
Fax #	703/934-3156	Fax #	218/619-3264		



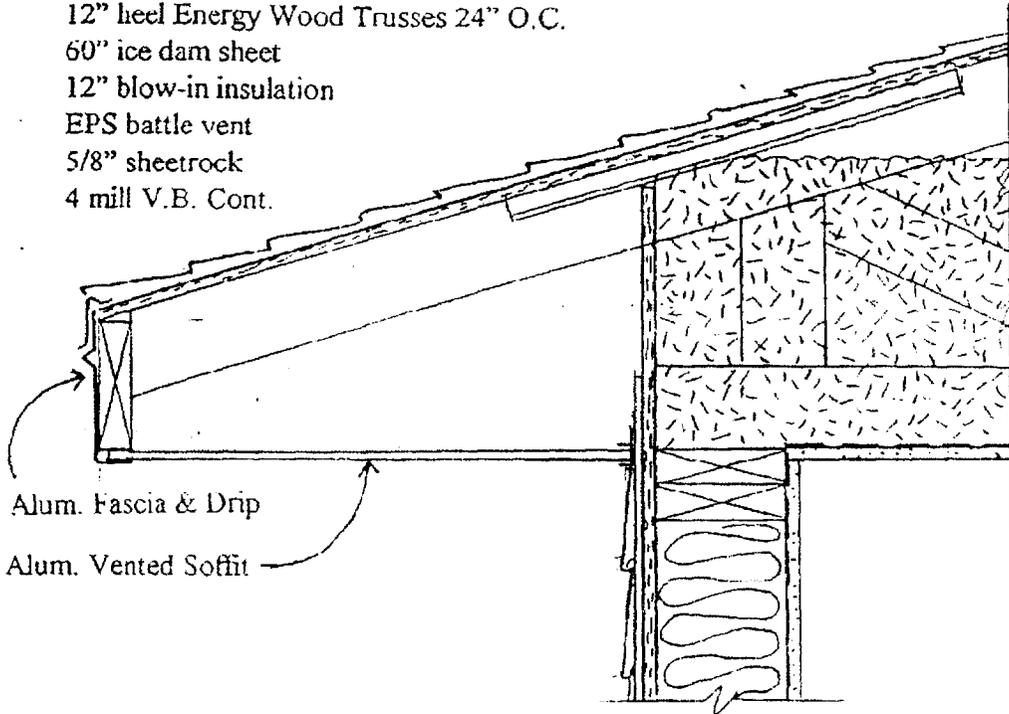
1 BDR UNIT



3 BDR UNIT

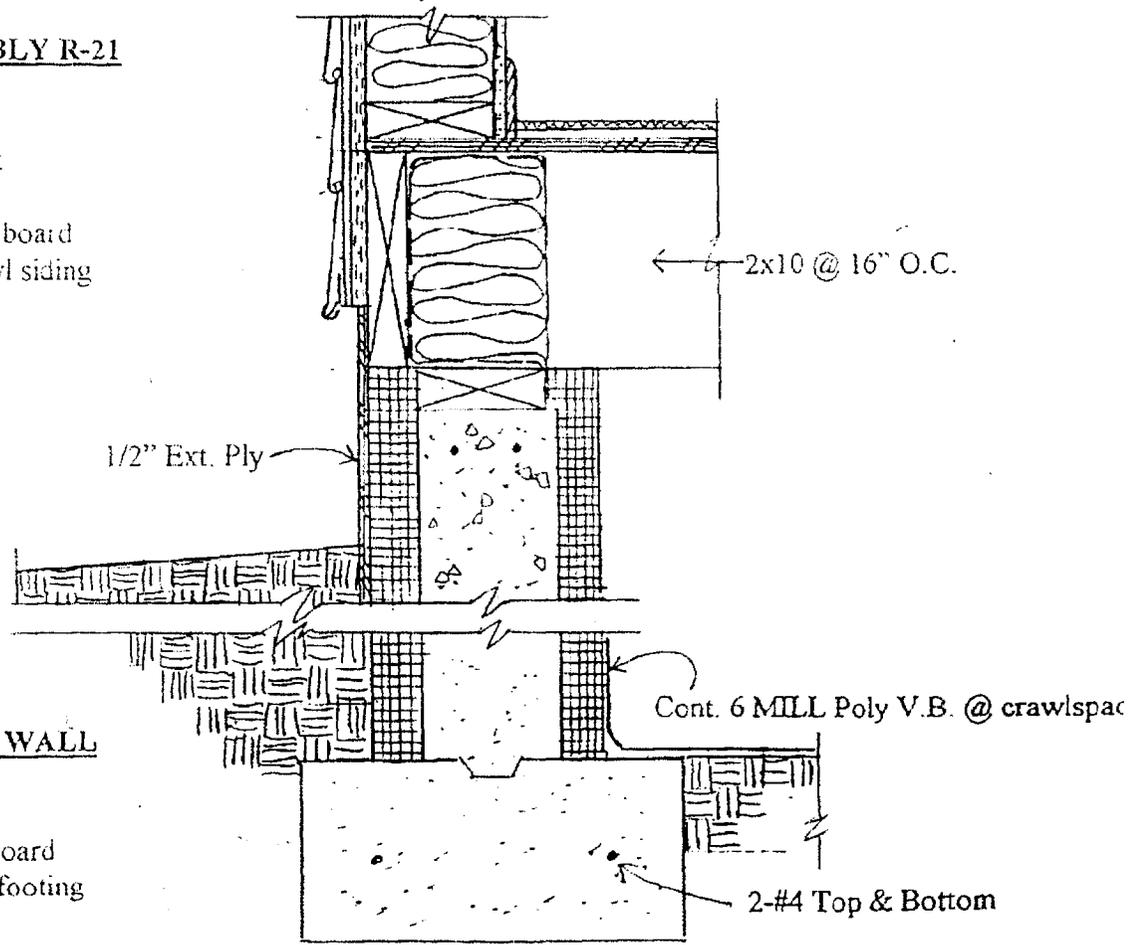
ROOF ASSEMBLY R-40

- 25 yr: fiberglass tabs
- 7/16 Oxboard
- 12" heel Energy Wood Trusses 24" O.C.
- 60" ice dam sheet
- 12" blow-in insulation
- EPS battle vent
- 5/8" sheetrock
- 4 mill V.B. Cont.



WALL ASSEMBLY R-21

- 2x6 @ 16" O.C.
- Full fiberglass batt
- 7/16" Oxboard
- 3/8" EPS Fanfold board
- double 4 1/2" vinyl siding
- 5/8" sheetrock
- 4 mill V.B. cont.



FOUNDATION WALL

- 6" cast concrete
- 2-2" EPS Form board
- 8"x16" concrete footing

2-#4 Top & Bottom

TYPICAL BUILDING WALL SECTION



Lulu Heron Congregate Home Bethel, Alaska



Presented by
Don Fancher, Executive Director
AVCP Regional Housing Authority



Location

- ❑ Located in Bethel, Alaska
- ❑ 400 miles west of Anchorage
- ❑ The transportation hub of 56 villages in the Yukon-Kuskokwim Delta



What is Lulu Heron?

- ❑ 16-Unit Congregate Home similar to Assisted Living Facility
- ❑ For residents 62 years or older and/or handicapped
- ❑ Apartment-Style units for independent living



What is Lulu Heron?

- ❑ Each unit contains bedroom, kitchen, living room and bathroom
- ❑ Features community dining hall, arts & crafts room, saunas and smokehouse
- ❑ Emergency call system connects all rooms to resident manager and police department

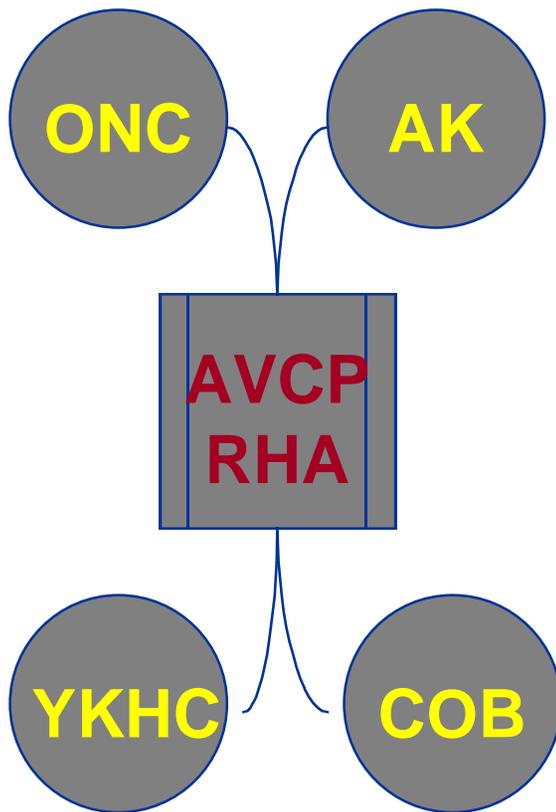


How It All Began

- ❑ USDA Rural Development-\$1.5 million in construction loan funds to be lost from state
- ❑ Needs survey showed congregate living facility needed in the region
- ❑ AVCP RHA applied for and got the funds



Other Project Partners



- ❑ HUD HOME Grant through local Native Council (Orutsararmuit Native Council)
- ❑ State of Alaska Senior Services Division-- processing Medicaid/ Medicare vouchers
- ❑ Yukon-Kuskokwim Health Corporation-- providing home health care to residents
- ❑ City of Bethel--renting land at \$1 per month for 75 years



Operational Subsidies

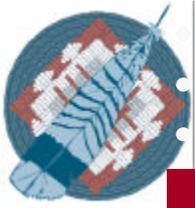
- ❑ USDA provides rental subsidies for low--income residents
- ❑ City of Bethel provides one meal daily--either delivered to residents or transportation to Senior Center



The Design Process

- ❑ Architectural/Engineering Firm Hired
- ❑ Meetings with Local Elders and Community Members





The Design Process

- ❑ Designed so that additional units and/or nursing home facility can be added to either or both wings.



The Design Process

- ❑ Culturally Relevant Features Added



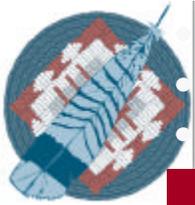
Construction

- Piles driven--Spring 1998
 - Materials arrive on first barge in June 1998



Construction

- ❑ Framing complete July, 1998



Construction

- ❑ Interior Work complete October, 1998



Construction

- ❑ Grand Opening Held December 15, 1998

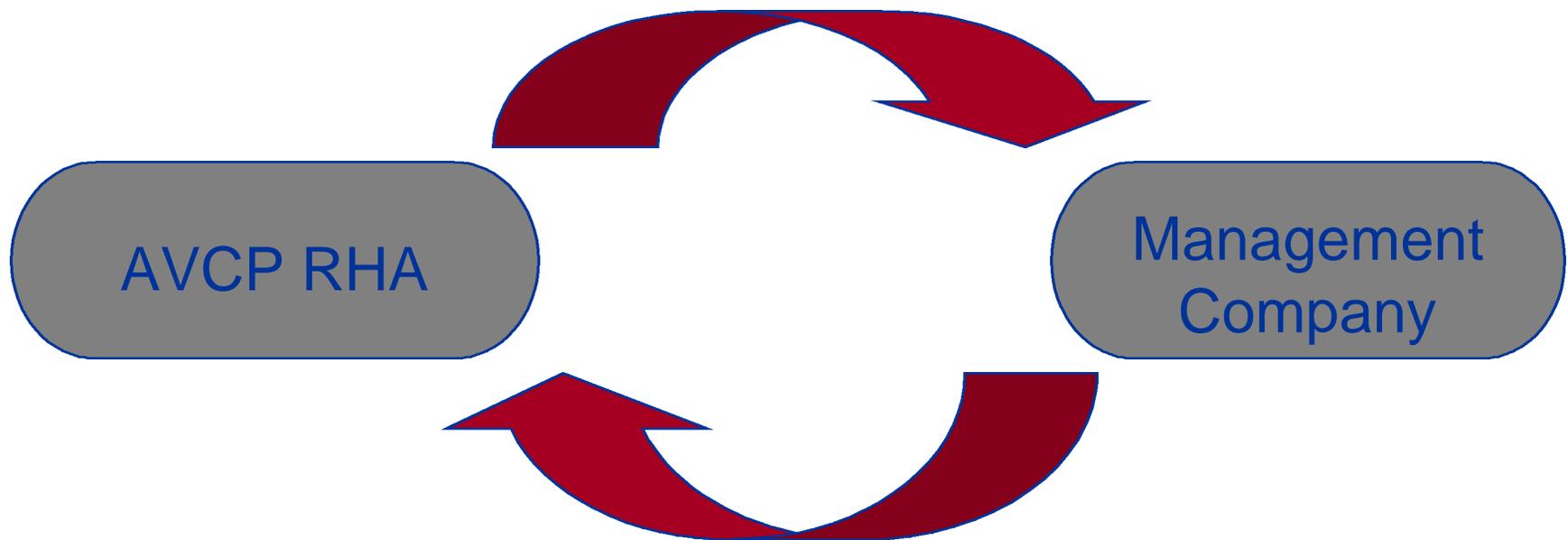
*The Association of Village Council Presidents
Regional Housing Authority
cordially invites you to an Open House
celebrating the completion
of the Lulu Heron Congregate Home
on Tuesday, December 15, 1998
from 1:00 - 3:00 p.m.
455 Ptarmigan Street
(next to AVCP Housing Authority Offices)
Bethel, Alaska*

*R.s.v.p. to Michael Moore
by December 8, 1998
543-3121*



Management

- ❑ Hired Management Firm to operate facility for the first year
- ❑ Will take over operation in FY2000





Lulu Heron Today

- All units rented
- Waiting list for another twenty residents
- Elders able to live independently in their own community

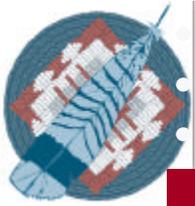


What Have We Learned?

□ Many entities = More money

USDA ONC AK
HUD YKHC =
AHFC COB





What Have We Learned?

□ Many entities = More administrative burden

USDA AK
 ONC
HUD YKHC
 =

AHFC COB

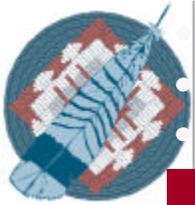




Was It Worth It?



You Bet It Was!!



SHARED VISIONS

- **ASSESSING ECONOMIC DEVELOPMENT OPTIONS**
 - **The Native American Homeownership, Legal and Economic Summit 1**
 - **Sponsored by The U.S. Department of Housing and Urban Development**
 - **March 30, 1999**



THE PLANNING PROCESS

- **Resource Inventory and Evaluation of Existing Conditions**
 - A. **Planning Context;**
 - B. **Characteristics of Human Resource Environment;**
 - C. **Characteristics of the Physical Environment;**
 - D. **Characteristics of the Biological Environment.**



PROBLEM ASSESSMENT

□ What Problems Do We Face?

- A. Planning Context;
- B. Human Resource;
- C. Physical Environment;
- D. Biological Environment.



DEVELOP GOALS & OBJECTIVES

□ What Do We Want To Achieve?

- A. Planning Context;
- B. Human Resource;
- C. Physical Environment;
- D. Biological Environment.



DEVELOP PLAN ALTERNATIVES

- How Do We Achieve What We Want?**
 - A. Planning Context;**
 - B. Human Resource;**
 - C. Physical Environment;**
 - D. Biological Environment.**



DEVELOP IMPLEMENTATION PLAN

- What Kind Of Written Strategies Do We Need?**
 - A. Consolidated Plan;**
 - B. Comprehensive Plan;**
 - C. Business Plan;**
 - D. Master Plan.**



DEVELOP STRATEGIES

- A. Capitol Improvement Plan**
- B. Design Standards**
- C. Growth Control/Incentives**
- D. Program Development Controls**
- E. Zoning, Ordinances, Policies, Procedures ,etc.**



MONITORING & EVALUATION

- **Are We Achieving What We Want?**
 - A. **Develop methods to determine if goals & objectives are being met.**
 - B. **Develop methods for any corrections that need to be made.**



THE PLANNING PROCESS

□ Keys To Success

- A. Project has a beginning and end.
- B. Planning does not, but is a continuous process.
- C. In planning you may return to any previous step and revise, amend or change
- D. Corrections are an integral part of the planning process to ensure success.



CONCLUSION

□ Key Points To Remember

- A. Begin planning process.
- B. Organize the process.
- C. Community participation is ongoing.
- D. Who are the stakeholders, e.g. Tribal members, Tribal Council, the Tribe, Contractors, OTHERS, etc.
- E. The planning department and other tribal department for a coordinated effort.

Key Steps and Considerations in the Economic Development Planning Process

ECONOMIC DEVELOPMENT PLANNING OUTLINE

Step I. INTRODUCTION

- A. Summary (This may include a brief summary of the plan's content, an executive summary of the plan or project);
- B. How the plan is organized;
- C. What the plan is to be utilized for;
- D. Function of the plan, e.g. decision-making, monitoring, evaluation, reference, etc.
- E. Tribal Government Function, e.g. decision making, problems & opportunities, sovereignty issues, zoning changes, permits, capital improvements and other needs;
- F. Definition and Characteristics of the proposed plan, e. g. public documents, policies & procedures, comprehensive plan, long-range, etc.
- G. Preparation of the Plan, Who does what, how and scope of work, scheduling. Utilization of a Gantt chart to track major activities, tasks and expected timelines.

Step II. DESCRIPTION OF THE PLAN

Section I. Description of the Planning Process

- A. A project location map with appropriate legend for features in the area;
- B. Description of the purpose or need for the plan;
- C. Current planning management description;
- D. Description of the planning process to be utilized for preparing the plan.

Section II. Inventory and Evaluation of Existing Conditions (What do we have?)

This is a description of the existing components of the study. This section describes the detailed characteristics of the following:

- A. **The Planning Context:** Characteristics of geographic location, township, range, county, reservation boundaries, political & jurisdictional roles, ownership that influence the planning process;
- B. **The Human Environment:** Land use history, roads, buildings, ditches, other features in and around the planning area. Archaeological aspects, codes & ordinances;
- C. **The Physical Environment:** Geology, topography, soils, surface and groundwater hydrology along with the influence and importance of each in the planning context;
- D. **Biological Environment:** Quantity, quality and health of the plant & animal species along with the communities to be managed. Methodology that will be utilized to inventory, sample analyses results, distribution and locations mapped.

Section III. Problem Assessment (What problems do we face?)

This is a principal by-product of the inventory. It is an analysis and summary of the study area's assets and problems of the following:

- A. The planning context;
- B. The human resource environment;
- C. The physical environment;
- D. The biological environment.

Section IV. Goals and Objectives (What do we want to achieve?)

This includes directions provided by accepted goals & objectives statements that enable decision-makers to evaluate various solutions for accommodating change for:

- A. The planning context;
- B. The human resource environment;
- C. The physical environment;
- D. The biological environment.

Note: Goals generally have long-range implications and objectives have measurable targets.

Section V. Develop Plan Alternatives (How do we achieve what we want?)

Development strategies pertaining to the plan in the following areas:

- A. The planning context;
- B. The human resource environment;
- C. The physical environment;
- D. The biological environment.

Note: These areas should be evaluated in accordance with the stated goals & objectives for enhancements, development, protection etc. One crucial element is to describe the procedure used in problem definition, formulation, of alternatives, legal, political, and social-economic-environmental impacts of the planning, benefit-cost impact analysis of proposed actions and evaluation of tradeoffs.

Section VI. Plan Preparation

Transfer the preferred alternatives into this section. The plan will be complemented by any subplans for proposed actions in the following:

- A. The planning context (e.g. proposed or potential agreements);
- B. The human resource environment (e.g. building roads, infrastructure, homes, parks);
- C. The physical environment (e.g. plug ditches, build ponds & berms);
- D. The biological environment (e.g. reforestation, wetland enhancement, food plots).

Section VII. Develop Implementation Strategies

Combine the plan and detailed subplan in this section for the following:

- A. The planning context;
- B. The human resource environment;
- C. The physical environment;
- D. The biological environment.

Note: Crucial areas include: capital improvements and funding pertaining to the major elements described in the planning design guidelines, finance & source of revenue for the planning project, policies & procedures, upkeep responsibility, etc.

Section VIII. Outcomes, Monitoring and Evaluation Procedures (Did we get what we planned for?)

Develop performance evaluation methods that determine if construction, maintenance, and management practice are practical and cost effective. Determine if goals and objectives of the planning process will be met and if alternative corrections are needed.

Review of steps: It is crucial to review the steps described above on an ongoing basis, the individuals involved in this process should have a good understanding of the scope of work for each step in the planning process along with what actual steps will be followed in the planning process.

Appendices

Include support documentation including but limited to the following:

- A. Background information;
 - 1. Citation of other documents used/reviewed in preparing the plan, e. g. tribal, county, state and federal laws, any code, zoning or other rules & regulations;
 - 2. Scientific literature cited;
 - 3. Previous planning documents for the study or planning area.
- B. Detailed listing of field notes and recorded inventory of plant and animal species by common and Latin names etc;
- C. Maps (old/new);
- D. Other, e. g. Letters of support, Memorandums of Understanding/Agreement, Internal Revenue Service letters etc.

COMMUNITY ECONOMIC DEVELOPMENT

BUSINESS DEVELOPMENT

INSTRUCTOR: WILLIAM A. NINACS

FALL, 1998

TRIBAL HOUSING AUTHORITY HOME CENTER

BUSINESS PLAN

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EXECUTIVE SUMMARY

As a result of the October 1996 federal legislation, Tribal Housing Entities have been afforded greater control over the operations of tribal housing. Under the new legislation called Native American Housing Assistance Self-Determination Act (NAHASDA), the trade off is that tribes will become financially self-sufficient within five (5) years.

The Tribal Housing Authority Home Center is a planning document that may be utilized by various tribal housing programs to develop a business opportunity that would assist tribes in achieving a “model activity” that would conform with the NAHASDA regulations in the second funding year of this new law.

It should be noted that federally recognized tribes under the provisions of the 1975 “Indian Self-Determination and Affirmative Education Act who become “Self-Governance Tribes under public Law 93-638” have a different standing as it relates to the federal government. These tribes have the full sovereign nation status and may establish their own codification system for most, if not all aspects of a municipality.

This plan will be presented at the “25th Annual Meeting of the National American Indian Housing Council (NAIHC) Convention and Trade Show,” that will be held in Seattle, Washington in July 1999. It is anticipated that there will be approximately 3, 000 participants representing 125 of the 209 Tribal Housing Authorities.

STATEMENT OF PURPOSE

The Tribal Housing Authority Home Center represents a “model” that other Tribal Housing Authorities may utilize to conform with the new federal regulations as a result of the Native American Housing Assistance Self-Determination Act of 1996. The primary purpose of this plan is to assess and provide an implementation guide for Tribal Housing Entities to utilize as they develop their business plans and long-term planning strategies.

The second primary focus of this plan will be to develop a sample financing strategy that will realistically address the first three years of operation due to the fact that there are only four years left under the Tribal Housing Community Economic Development appropriations.

In addition, this planning document will provide the basis for developing a services and marketing strategy that is badly needed by a majority of tribes who have relied on the 1937 Housing Regulations and Housing and Urban Development (HUD) direction. It is believed that this document will provide the Tribal Housing Entities a rationale to utilize planning as an ongoing process as it relates to “model Activities”.

MISSION, GOALS AND OBJECTIVES:

The Mission of the Tribal Housing Authority Home Center is to provide Oneida Nation members with housing construction options that will assist in a cost effective and return money to the tribal community.

Goal: To become a major supplier of building materials for utilization by public, private and tribal construction entities.

Objective: To assist in reducing tribal housing materials cost by selling at cost.

Goal: To provide building materials at a reasonable cost for housing construction.

Objective: To assist in the development of affordable housing construction and stimulate tribal economic development within the reservation area.

Goal: To operate a profitable retail outlet and reinvest profits into the organization.

Objective: To develop a model that could be utilized by other tribal housing programs.

COMPANY DESCRIPTION:

The Tribal Housing Authority Home Center would become a department of the Oneida Housing Authority and would be the central purchasing and receiving source for construction materials.

The department would market initially to it's own housing needs, tribal programs and tribal or non-tribal contractors doing business with the Housing Authority or tribe. There appears to be a market niche that may be considered and that is the number of contractors who also deal with government contracts and are looking for minority owned companies to do business with.

The Oneida Housing Authority has space at N4402 Seminary Road, Oneida, and WI 54155 for both retail and warehouse space. The primary products for retail sale would be; lumber, wood products, construction supplies and some appliances.

It is anticipated that there would be a need of 20,000 Sq. feet of additional warehouse space that would include a small retail outlet in the front of the building to service customers. The retail store would allow tribal members to purchase materials at a discounted price, allow general public members and contractors to utilize discounted prices as well.

The warehouse inventory could be utilized to maintain the inventory of other tribal housing programs, receiving functions and provide the functions of the "Purchasing Department acquisitions" thereby, saving these entities both labor and material charges.

COMPETITION

Competitors:

At the present time there are two tribal competitors: The Menomonee Nation, 42 miles west of Oneida with its own sawmill and value added products along with the Oneida Community Housing program within the Development Division.

The second competitor are the fifteen local lumberyards, however, of these the principal competition would be from Menards, Wicks and Stock Lumber Company. Of these Menards is by far the largest with approximately \$225,000,000 a year in sales. Stock, at the present, has an annual sales volume of approximately \$15,000,000 and Wicks approximately \$12,000,000.

Competitive Positions:

As a result of the NAHASDA regulations, the Oneida Housing Authority needs to develop an aggressive investment and leveraging strategy. By developing the Home Center this would comply with the federal regulations while giving the Oneida Housing Authority a market share of the current lumber business in Brown and Outagamie counties and possibly the Fox Valley region as well.

Not only does the Oneida Nation have a high demand and need but also the surrounding area is experiencing significant construction growth. Other tribes in the immediate area are the following:

- ❖ Menominee Nation
- ❖ Stockbridge Munsee

- ❖ Lac Du Flambeau
- ❖ Ho Chunk
- ❖ Lac Coute Orellies and
- ❖ Others.

Market Share Distribution:

With the amount of new home construction that the Oneida Housing Authority is scheduled to build over the next five years along with the tribal construction the Home Center could capture approximately 4.14% of the primary market total sales. By developing an aggressive and or collaborative effort with other tribes, the Home Center could achieve 5.5 to 6.0% of sales within the market area.

Future Competition:

As in any new start-up business there are always risks however, because the Oneida Housing Authority has been in business since 1964, they have a strong history of housing construction.

The competition will be from the franchise type and larger lumberyards mentioned earlier. As in any competitive market the competition will become more interested in the tribal market therefore, it is imperative that the Housing Authority Home Center plan be implemented as soon as possible.

MARKETING STRATEGY:

The primary market area would be within the 65,000 Square mile reservation boundaries, to tribal members who are either homeowners or contractors. It is our belief that another customer base we would attract would be the middle age group who would not be as interested in doing the job themselves but rather purchase the materials themselves and supervise the installation of the project.

Lumber would be the first product that would be sold to prospective tribal and non-tribal customers. It is anticipated that lumber would be the only item sold during the first year.

In year two the following products would be added:

- ❖ Windows and doors with value added features;
- ❖ Kitchen cabinets;
- ❖ Bath vanities and spas
- ❖ Light fixtures
- ❖ Other miscellaneous merchandise

In year three the following Items would be added:

- ❖ Major appliances, washer and dryer
- ❖ Television and stereo sets

- ❖ Security systems
- ❖ Swimming pools
- ❖ Other miscellaneous merchandise

A secondary market that would be analyzed in year two would be the off reservation Fox Valley market area. There is a Home Center niche within the Green Bay and Fox Valley area for the Tribal Housing Authority to compete in and it is my belief that the Home Center can compete effectively against local home center and lumber supply centers.

The Home Center would have certain tax advantages due to its tribal status and therefore, could establish a pricing advantage achieved through volume purchasing as well. Also, transportation costs would provide a further reduction in cost to the buyer due to the local location.

Marketing Tactics

Home Improvement Clinics:

Based on local TV programming, a successful marketing tactic is in-house demonstrations of products or in-house clinics. Experiential, demonstrations and other techniques may be utilized and certificates of participation given out to participants.

STRENGTHS, WEAKNESSES, OPPORTUNITIES AND THREATS

STRENGTHS:

- ❖ The Oneida Housing Authority has been in existence since 1963
- ❖ There is an existing need within the tribal housing community
- ❖ The Oneida Housing Authority has a significant cash reserve to fund start-up
- ❖ The tribal housing community has indicated support for this.

WEAKNESSES:

- ❖ Tribal members have been slow to pay on a credit type system
- ❖ The Tribal Business Committee would have to approve this procedure
- ❖ Housing and Urban Development (HUD) would have to approve as well
- ❖ The Oneida Housing Authority has no experience in retail/wholesale business.

OPPORTUNITIES:

- ❖ Oneida Housing Authority would be first to develop a NAHASDA Business venture and could provide technical assistance for a fee to others
- ❖ Home Center could expand with possible franchising
- ❖ As Home Center expands additional jobs could be created
- ❖ Home education training, workshops and apprenticeships could bring in additional monies.

THREATS:

- ❖ HUD and federal regulations may be evoked against this due to nature of business
- ❖ Home Center may be target for Unrelated Business Income Tax (UBIT) even though the Center is on tribal land
- ❖ Lumber source along with other materials could be marked up thereby, denying the Home Center from establishing the discounts to customers.

PRODUCTION (Operating) PLAN

First Year Production/Operating Plan:

Facilities: The primary building will include a large building with service desks, offices and storage with an outside lumber capability, service garage and approximately three (3) to six (6) acres to store the lumber.

For this proposed business to become operational or competitive in the retail business there needs to be a larger store and yard layout along with the operating capital for the first three years. The equally important need is that of the qualified human resource employees who have both the academic and life experience to handle the day to day business.

The overall responsibility would be in the development of clear policies and procedures that would provide clarity along with accountability to the employees, the management and the community. The start-up crew would consist of the following:

- ❖ Manager of enterprise 1FTE.
- ❖ Two full-time day sales persons 2FTE
- ❖ Two part-time evening sales person 2PTE .5X2=1FTE
- ❖ Two part-time weekend sales persons, (Sat. & Sunday). 2PTE.5X2=1FTE
- ❖ One part-time bookkeeper 1PTE.5X1=.5
- ❖ One part-time trouble shooter, on call as needed 1PTE.5X1=.5

The fringe benefit would be twenty three percent (23%).

Operations:

In addition to the significant human resource need it is apparent that technology is a key need for the retail/supply business so that the Home Center may operate more efficiently along with providing the accountability needed for ongoing analysis.

Computer software that is compatible to the Home Centers business is critical to the success of the operation and care should be given in the selection of appropriate software that supports the overall business.

There should be adequate equipment at the start-up such as the following:

- | | |
|----------------------------------|------------------------------|
| ❖ Two outside forklifts | A boom truck |
| ❖ One interior electric forklift | Two utility half-ton trucks |
| ❖ Seventy-five shopping carts | Ten carry-out carts |
| ❖ One or two delivery vehicles | Shelving & H-frame racks |
| ❖ Service desk | Computer & computer hardware |
| ❖ A bander | A table saw |
| ❖ A panel cutter | Pipe threader |
| ❖ Cut-saw | Glass cutter |
| ❖ Fax machine | Calculators and |
| ❖ Appropriate paper work. | |

These represent only the critical areas of start-up and are not meant to convey the hundreds of additional materials and other activities that need to be done in order to achieve start-up status.

Hours of Operation:

First six months the hours of operation are the following:

- ❖ 8:00 a.m. to 4:30 p.m. Monday – Friday
- ❖ 9:00 a.m. to 1:30 p.m. Saturday & Sunday

Starting in month seven the operations hours are the following:

- ❖ 8:00 a.m. to 4:30 p.m. and 4:30 to 9:00 p.m. Monday - Friday
- ❖ 9:00 a.m. to 5:00 p.m. Saturday
- ❖ 12:00 p.m. to 4:00 p.m. Sunday

After the first year of operation an evaluation will be done to determine the actual business hours for the forth coming years.

Promotions and Advertisements will be discussed in additional portions of this document.

ORGANIZATIONAL PLAN

Oneida Housing Authority:

The Oneida Housing Authority (OHA) was created through an Oneida Nation Tribal Ordinance on April 4th 1963 as a Tribal 501 (c) (3) with the mission of addressing the housing problems within the Oneida Nation.

The legal structure of the organization was the same as any nonprofit with a Board of Directors, Executive Director and Staff. The OHA reported to the Oneida Business Committee monthly through the President of the Board of Commissioners and once a year to the General Tribal Council.

In addition, OHA provided the usual reports to the Housing and Urban Development (HUD) regarding the development and finances of the program.

As a result of the Native American Housing Assistance Act of 1996, Tribal Housing Programs are no longer under the 1937 Public Housing Act but receive financial allocations through the Tribal Housing Community Development Block Grants.

Therefore, Tribes had a choice either to make housing authorities a department of the Tribe or continue as Tribal Designated Housing Authorities (TDHE) through a new Tribal resolution.

OHA was continued as a TDHE.

Decision Making Process:

The Board of Commissioners appointed by the elected Oneida Business Committee has the role of Policy , Staff has the day-to-day operations and the General Tribal Council has the overall oversight of the program.

Management and Key Personnel:

The Oneida Housing Authority Executive Director has the overall operational responsibility of the Home Center that would become a new program under “Model Activity.” A Home Center Manager, two full-time Sales persons and a part-time Bookkeeper would constitute the core staff needed for start-up

Requirements for Key Personnel:

Home Center Manager: Masters Degree in Business Administration preferred, five (5) years-minimum home center experience, supervisory experience and academic experience in related field.

Sales Person: Bachelors Degree in Marketing, five-(5) years-minimum experience in home center or related field and progressive documented success in work related area.

Bookkeeper: Bachelors Degree in Accounting, five (5) years minimum experience in accounts receivable, accounts payable, billing, and other business related activities.

PRICING

As a determination to the lumber needed along with being able to provide our customers with the Oneida construction-pricing schedule it is important to have the following information/specifications:

Stake-out Labor: Buyer to furnish survey if required to locate lot lines.

Building/Park Permits: \$1,400.00 and \$800.00 respectively (if in sub-division).

Sewer & Water Connection: \$1,400.00 for lateral.

Floor Materials: Floor covering and installation \$12,000 per building. 31' 2" average concrete floor.

Roof Materials: Class A seal-down shingles over 15# felt \$30.00 per square foot .

Windows: \$4,000 per building, windows per elevation design, double glazed (low E glass) with storms and screens on all windows.

Entrance Door: (Future) \$350.00

Siding, Soffit, Fascia & Shutters: \$78.00 per square foot.

Interior Walls and Interior Trim and Doors: (Future).

Kitchen: Cabinet and counter top \$18,000.00 with \$6,400 for ranges, refrigerators, hood fans, washers & Dryers if needed.

Electrical: \$3,200.00 light fixtures.

Warranty & Call Backs: 180 days after installation

Miscellaneous: (Future) Blueprints and specifications, pumps, septic system, gas hook-up, electric hook-up, curb breakage, sidewalk breakage, dryer vent installation, connection of vent may be featured.

ADVERTISING:

Green Bay along with the surrounding communities have a minimum of eight (8) newspapers that could be utilized for the purpose of both marketing and advertising. The major newspapers are the Green Bay Press Gazette and the Green Bay News Chronicle. Other local papers are; the Ashwaubenon Press, News Chronicle Shoppers Guide, The DePere Journal, Green Bay Catholic Compass and the Oneida Kalihwisaks.

There are four television stations in the immediate area including the following: WBAY, WLUK, WGBA and WPNE. Also, there is Cable and Local Cable advertising in the immediate area. There are four major FM and AM radio stations as well.

PROMOTIONS:

Upon the start-up of the Home Center, promotional flyers, advertisements and information will be provided to the local community and the Fox Valley market area.

As an example prizes will be given on a daily basis for the first week along with various in-house demonstrations and assorted products will be given away during in-house clinics.

Throughout the life of the Home Center on-going promotions will be utilized to attract and keep a consistent customer base.

FINANCIAL ASSUMPTIONS

The following financial assumptions are projected for the first year of the Tribal Home Center.

Personnel:

The start-up of the organization would require the need for the following:

Manager of Home Center @ \$60,000 per year

Two full-time staff @ \$30,000 each

One part-time Bookkeeper @\$15,600 (20 hours per week)

Two part-time Sales persons for twenty hours per week after six months @ \$15,000 each

Two part-time Sales persons for weekends after six months @ \$5,000 each

One part-time trouble shooter after six months @ \$15,600.

Equipment:

All equipment has been purchased through a buy-out of an existing lumberyard.

Inventory:

Fifty Thousand would be utilized for the purchase of lumber in the first month of operation and an additional twenty-five thousand would be added in July to maintain a current inventory.

Tribal Authority Contribution:

There would be a One Hundred Thousand Dollar OHA Contribution from the Housing Authority Reserve Fund with two additional OHA Contributions of the same amount based on a critical path analysis within the first year.

Other Needs:

There would have to be a strategic planning session for the short-term and in the sixth month of operation a long term strategic planning session would be held to determine the future long-term opportunities of the Home Center.

**CASH FLOW ANALYSIS FOR HOME
FOR YEAR ENDING DECEMBER 31, 1999**

	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Income:												
OHA	100,000	0	0	0	0	0	0	0	0	0	0	0
Contrib:	0	0	15,000	21,500	34,823	36,400	31,017	32,041	37,403	23,187	35,043	27,834
Sales:	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Income:	100,000	0	15,000	21,500	34,823	36,400	31,017	32,041	37,403	23,187	35,043	27,834
Total:	100,000	0	15,000	21,500	34,823	36,400	31,017	32,041	37,403	23,187	35,043	27,834
Expenses:												
Inven:	50,000	0	0	0	0	0	25,000	0	0	0	0	0
Sal:	15,300	15,300	15,300	15,300	15,300	15,300	23,066	23,066	23,066	23,066	23,066	23,066
Fringe:	3,519	3,519	3,519	3,519	3,519	3,519	5,305	5,305	5,305	5,305	5,305	5,305
Utilities:	600	600	600	600	600	600	600	600	600	600	600	600
Taxes:	1,138	1,138	1,138	1,138	1,138	1,138	1,720	1,720	1,720	1,720	1,720	1,720
Insur:	500	500	500	500	500	500	500	500	500	500	500	500
Phone:	250	250	250	250	250	250	250	250	250	250	250	250
Ht/elec.	150	150	150	150	150	150	150	150	150	150	150	150
	71,457	21,457	21,457	21,457	21,457	21,457	31,591	31,591	31,591	31,591	31,591	31,591
Beginning												
Bal:	100,000	28,543	7,086	629	6,272	19,638	34,581	14,390	14,840	20,652	9,248	12,700
Income:	0	0	15,000	21,500	34,823	36,400	36,400	32,041	37,403	23,187	35,043	27,834
Sub	100,000	28,543	22,086	27,729	41,095	56,038	70,981	46,431	52,243	40,839	44,291	40,534
Exp.	56,591	21,457	21,457	21,457	21,457	21,457	56,591	31,591	31,591	31,591	31,591	31,591
Ending												
Bal:	28,543	7,086	629	6,272	19,638	34,581	14,390	14,840	20,652	9,248	12,700	8,943

Notes to Bill:

As a result of my move to Washington, D. C. a significant amount of my financials were lost therefore, I have put together a cash flow analysis consistent with how the Oneida Housing Authority (OHA) would fund the Home Center as a new project utilizing OHA Reserves (current amount of OHA Reserves 1.9 Million).

Before the project could go beyond the one-year point and receive a second year allocation (100,000) the program would have to provide a six month analysis, nine month analysis and project actuals for the current year.

**Tribal Housing Authority Home Center
Projected Balance Sheet as of December 31, 1998**

Assets:

Cash \$ 12,700
Revenue 27,834

Total Asset 40,534

Liabilities:

Liabilities \$31,591

Total Liabilities 31,591

Retained Earnings 8,943

Total Assets

Total Liabilities & Equity

\$40,534

\$40,534

1. **Market Area—General.**

The market area utilized is in Outagamie County, within the Oneida Nation boundaries located in the "Vandewalle Development Site." The Oneida Housing Authority has completed ten (10) housing units and is in the process of developing four (4) units in the spring of 1998.

The market area has the waste, water and sewer (infrastructure) completed through the Oneida Nation Department of Public Works and paid out of Oneida Tribal contribution, Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) funding. This will reduce the overall cost of the project significantly.

A. Based on an analysis of the tribal population and housing development patterns, major employers and commuting patterns, the effective market area for the Oneida Housing Authority proposal is defined to include all of the Vandewalle Development site allocated to the OHA, one (1) percent of the Town of Oneida and One (1) percent of the Outagamie census area.

This area is shown of Map two (2) following Map one (1). (page 1) in the attachment section of this report. In 1980, this geographic market area contained an estimated 2, 771 tribal members with the following profile:

<u>COUNTY</u>	<u>TOTAL</u>
Brown and Outagamie	5,834

However, it should also be noted that there are approximately 18,000 individuals living within the Oneida Nation Reservation and of these there are currently 2,771 tribal members.

MARKET AREA GROWTH:

During the period of time from 1985 through the present time there was significant growth as the "high stakes bingo and Oneida Nation Casino" were developed. The Oneida population as indicated in a 1992 "Tribal Census Report" (see attachment) that reported a "Total Base Enrollment Households over 18 years of age Tribe wide (as reported by Tribe-8,350"¹ and our most recent 1997 Tribal Enrollment Data shows an increase from the previous census amount of 2,803 from 1980 in Brown and Outagamie Counties to 5,834 in 1997. This represents an increase of forty eight (48) percent. (see attachment two).

¹ Oneida Nation in Wisconsin 1993-93 Tribal Census Report: Tribal Data Resources, 1992

B. The effective market area for the subject proposal includes the Town of Oneida located within the Oneida Nation Reservation Boundaries and the unincorporated areas to the south and west of Oneida. The Seminary road is located east of the Vandewalle Development location, Fish Creek is very close to the development site and acts as a barrier to certain areas for expanding development to the east. The area west and south, however, are still available for additional and the OHA plans to utilize this development area under our future housing plan mandated by the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996.

Housing Development, along with population growth has occurred along the "Old Seymour Road" between Seminary Road and Highway H. Other housing sites and housing development have occurred within the Oneida Nation Boundaries through acquisition and new or stick building. This will continue as prescribed in the "1994 Comprehensive Housing Plan"

There are a number of employment sites located within one fourth of a mile and up to four miles from the Vandewalle Housing Development site including the following:

- The Turtle School, one fourth mile away;
- The Norbert Hill Center, one half mile away;
- The Oneida Nation Little Bear Development Center, One mile away;
- The Oneida Department of Public Works, One mile away
- The Oneida Housing Authority, one and a half mile away;
- The Oneida Nation Health Center, four miles away
- The Oneida Nation Bingo Hall, Four miles away
- The Oneida Nation Casino,(the second largest employer in Northeastern Wisconsin) Four miles away and a significant amount of both tribal and non-tribal job sites located seven miles away in Seymour, WI, ten miles away in Green Bay, Ashwaubenon, ten miles away in Freedom, WI and so on.

II. **Site:**

- A. The proposed site is located in the western section of the town of Oneida on Old Seymour Road. The area had been farmland, flat and with a mild slope until past Fish Creek. Currently there are both multi-family and single family housing units in the development area.
- B. The site is currently zoned as residential by the Oneida Tribe Zoning Department.
- C. The Vandewalle Development site is approximately one half (.05) miles south and west of the Town of Oneida that contains two gas stations, a car wash. One mile from the development site is the Oneida Tribal U. S. Post Office, Community Library. Other shopping is located seven (7) miles to the west, Seymour, ten (10

miles to the south, Freedom, ten miles to the east, Green Bay and eight miles to the north, Pulaski.

- D. There is the Oneida Nation Health clinic with dental services that provides outpatient assistance and referrals and is located four miles away. The health clinic open and staffed twenty four hours a day. The nearest hospital is ten miles away in Green Bay (Saint Marys).
- E. All normal public services including utilization of the Oneida Nation Transit. Oneida Nation Transit is a critical component for very low income people. Transit goes to all Tribal buildings such as the Oneida Nation Health clinic, Oneida Social Services and also to the Oneida Food Distribution Program that provides food for low-income community members.
- F. Photographs are in the attachments.
- G. Due to the small size of the current Vandewalle Development Site there is no current nor request for on site small business and residents have indicated no interest in any small businesses at this time, however, this may change as the development grows in size.

III. Demographic Characteristics.

A. Economic Profile.

1. Labor force and employment trends between 1990 and the present year.

Civilian Labor Force and Employment Trends and Forecasts, Outagamie County 1990-1998:

<u>Civilian Labor Force</u>	<u>1990</u>	<u>1997-1</u>	<u>1997-2</u>
<u>Unemployment</u>			
Rate of Unemployment	.05%	1%	1%
<u>Employment</u>	21%	60%	60%
Change in total Employment	n/a	<u>35%</u>	35%

Although unemployment specifically on the Oneida Reservation is at 12%. The unemployment rate in Green Bay is at 3%.

1997-199 Two Year Projection:

Note: The Oneida Nation in 1994, 1995 and 1996 was the largest employer in Northeastern WI and in 1993, 1994 and 1995 enjoyed a 34% financial growth as a result of a market share of the Oneida Nation Casino. In 1996 and 1997 the Oneida Casino has

experienced a loss of market share and has become the second largest employer with Fort James regaining its position as first.

As a result of the loss of market share by the Oneida Nation, there have been lay-off notices sent out in some divisions of the Oneida Tribe and the Tribal Casino.

1/ Preliminary-based on monthly data through December 1997 there is no current data. It appears there may be up to a five percent increase in unemployment which would bring the unemployment rate up to 17% on the Oneida Reservation.

2/ Data placed on residence is also non existent however because of current lay-offs at the Oneida Nation Casino and because a significant amount of Casino employees live within the reservation boundaries it appears there will be a higher rate of unemployment for tribal members who are working for both the Tribe and the Casino.

SOURCE:

Oneida Nation in Wisconsin 1992-93 Tribal Census Report.²

The latest data regarding 1997 data came from the Oneida Enrollment Office and was "Prepared by Tina R. Pospychala, Tribal Data Specialist." (see attachment)

2. Employment data.

The Oneida Nation as a Self-Governance Tribe has kept most of this information through the Oneida Development Division Planning Department and because the Vandewalle Development is within the Oneida Nation Reservation Boundaries we have not compiled the last three years of employment data, however, this will be done by the year 2000 as a result of incorporating this into the Planning Departments overall responsibility. Currently our research has indicated an unemployment rate that has increased from 12 to 17%.

3. Major employers.

The largest employer is the Oneida Nation of WI who currently employ 3,200 employees, down from 3,700 two years ago. It appears that the two largest employers of Oneida Tribal members are the Tribe itself and the Oneida Nation Casino and the hiring will neither increase nor decrease in the immediate future.

<u>EMPLOYER</u>	<u>PRODUCT SERVICE</u>	<u>LOCATION</u>	<u>YEAR ESTABLISHED</u>
Oneida Nation of Wisconsin	Services to Tribal Members	Town of Oneida	1936

² Oneida Nation in Wisconsin Tribal Census Report, Tribal Data Resources, 1993: Page -3, (Education/Employment Statistics.

Oneida Housing Authority (OHA) Housing Town of Oneida 1963³

Number of Employees & Average weekly salary: Oneida Housing Authority.

	<u>OHA Administration</u>	<u>OHA Construction & Maintenance</u>	
Number of Employees:	9	Construction 20	Maintenance-4
Budget for Salary:	\$4,681	\$4,564	\$2,457
Average weekly Salary:	\$ 520	\$ 228	\$ 614

NUMBER OF EMPLOYEES AND AVERAGE WEEKLY SALARY, ONEIDA TRIBE (1997):

Oneida Tribal Employees*	3200	<u>Average Weekly Salary</u> \$ 385 and approximately \$20,000.00 yearly
--------------------------	------	--

*This information is based on 1996 Oneida Communication Department figures.

Employment outside of county.

Of the 2771 Oneida Tribal members residing within the Oneida Nation Reservation Boundaries it has been estimated that less then one (1) percent work out side Brown and Outagamie Counties.

Source: Annual General Council Reports-January 3, 1998.

Overall Demographic profile.

1. Population:

<u>Year</u>	<u>Number</u>	<u>Total</u> <u>Change</u>	<u>Percent</u>	<u>Annual</u> <u>Change</u>	<u>Percent</u>
1980	551	n/a	n/a	n/a	n/a
1990	1,003	452	55%	45.2 per yr.	5.5 per year
1997	5,856	4853	17%	485.3	.017

Projected: 1998/99

The assumptions utilized within the Oneida Comprehensive Housing Plan indicated the following: "...The 1998 projections show that the reservation population will increase by 30% to 40% in the next five years. This will account for 2,779 to 2,993 tribal members living on the reservation." ⁴

³ Oneida Nation in Wisconsin, Tribal Ordinance: 1963

⁴ Oneida Nation in Wisconsin, 1994 Comprehensive Housing Plan, November 1994: Page-49.

It appears that this was an under count due to the success of the Tribal Casino that produced migration by Oneida Tribal member back to the reservation and the high impact of job opportunities. In spite of what appears to be a down turn of the Tribal Casino and with estimates from the Indian Health Service Birth record and projections we anticipate our tribal population to increase as follows;

1997 5,856, 1998 6,149 and 1999 6,579.

2. Age characteristics:

<u>Age</u>	<u>Oneida</u>		
	<u>1980-1990</u>		
	<u>1980-90 Change</u>		
Under 16	971	928	(-1%)
16-24	525	364	(-7%)
25-34	460	416	(-9%)
35-44	370	448	8%
45-64	363	468	77%
65-over	320	183	(-57)

The Oneida Nation utilizes a slightly different census tabulation based on the requirements of the Bureau of Indian Affairs (BIA) Labor Force Reports and the Indian Health Services Reports.

<u>3. Year</u>	<u>Households. Population</u>	<u>In group Quarters</u>	<u>Households</u>	<u>Persons Per Household</u>
1980	551	Unknown	138	4
1990	1,003	None	459	4 average
1997	5,856	None	1302	4 average
Projected (Oneida Housing Authority) 1997--1999				70 additional, forty (40) in 1998 and thirty (30) in 1999.

4. Households by size/type/age of members including elderly.

<u>Households with:</u>	<u>Oneida</u>	<u>Market Area</u>	<u>County</u>
One (1) person, age 60 years & over-120		Oneida Reservation	Brown & Outagamie
One person household-	31, OHA	Oneida Reservation	Brown & Outagamie
Two or more persons (family)	All per HUD	Oneida Reservation	Brown & Outagamie
Two or more persons (nonfamily)	None per HUD	Oneida Reservation	Brown & Outagamie

5. Household type and relationships-persons 65+.

<u>Total:</u>	<u>Oneida</u>	<u>Market Area</u>	<u>County</u>
In households	31	128	Brown & Outagamie
In family households	128	128	Brown & Outagamie
		Market Area	County
Area	<u>Oneida</u> County	<u>Area</u>	<u>County</u>
Householder	31	31	Brown & Outagamie
Spouse	None	None	None
Other relatives	unknown	unknown	Brown & Outagamie
Nonrelatives	None	None	Brown & Outagamie
In nonfamily			
Households	None, HUD	Unknown	Brown & Outagamie
Male householder	None, HUD	Unknown	Brown & Outagamie
Not living Alone	None, HUD	Unknown	Brown & Outagamie
Female householder	None, HUD	Unknown	Brown & Outagamie
Living alone	None, HUD	Unknown	Brown & Outagamie
Not living alone	None, HUD	Unknown	Brown & Outagamie
Nonrelatives	None, HUD	Unknown	Brown & Outagamie
In group quarters	None	None	N/A
Institutions	None	None	N/A
Other persons in group quarters	None	None	N/A

6. Households by tenure.

<u>Year</u>	<u>Total Households</u>	<u>Owner</u>	<u>Percent</u>	<u>Renter</u>	<u>Percent</u>
1980	551	459	83%	294	45%
1990	1,367	1,094	92%	273	8%
1998	1,427	1,139	80%	288	7%
1999	1,487	1,179	79%	308	20%

As indicated earlier due to a significant increase in 1994, 1995 and 1996, with the 34 percent financial growth along with an increase in net income by the Retail Division of the tribe there was a increase in job opportunities for Oneida Tribal members to return home to Oneida and work.

This along with an unemployment rate of 3 to 3.5 percent in Green Bay limited the rental and home ownership opportunities for Oneida Tribal members who were returning to Oneida for jobs. The Oneida Housing Authority has less than 1 percent turnover in our 189 rental units and we have an extensive waiting list of 334 families for our rental housing units. Also, we have an active waiting list of 84 for our Mutual Help Homes.

7. Households by size.

Occupancy.

1. Female head of household-362 (36.1 of the 1,003 households responding).
 - a. Female head of household below 62 years of age-286
 - b. Female head of household above 62 years of age-76
 - c. Disabled persons below age 62-64

SPECIFICATIONS: 4 unit Lot 12 Standing Stone Subdivison 3/12/98
Pricing is per building

ALLOWANCES: Allowances are provided for various items where the actual cost is not possible to determine as of the date the specifications are written. If the actual cost is greater than the allowance, the difference will be charged at the closing. If the actual cost is less than the allowance, the difference will be credited.

STAKE-OUT LABOR: Stake 4 unit per plot plan. Buyer to furnish survey if required to locate lot lines.

BUILDING PERMITS: Allowance of \$1,400.00 provided. Park fee allowance \$800.00 per building.

EXCAVATING, BACK FILLING & ROUGH GRADING: Excavation to normal depth per blueprint and construction agreement. Back fill of foundation and rough grade only to city/town/village grade specifications. All fill needs or extra fill is the responsibility of the owner.

SEWER & WATER CONNECTION: Allowance of \$1,400.00 for lateral.

FOUNDATION: 8" poured concrete frost walls 4' high. Sill sealer perimeter insulation. Exterior walls insulated on outside with 1" extruded polystyrene which, according to the manufacturer, will yield a value of R5. Two 1/2" steel reinforcing rods installed in foundation wall, 3 1/2" average concrete floor with gravel fill as needed, 2" foam insulation and vapor barrier.

CONCRETE STOOPS: 9'6" X 4' concrete stoop with one step provided at front door.

SERVICE WALK: Four inch average thickness, poured concrete walk 3 1/2 ft. wide and 16' ft. long from front door to drive.

FLOOR MATERIALS: Floor Covering and installation allowance \$12,000.00 per building. 3 1/2" average concrete floor.

ROOF MATERIALS: Roof pitch per plan. Trusses 24" on center with 1'0" overhang on the gable end, and 22" eave overhang. Class A seal-down shingles over 15# felt allowance \$30/square. 1/2" wood sheathing. R38 ceiling insulation (12") blown or batt with poly vapor barrier installed warm side, total ceiling R40. 5/8" ceiling gypsum installed for drywall ceiling.

EXTERIOR WALLS & TRIM: 2" x 6" stud grade framing 16" on center. 1/2" wall gypsum for drywall walls. **CEILING:** 8' ceiling height first floor. Fiberglass batt R19 insulation (6") with poly vapor barrier warm side. 1/2" wood sheathing. Air barrier house wrap installed.

WINDOWS: Windows per elevation design. Double glazed (low E glass) with storms & screens on all windows. Grids on all windows. **Allowance of \$4,000.00 per building for window blinds.**

ENTRANCE DOOR: Peachtree A300 steel front door. Combination doors not included.

SIDING, SOFFIT, FASCIA & SHUTTERS: Horizontal vinyl siding on walls and gable ends. Aluminum soffit, trim and smooth fascia. Aluminum gutters and downspouts. **Siding and accessories allowance \$78.00/square.**

INTERIOR WALLS: 2" x 4" stud grade framing 16" on center covered with 1/2" wall gypsum. Knock down textured drywall walls and ceilings. Smooth walls will not be considered paper ready. Sanding, sizing and wall preparation is the responsibility of the owner.

INTERIOR TRIM & DOORS: Oak interior trim, casing and base to be 2 1/4". Passage and closet doors are solid core Flush Oak with veneered jambs. Door hardware Schlage Georgian or equal. White vinyl covered closet shelves with wood poles.

KITCHEN: Laminated plastic counter tops. Soffits over kitchen cabinets. Broan series #40000 or equal variable speed range hood vented to the exterior. **Cabinet and counter top allowance \$18,000.00 per building including installation.** Insinkerator Badger 5 Garbage disposal. **Allowance of \$6,400.00 for ranges , refrigerators, hood fans , washers & dryers per building.**

BATH: Vanity to match kitchen cabinets and are part of kitchen cabinet allowance. Laminated plastic counter tops. Externally vented exhaust fan. Plate glass mirror sized per vanity with light over mirror. **Mirror allowance \$250.00 per building.**

ELECTRICAL: Complete wiring per 1998 National Electrical Code. 15-amp circuits wired with #14 wire. **Light fixture allowance \$3,200.00 per building.** Wiring for electric range 220V. 100-amp Gould or equal load center with required breakers for each unit. One (1) waterproof GFI outlet installed. Wiring in the units for telephone and cable tv is included. Owner is to coordinate with the phone company and cable service for hookups. 2 telephone jacks and 2 cable television jacks installed. 2 flat-ceiling recessed lights with standard trim included. Wiring for fan/light

fixtures may be extra. Special wiring for computers or electronic equipment may be extra. 200-amp underground entrance. 220V clothes dryer outlet. ALL CHARGES FOR UNDERGROUND WIRING FROM POWER COMPANY SOURCE TO METER PEDESTAL ARE THE RESPONSIBILITY OF THE CUSTOMER.

PLUMBING: Complete plumbing with PVC plastic drain, lines. All water supply lines copper. Two (2) exterior sill cocks installed. One-piece Lasco fiberglass tub and shower module with Delta #1348 faucet. Mansfield 130-160 1.6 gallon water-saving stools. Bath lavatories are Mansfield 1916SRO Lavs with Delta #2522 faucet. Dayton stainless steel double bowl kitchen sink with Delta #400 faucet. All chrome faucets, towel bars and paper holders. Hot and cold faucets and stand pipe drain for washer. Radon sealed sump pump installed and stubbed through exterior wall. One high efficiency natural gas 40 gallon water heater included.

HEATING: Bryant Model 340 Plus 90 energy-efficient gas forced-air heating system, duct work, cold air returns, putty-colored duct registers. Bryant 10 seer rated air conditioner. Furnace sizing to be determined by Wisconsin Energy Code Administration. Water heater flue as needed. Venting for range hood.

PAINTING/STAINING: All exterior wood trim painted. Primed steel exterior doors will be painted on the outside to match siding or trim, painted on the inside to match wall color. (Woodgraining on steel doors is not included, and can be quoted upon request.) One coat latex wall paint sprayed on walls and ceilings. Interior trim, doors and windows stained, sealed and varnished.

DRIVEWAY: See site work

PATIO: Per plan 31/2" average concrete patio pad.

LANDSCAPING: See site work

SOUND & SECURITY SYSTEM: None included.

DECORATING: None included.

GARAGE: 9' X 7' insulated steel overhead garage door. Opener with one transmitter. Sheetrock walls & ceiling, taped only.

CLEANUP: Units will be cleaned of all construction materials, debris, sawdust. Counter tops, cabinets and plumbing fixtures will be dusted. Windows cleaned interior only to remove labels, occasional stain/varnish/paint. Floors will be swept/vacuumed. Additional cleaning is the responsibility of the owner. A dumpster will be provided.

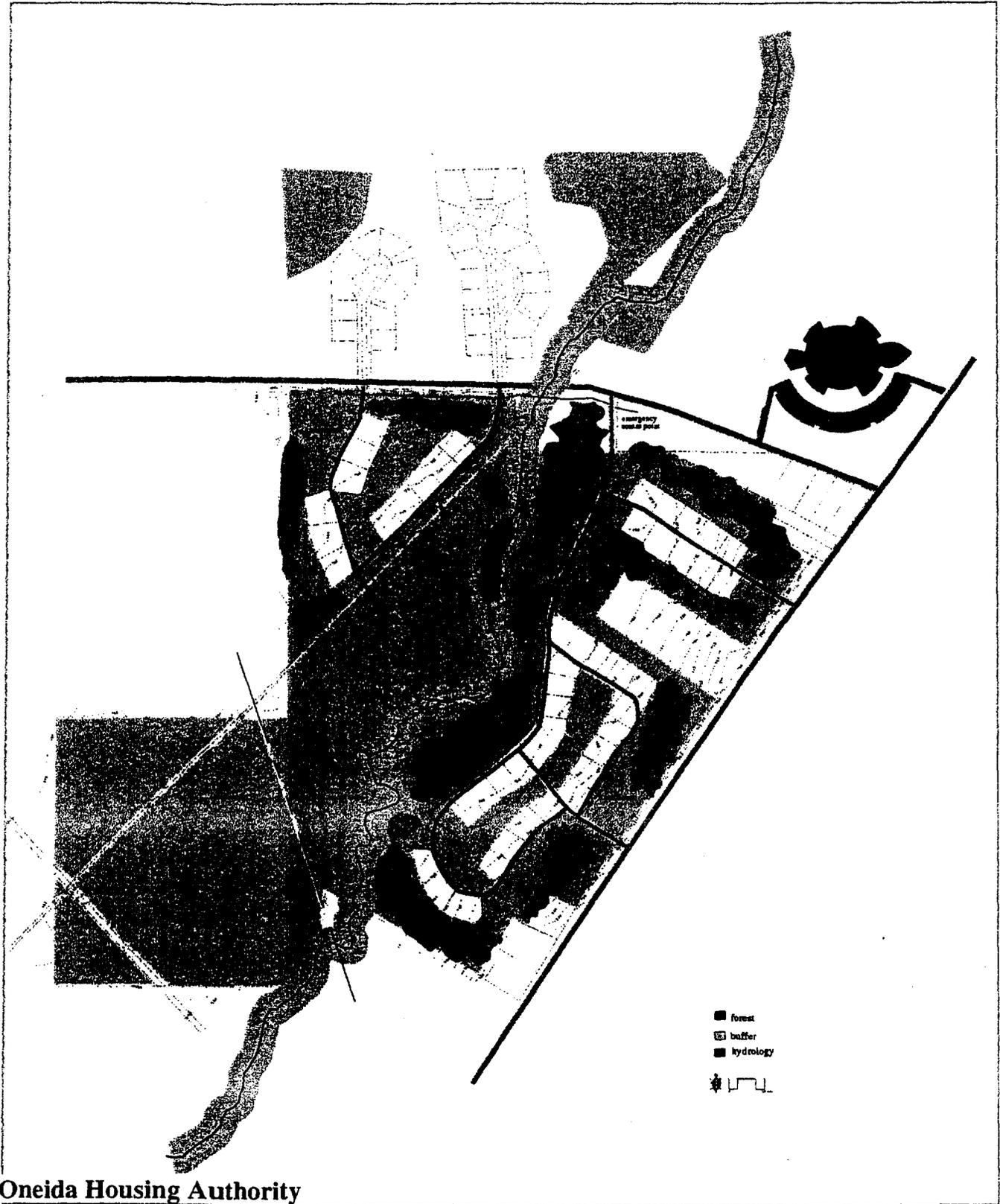
WARRANTY & CALL BACKS: Builder will provide a courtesy call-back 30 days after closing. A form for the call is included in the closing packet. Builder will provide a one-year customer warranty, in effect for one year from the date of closing.

MISCELLANEOUS: Blueprints and specifications provided by the owner to the builder and all appropriate suppliers and subcontractors. Well, pump, septic system, gas hook-up, electric hook-up, curb breakage or repair, sidewalk breakage or repair not included in the price of this contract, and may be priced as an allowance. Dryer vent is installed in the exterior wall. Connection of the vent to the dryer is the responsibility of the buyer.

SAFETY FEATURES: One multi-station smoke detector installed on each floor. Bath outlet and exterior outlet installed on GFI circuit. Anti-siphon sill cock valves. Relief valve for hot water heater. Firestop installed at ceiling lines on chimney.

PARKING LOT: Cut, Fill & grade parking lot and driveway. Install culvert at ditch line. Install 12" of breaker run (approximately 1150 yards) and 4" of ¾" crusher run stone (approximately 400 yards). 3" of asphalt over parking and drive **Allowance \$10,000.00 for asphalt in place.** 120 LF curb in total project, **Allowance \$1,200.00.**

SITE WORK: 6 Loads of sand and 6 loads of wood chips for play ground. 380 feet sidewalk to play area, 3.5 feet wide. Final grade and spread top soil.



Oneida Housing Authority
Vandewalle Property

Options for Site Layout

PRESENT ONEIDA HOUSING AUTHORITY ORGANIZATIONAL CHART

Oneida Housing Authority Board of Commissioners

Frieda Clary
Chairperson

Warren Skenadore
Vice-Chairperson

Linda Torres
Secretary/Treasurer

Ronald John

Mary Ellen Metoxen

David Bischoff Lois Powless

Oneida Housing Authority Executive Director

Ken W. Webster

Assistant Executive Director

Laurel Meyer

Comp Grant Construction Manager

Shane John

Maintenance Supervisor
Erwin Danforth

Administration

Development Projects Active

Comp Grant Crew

Kevin John

Randean Granquist

Juile Cornelius

Maintenance Worker I
Gilbert Sundquist

Secretary/Receptionist
Tina Cottrill

Project 10-13
Project 10-14
Project 10-15
Project 10-16
Project 10-17

Maintenance Worker II
Rick Hawpetross

Occupancy Specialist
Sharon Samowski

10-13
Project Manager
Jerry Fischer

Maintenance Worker III
William Jourdan

Resident Services Specialists/Rental
Lois Dalke

Field Supervisor
James Allen

Drug Elimination Program
Isabel Parker
D.A.R.E. Officer
R. Cornelius

Resident Services Specialists/Homeowners
Marge Funnaker

Secretary
Lori Elin

Comm. Worker
Vacant

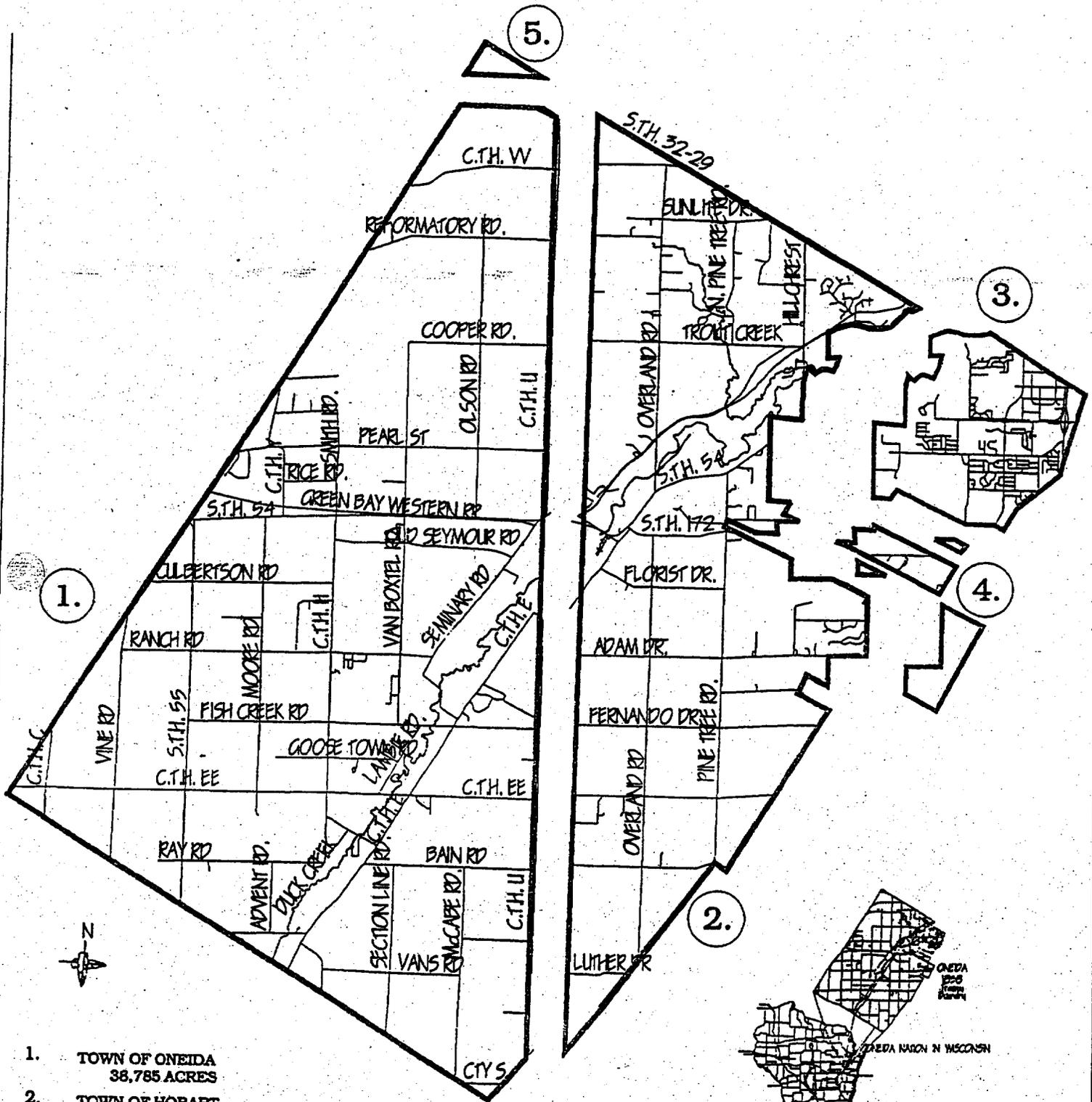
Systems Manager
K. C. McMullen

Crew
Ken Gerrits/Foreman
Kent Brunette

Accounts Receivable Clerk
Cindy Kohl

Floyd Shauman
John Skenadore

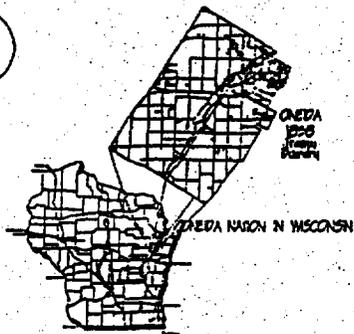
Municipalities



1. TOWN OF ONEIDA
38,785 ACRES
2. TOWN OF HOBART
21,556 ACRES
3. CITY OF GREEN BAY
3,826 ACRES
4. VILLAGE OF ASHWAUBENON
545 ACRES
5. TOWN OF PITTSFIELD
162 ACRES

Acres figures may represent up to a 5% variation from the actual amount.

Municipalities Within
Reservation Boundaries



1. Market Area—General.

The market area utilized is in Outagamie County, within the Oneida Nation boundaries located in the "Vandewalle Development Site." The Oneida Housing Authority has completed ten (10) housing units and is in the process of developing four (4) units in the spring of 1998.

The market area has the waste, water and sewer (infrastructure) completed through the Oneida Nation Department of Public Works and paid out of Oneida Tribal contribution, Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) funding. This will reduce the overall cost of the project significantly.

A. Based on an analysis of the tribal population and housing development patterns, major employers and commuting patterns, the effective market area for the Oneida Housing Authority proposal is defined to include all of the Vandewalle Development site allocated to the OHA, one (1) percent of the Town of Oneida and One (1) percent of the Outagamie census area.

This area is shown of Map two (2) following Map one (1). (page 1) in the attachment section of this report. In 1980, this geographic market area contained an estimated 2, 771 tribal members with the following profile:

<u>COUNTY</u>	<u>TOTAL</u>
Brown and Outagamie	5,834

However, it should also be noted that there are approximately 18,000 individuals living within the Oneida Nation Reservation and of these there are currently 2,771 tribal members.

MARKET AREA GROWTH:

During the period of time from 1985 through the present time there was significant growth as the "high stakes bingo and Oneida Nation Casino" were developed. The Oneida population as indicated in a 1992 "Tribal Census Report" (see attachment) that reported a "Total Base Enrollment Households over 18 years of age Tribe wide (as reported by Tribe-8,350"¹ and our most recent 1997 Tribal Enrollment Data shows an increase from the previous census amount of 2,803 from 1980 in Brown and Outagamie Counties to 5,834 in 1997. This represents an increase of forty eight (48) percent. (see attachment two).

¹ Oneida Nation in Wisconsin 1993-93 Tribal Census Report: Tribal Data Resources, 1992



Government and Development



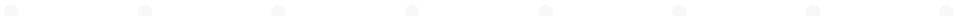
A Nation-Building Approach to American Indian Economic Development

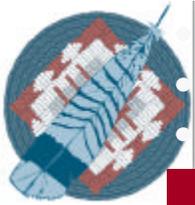
Jonathan B. Taylor

Harvard Project on American Indian Economic Development

jtaylor@erginc.com <http://ksgwww.harvard.edu/hpaied/>

March 30, 1999





The Question:

- ❑ Indian Country is poor, but it is not uniformly poor.
- ❑ What explains the success that some Indian nations have had in building sustainable, self-determined economies?



Two Models of Reservation Development

- ❑ The Standard Model has dominated Indian Country since the IRA (1934)
- ❑ The Nation-Building Model has been emerging in Indian Country over the last decades

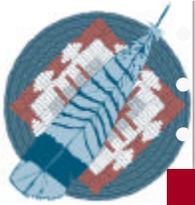
These models are producing very different results.

How do the models differ, and why does one work so much better than the other?



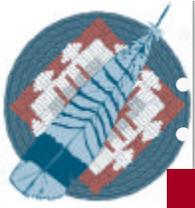
Characteristics of the Standard Model

1. Views indigenous culture as an obstacle to development
2. Views development as primarily an economic problem
3. Lets others set the development agenda
4. Short-term, non-strategic



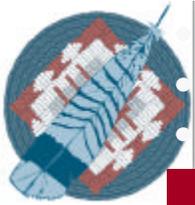
1. Views Indigenous Culture as an Obstacle

- ❑ BIA (1969): “Development will proceed as the process of acculturation allows”
- ❑ Recognizes indigenous culture as a resource that can be sold (e.g., tourism, arts and crafts), but misses its usefulness as a guide to organization or action



2. Development Primarily an Economic Problem

- ❑ Goal is jobs and income
- ❑ Pays primary attention to economic variables (e.g., natural resources, human capital, access to \$, etc.)
- ❑ Pays little attention to the reservation political environment in which development has to succeed



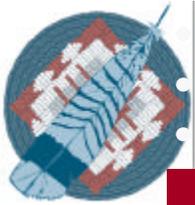
3. Others Set the Development Agenda

- ❑ Development goals typically are set by Congress, funding sources, the states, etc.
- ❑ Decisions about strategic direction, resource management, and other matters are often in non-Indian hands
- ❑ Regulatory power is often in non-Indian hands



4. Short-Term, Non-Strategic

- ❑ Asks “How do we generate jobs and income now?” rather than “What kind of society are we trying to build?”
- ❑ Encourages a “flavor-of-the-month” approach to development.
- ❑ Is more concerned with starting businesses than sustaining them.
- ❑ Fosters short time horizons in decision-making and discourages long-term, strategic planning.



The Standard Model Development Processes

- Ask the tribal planner to come up with business ideas and to identify funding sources
- Apply for outside grants / Respond to outside initiatives
- Start whatever you can find funding for
- Appoint your supporters to run projects (in many cases)
- Micromanage (in many cases)



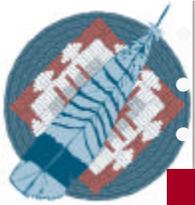
Typical Results of the Standard Model

- ❑ Failed enterprises
- ❑ A politics of spoils
- ❑ Outside perceptions of incompetence and/or chaos
that undermine the defense of sovereignty
- ❑ Continuing poverty



Characteristics of the Nation-Building Model

1. Attention to *de facto* sovereignty
2. Effective governing institutions
3. Cultural match
4. Strategic orientation



Note...

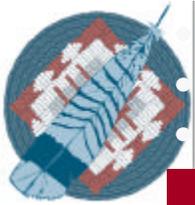
...not one of the characteristics of the Nation-building model is something we usually describe as “economic.”

- They are all political.
- In the nation-building model economic development is first and foremost a political problem not an economic one *per se*.
- Why does the quality of self-governance matter so much?



What Governments Do:

- ❑ They determine (in interaction with other governments) the scope of decision-making power that can be exercised by the community
- ❑ They establish and enforce the “rules of the game” by which communities and their members organize action, cooperate, and interact with each other and with outsiders



1. *De facto* Self-Governance

- ❑ Puts the development agenda in Indian hands
- ❑ Puts control of the necessary resources in Indian hands
- ❑ Couples decisions and their consequences, leading to better decisions
- ❑ Has concrete, bottom-line payoffs
- ❑ Appears to be necessary (but not sufficient) for sustainable development



De facto Self-Governance: Dimensions

- ❑ Law
 - Legal recognition of rights and powers.
- ❑ Policy
 - Formal observance of those rights and powers by federal, state, or municipal governments.
- ❑ Practice
 - Native nations asserting their self-governing powers – i.e., taking action (This is *de facto* self-governance).
- ❑ Efficacy
 - Native nations asserting those powers *capably* (i.e., taking effective action) and *judiciously* (i.e., waiving or de-emphasizing elements of sovereignty when appropriate).



The Rules of the Game...

...include, very broadly, answers to questions such as these:

How is the nation organized politically?

Who has what rights and obligations?

Who has what authority?

How, when, and where can that authority be exercised?

How are disputes settled, including those over authority itself?

How can the rules themselves be changed?



Why Are the Rules of the Game So Important?

- ❑ They send a message to investors
- ❑ The political challenge in development is to make investors feel secure
- ❑ But who is an investor?



Who is an investor?

- ❑ **A bank** considering a loan to the tribe or band...is an investor
- ❑ **A non-Indian entrepreneur** wanting to set up a joint venture...is an investor
- ❑ **A tribal member** thinking of taking a job in a tribal enterprise or starting up a small business or working in tribal government...is an investor

They're all investors-they're betting time, energy, talent, ideas, or money on the nation's future



So how do you persuade investors to invest?

- ❑ With rules they can trust.
- ❑ By making certain that investments of time or energy or ideas or money will be handled fairly and will not be hostage to opportunistic or partisan politics.



The Rules of the Game Are Embedded in Effective Institutions of Self-Governance

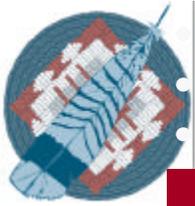
Ideally, these institutions...

- ...are stable (the rules don't change arbitrarily, and when the rules do change, the process follows established procedures)
- ...are fair (how people are treated does not depend on how they voted or who their friends or relatives are)
- ...are effective (they are capable of dealing with contemporary circumstances and needs; they can get things done)
- ...match indigenous notions of how authority ought to be organized and exercised—people believe in them.



2. Effective Governing Institutions

- A. Stability
- B. Effective and non-politicized resolution of disputes (a strong and independent judiciary)
- C. Separation of politics from business management
- D. An administration that can get things done



A. Stability

- ❑ Graduated hurdles for changes in policy, law, and constitution
- ❑ A judicious approach to separation of powers, recall, impeachment, etc.
- ❑ Staggered and/or longer terms



B. Independent Dispute Resolution

□ Purposes:

- Enforcement of agreements
- Constitutional review
- Resolution of internal conflict

□ Forms:

- Independent judiciary
- Traditional court or informal culturally supported rules
- Ethics board
- Third-party arbitration
- Multi-tribe court of final review



Contribution of Governmental Form to Reservation Employment

	General Council	Parliamentary Executive	Independent Chief Executive
No Independent Judiciary	Base Level	+10.8%	+14.9%
Independent Judiciary	+5.0%	+15.9%	+19.9%

An independent judiciary sends a message to “investors” that they will be treated fairly. This increases the likelihood of investment.



C. Separation of Business and Government

- ❑ Enterprise boards
 - Separation of strategic from day-to-day decision-making
 - Engagement of specialized talent
- ❑ Uniform Commercial Codes
 - A declaration of how commercial transactions will be handled
 - A clarification of jurisdictional uncertainty
- ❑ Well-defined taxation approaches
 - Predictability of investor return in a complex legal environment
 - Predictability in a dynamic political environment



The Consequences of Not Separating Business and Government

	Independent of Council Control	Council- Controlled
Profitable	34	20
Not Profitable	5	14
Odds of Profitability	6.8 to 1	1.4 to 1

Enterprises that are insulated from political interference are four times as likely to be profitable as those that are not.



D. Effective Administration

□ Accountability

- Civil service vs. political appointment
- Personnel grievance system
- Record keeping and independent audits
- Clear and consistent procedures

□ Effectiveness

- Rule-based or outcome-based?
- Base funding from stable income
- Separation of day-to-day (administrative) and strategic (legislative) decision-making



3. Cultural Match

- ❑ To be effective, governing institutions must have legitimacy with the people
- ❑ This means they have to match indigenous ideas about how authority should be organized and exercised
- ❑ Institutions and economic strategies that match contemporary indigenous cultures are more successful than those that don't
- ❑ But there's no blank check; institutions and strategies also have to work



What Dimensions of Cultural Match Matter?

- Location of authority
- Division of authority
- Scope of authority
- Transfer of authority
- Relationship with outsiders



Cultural Match (continued)

- ❑ Indian Reorganization Act (IRA) Governments (1934 and after):
 - Centralized
 - Directly-elected strong executive
 - Relatively weak council
 - No independent judicial function
 - Politicized business management



Cultural Match (continued)

- ❑ Traditional White Mountain Apache Government (c. 1850):
 - Centralized
 - Strong chief executive
 - Weak council (typically selected by executive)
 - Judicial function in hands of executive
 - Executive oversight of economic activity



Cultural Match (continued)

- ❑ Traditional Lakota Government (c. 1850):
 - Decentralized
 - Relatively weak executive
 - Relatively strong council (parliamentary design: council selects Shirt Wearers)
 - Independent judicial and enforcement functions (*akicita* societies)
 - Separation of strategic decisions from day-to-day business management (delegated authority with real power)



What Can Cultural Match Yield?

- More effective institutions
- Better market outcomes
- More effective assertions of sovereignty



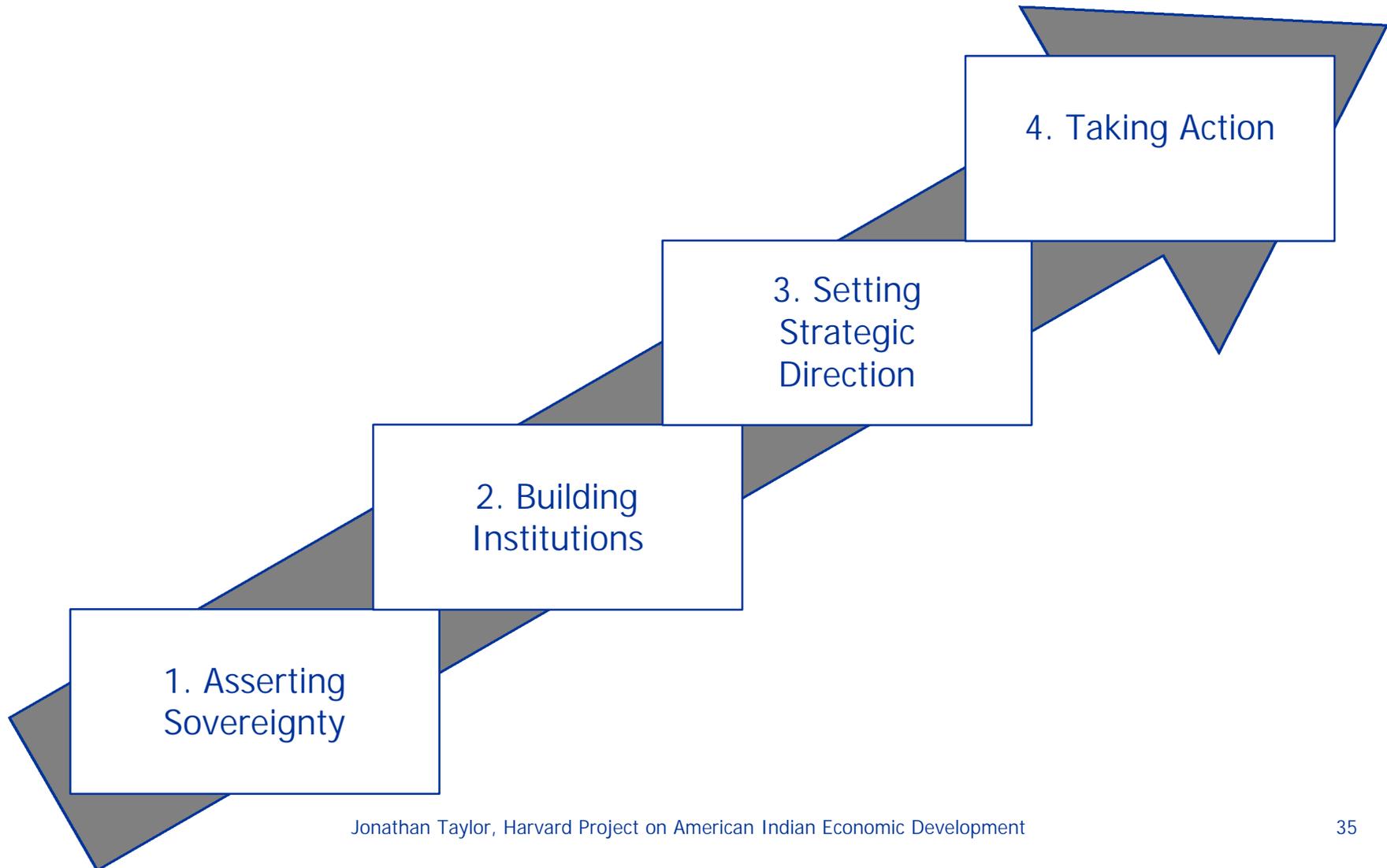
4. Strategic Orientation

A shift...

- ...from reactive thinking to proactive thinking (*not* “What can be funded?” but “What do we want to create?”)
- ...from short-term thinking to long-term thinking (“Twenty-five years from now, what kind of society do we want?”)
- ...from opportunistic thinking toward systemic thinking (“How does this option fit our conception of our society?”)
- ...from a narrow problem focus to a broader societal focus (“How do we mend not just our problems but our societies?”)



The Development Planning Process Under the Nation-Building Model





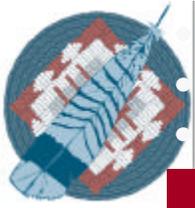
Some Practical Steps

- ❑ Carry out a sober analysis of your governing institutions. Fix those that need to be fixed.
- ❑ De-politicize court decisions and business management.
- ❑ Undertake a hard-nosed, realistic analysis of assets, opportunities, infrastructure, human capital, and strategic priorities and concerns.



(Potential) Results of the Nation-Building Model

- ❑ More effective access to and use of resources
- ❑ Better chances of sustained and self-determined economic development
- ❑ More effective defense of sovereignty
- ❑ Societies that work

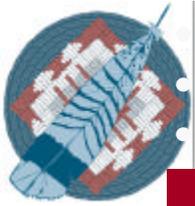


Key Finding from Harvard Project Research

Successful Indian Nations
Assert the Right to Govern Themselves and
Exercise That Right Effectively
By **Building** Capable Governing Institutions
That **Match** Their Cultures

The Task Is Nation-Building

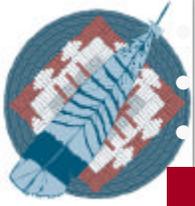
To obtain a copy of STRATEGIC ANALYSIS FOR NATIVE NATIONS, please contact
The Harvard Project on American Indian Economic Development, 79 John F. Kennedy
Street, Cambridge, Massachusetts, 02138, (617) 495-1480.



FINANCING RESOURCES FOR TRIBES

- JoAnne Lewellen
Community Affairs Officer
Federal Reserve Bank of Minneapolis

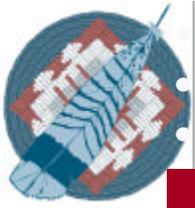
- Craig Nolte
Community Affairs Advisor
Federal Reserve Bank of San Francisco



FINANCING RESOURCES FOR TRIBES

□ Goal of Session:

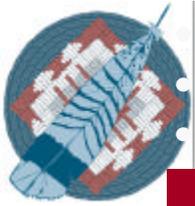
Discuss Financing Resources Available to Tribes and How to Use Them



FINANCING RESOURCES FOR TRIBES

- Tribes?
- Lenders?
- Government Agencies?
- Others?

\$ - Raise Hand



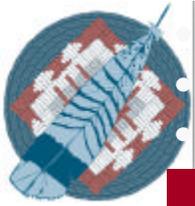
FINANCING RESOURCES FOR TRIBES

- Single Family Housing?
- Multifamily Housing?
- Small Business?
- Commercial Business Development?
- Healthcare Facility?
- Tribal Administration Building?



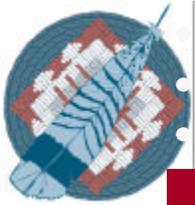
FINANCING RESOURCES FOR TRIBES

- Session Agenda
 - Certain Financing Options (Not All)
 - Applying Programs to Activities
 - Steps Toward Financing Your Project
 - Give Away \$



FINANCING RESOURCES FOR TRIBES

- Banks
- HUD
- USDA, Rural Development
- U.S. Small Business Administration
- Tax-Exempt Bond Financing
- Foundations

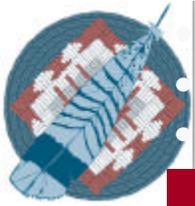


FINANCING RESOURCES FOR TRIBES

☐ Banks

- Leverages Scarce Public Funds
- Provides Access to Banking Skills & Expertise
- May Enhance Community Confidence
- Serve as Gateway to Many Lending Programs

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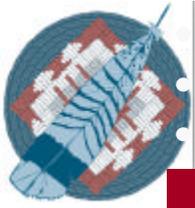


FINANCING RESOURCES FOR TRIBES

Banks

● Contact Person

- ✓ Loan Officer
- ✓ CRA Officer

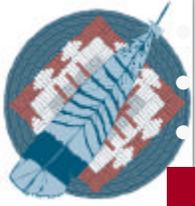


FINANCING RESOURCES FOR TRIBES

☐ HUD

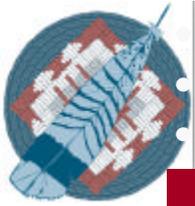
● 184 Loan Guarantee Program

- ✓ Tribes Should Consider Adopting Laws to Allow Members Access to this Program



FINANCING RESOURCES FOR TRIBES

- ❑ USDA Rural Development
 - Promotes Economic Development by Supporting Loans to Businesses through Banks and Community-Managed Lending Pools



FINANCING RESOURCES FOR TRIBES

- ❑ USDA Rural Development
 - Rural Business-Cooperative Service
 - Rural Housing Service
 - Rural Utilities Service



FINANCING RESOURCES FOR TRIBES

❑ USDA Rural Development

● Rural Business-Cooperative Service

- ✓ Business & Industry Direct Loans
- ✓ Business and Industry Guaranteed Loans
- ✓ Intermediary Relending Program
- ✓ Rural Business Enterprise Grants
- ✓ Rural Economic Development Loans
- ✓ Rural Economic Development Grants



FINANCING RESOURCES FOR TRIBES

❑ USDA Rural Development

● Rural Housing Service

- ✓ Home Ownership Loans
- ✓ Rural Rental Housing Loans
- ✓ Rental Assistance
- ✓ Home Improvement and Repair Loans & Grants
- ✓ Self-Help Housing Loans
- ✓ Rural Housing Site Loans



FINANCING RESOURCES FOR TRIBES

□ USDA Rural Development

● Rural Housing Service

- ✓ Farm Labor Housing Loans & Grants
- ✓ Congregate Housing and Group Homes
- ✓ Housing Preservation Grants



FINANCING RESOURCES FOR TRIBES

- ❑ US Small Business Administration
 - Loan Programs
 - Technical Assistance



FINANCING RESOURCES FOR TRIBES

❑ US Small Business Administration

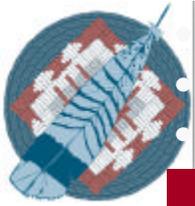
● Loan Programs

- ✓ 7(a) Loan Guaranty Program
- ✓ LowDoc
- ✓ SBAExpress
- ✓ Certified Development Company (504)



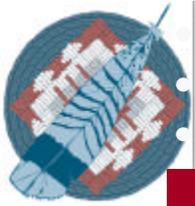
FINANCING RESOURCES FOR TRIBES

- ❑ US Small Business Administration
 - Technical Assistance
 - ✓ SCORE
 - ✓ Small Business Development Centers
 - ✓ Business Information Centers
 - ✓ Tribal Business Information Centers
 - ✓ SBA Office



FINANCING RESOURCES FOR TRIBES

- ❑ Tax-Exempt Bond Financing
 - Indian Tribal Government Tax Status Act of 1982
 - ✓ Government Purpose Bonds
 - ✓ Private Activity Bonds for Certain Tribally-Owned Manufacturing Facilities

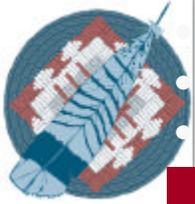


FINANCING RESOURCES FOR TRIBES

☐ Tax-Exempt Financing

- Interest Paid to Investor is Tax-Exempt from Federal Income Taxation

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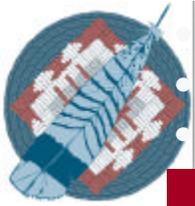


FINANCING RESOURCES FOR TRIBES

☐ Tax Exempt Bond Financing

● Government Purpose Bonds - *“Essential Government Purpose”*

- ✓ Schools
- ✓ Tribally-owned Hospital and Healthcare Facilities
- ✓ Tribal Infrastructure
- ✓ Tribal Administrative Buildings
- ✓ Museums, Parks, Libraries, Jails, Utilities



FINANCING RESOURCES FOR TRIBES

□ Tax-Exempt Financing

- Private Activity Bonds for Manufacturing
 - ✓ Proceeds Only to Finance Manufacturing a Facility
 - ✓ Must be Owned & Operated by Indian Tribal Government
 - ✓ Must be Located on Indian Tribal Land
 - ✓ Must Meet a Detailed Employment Test



FINANCING RESOURCES FOR TRIBES

□ Tax-Exempt Financing

● Issuer Assessment

- ✓ Establish Capital Plans and Financial Policies
- ✓ Identify Funding Alternatives
- ✓ Review Existing Debt Structure
- ✓ Review Capital Budget
- ✓ Analyze Future Capacity

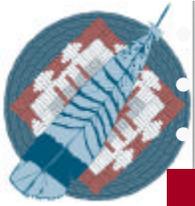


FINANCING RESOURCES FOR TRIBES

☐ Tax-Exempt Bond Financing

● Who To Contact:

- ✓ Your Tribal Attorney
- ✓ Bond Counsel
- ✓ Underwriter
- ✓ Banker



FINANCING RESOURCES FOR TRIBES

☐ Foundations



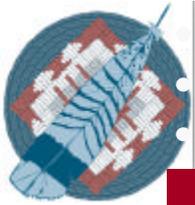
FINANCING RESOURCES FOR TRIBES

☐ Foundations

● The Foundation Center

- ✓ Top 100 by Total Giving
- ✓ 50 Largest Corporate Foundations
- ✓ 25 Largest Community Foundations
- ✓ Application & Budget Formats
- ✓ Short Course

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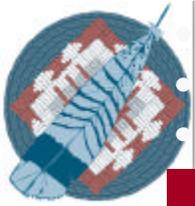


FINANCING RESOURCES FOR TRIBES

☐ Foundations

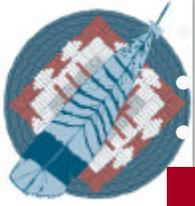
● Six Steps to Finding Foundations

- ✓ *Library: National Foundation Directory & National Directory of Corporate Giving*
- ✓ Regional Association of Grantmakers
- ✓ Foundation Center Office
- ✓ *Web: TFC, Guidestar*
- ✓ Review foundation's funding interest
- ✓ Application process



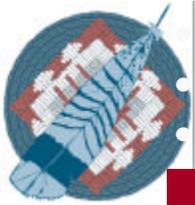
FINANCING RESOURCES FOR TRIBES

☐ Cases



FINANCING RESOURCES FOR TRIBES

□ Five Steps to Better Banking Services



FINANCING RESOURCES FOR TRIBES

□ First Step

- Assess your Tribe's and Member's Current Level of Banking Services
 - ✓ Research Banking Services Available Off the Reservation
 - ✓ Survey your Members, Tribal Council and Economic Development Planners

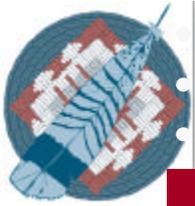


FINANCING RESOURCES FOR TRIBES

☐ Second Step

● Meet with Bank CRA Officers

- ✓ Tell Them What Types of Banking Services are needed
- ✓ Ask Them to Review your Tribe's Lending Laws and Report any Deficiencies

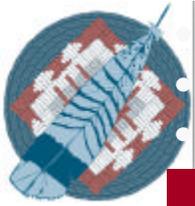


FINANCING RESOURCES FOR TRIBES

□ Third Step

● Review Your Tribe's Laws

- ✓ Do They Provide Guidelines for Lenders?
- ✓ Do They Allow Tribal Members Access to HUD's 184 Loan Guarantee Program?

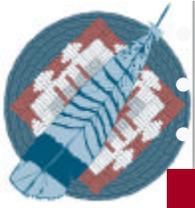


FINANCING RESOURCES FOR TRIBES

□ Fourth Step

● Network

- ✓ Other Tribes
- ✓ Tribal Organizations
- ✓ Lenders
- ✓ Federal Reserve Community Affairs Office



FINANCING RESOURCES FOR TRIBES

□ Fifth Step

- Periodically Review Your Progress in Attracting Banking Services

Government Loan Products for Indian Country

	HUD/ ONAP	HUD/FHA	USDA/RHS	USDA/RHS	USDA/RHS	VA*	Fannie Mae/Navajo	First Americans/ FHLMC
	Section 184	Section 248	Sec. 502 Guarantee	Sec 502 Direct	Sec 504 Direct	N.A. Direct	Experiment	Chickasaw
Eligible Borrower								
Indian Tribe	X	X						
Indian Housing Authority	X	X (if Tribe's Agent)						
Tribal Families	X	X	X	X	X	Veterans	x	X
Income Eligibility	No Restrictions	No Restrictions	Below 115% County Median	Below 80% County Median		No Restrictions	Below 100% US Median	
Tribal Approval Required								
Eviction & foreclosure procedures	X	X	If tribal court	If tribal court		MOU w/ Tribe	Eviction & foreclosure procedures	
Loan Purpose								
New Construction	X	X	X	X	X	X	X	X
Purchase Existing Home	X	X	X	X		X	X	X
Rehabilitate Existing Home	X	X	X	X		X	X	X
Purchase & Rehab. Home	X	X	X	X		X		
	HUD/	HUD/FHA	USDA/RHS	USDA/RHS	USDA/RHS	VA*	Fannie Mae/Navajo	First

Government Loan Products for Indian County (Cont'd.)

	ONAP							Americans/ FHLMC
	Section 184	Section 248	Sec. 502 Guarantee	Sec 502 Direct	Sec 504 Direct	N.A. Direct	Experiment	Chickasaw
Authority	100% Guarantee	100% Insurance	90%			up to \$80,000 >\$80,000 high cost	No loan limit	No Loan limit
Loan Type								
Fixed Interest Rate	X	X	X	X		X	X	
Adjustable Interest Rate		X						
Refinancing Available		X		X		If prior VA Direct		
Loan Term			30 years	33 years				
Available Land Type								
Tribal trust land	X	X	X	X		X	X	
Individual allotted land	X		X	X		X	X	
Fee Simple land (Indian Area)	X		X	X			X	X
Rural Area	X	X	Must be rural area	Must be rural area			X	X
Priority of Lien	1 st	1 st	1 st	1 st or 2 nd		1 st	1 st	1 st

	HUD/ ONAP	HUD/FHA	USDA/RHS	USDA/RHS	USDA/RHS	VA*	Fannie Mae/Navajo	First Americans/ FHLMC
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	Section 184	Section 248	Sec. 502 Guarantee	Sec 502 Direct	Sec 504 Direct	N.A. Direct	Experiment	Chickasaw
Underwriting Criteria								
Debt-to-income ratio(s)	41% all debt	29/41%	29% housing debt	33% housing debt low income 29% housing debt very low inc.		Residual Income then 41% all debt		
Maximum Income Amount Applies	N/A	N/A \$25,000; 95% \$25,000-\$125,000 and 90% > \$125,000 of acquisition	not > 115% of median	not > 80% of median				
MIP	1%	0.50%	N/A	N/A		1.25%	Guaranteed by Tribe	
MIP Paid:	At closing, financable	monthly				at closing, financable		
Construction Financing	Included	Lenders can originate construction/ Permanent mortgages that can be insured prior to the start of construction	Not Included	Included		Not Included	Provided by NAHASDA	
	HUD/ ONAP	HUD/FHA	USDA/RHS	USDA/RHS	USDA/RHS	VA*	Fannie Mae/Navajo	First Americans/ FHLMC
	Section	Section 248	Sec. 502 Guarantee	Sec 502 Direct	Sec 504 Direct	N.A. Direct	Experiment	Chickasaw

Government Loan Products for Indian County (Cont'd.)

	184							
Appraisals	Cost Approach						Cost Method for new construction	
Downpayment		Difference between amt of insured mortgage and total cost & total cost to acquire the property including such items as prepaids	0	0		0	1% out of pocket	
Credit Guidelines	Uses Judgmental approach		>3x30 late No foreclosure in 36 mos. >2 Hsg pmts late in 24 mos. Collection Accts Bankruptcy discharged 36mos	>3x30 late No foreclosure in 36 mos. >2 Hsg pmts late in 24 mos. Collection Accts Bankruptcy discharged 36mos			2x30 days late on installment 1x60 on an installment	
Assumable?	No	Yes	Yes	Yes			1x30 on any housing-related payment but 0x30 for last 60	
	HUD/ONAP	HUD/FHA	USDA/RHS	USDA/RHS	USDA/RHS	VA*	Fannie Mae/Navajo	First Americans/FHLMC
	Section	Section 248	Sec. 502 Guarantee	Sec 502 Direct	Sec 504 Direct	N.A. Direct	Experiment	Chickasaw

Government Loan Products for Indian County (Cont'd.)

	184							
Refinance?	No	Yes	No	No		Yes		
Co-Borrowers Allowed?			Yes	Yes				
Early Delinquency Intervention	N/A	N/A	N/A	N/A		N/A	Required of lender	
Purchaser After Foreclosure								
Indian Tribe	X	X	X	X		According to terms of MOU		
Indian Housing Authority	X	X (If Tribe Agrees)	X	X				
Tribal family	X	X (If Tribe Agrees)	X	X				
Non-Indian family		X (If Tribe Agrees)	X (if Tribe Agrees)	X (If Tribe Agrees)				

APPENDIX B

The following questions can be used as a guide when reviewing programs for cultural sensitivity:

Does this program, curriculum, information or activity:

- Provide opportunities for participants and presenters from different cultures to listen to and learn from one another?
- Reflect respect for different cultures and traditions?
- Encourage informed choices about financial options rather than judging or trying to change cultures and beliefs?
- Fit the knowledge, age and experience of the targeted audience, for example, children, youth and adults with varying levels of knowledge and experience?
- Provide flexibility for adaptation to local cultures, interests and needs?
- Contribute to establishing a base of financial literacy that will help tribal members who are interested in entrepreneurship or in seeking jobs, as well as those who will eventually want to buy a home?
- Have local, regional and/or national Native American-based organizations in appropriate leadership and partnership roles?
- Involve partners with people and agencies with cultural, financial, technical, and other needed expertise?
- Provide for education and training for teachers, trainers, and other leaders and resource people?
- Provide for an assessment process that ensures input and feedback from the targeted audience, before implementation?

APPENDIX C

Non-traditional Underwriting

The material in this appendix was taken primarily from HUD's "Indian Housing Loan Guarantee Program Processing Guidelines" (July 1997) and Fannie Mae's "Underwriting the Borrower: Basics of Sound Underwriting" (1996).

I. Credit History

- A. Rely on overall payment history
- B. Allow borrower to explain (in writing) derogatory credit within the last two years.
- C. If a borrower has chosen not to use credit or has not yet established a credit history, the lender could look to:
 - 1. Rent payment history, including rent history with the IHA.
 - 2. Utility payment history
- D. If a Three Repository Merged or a Residential Mortgage Credit Report is unavailable, a lender may rely on a Nontraditional Mortgage Credit Report, prepared by a credit reporting agency.

II. Income

- A. Stability of Income
 - 1. Allow for seasonal employment when considering gaps in employment history.
 - 2. If the borrower changes jobs frequently consider the degree to which the borrower advances in income.
- B. Verify sources of Income in Addition to Wages and Salary. Consider overtime and bonus income, seasonal income, part-time income, government assistance income, etc.

III. Ratios

- A. Debt-to Income Ratios

Use compensating factors to justify approval of mortgage loans with a debt-to income ratio exceeding the standard 41 percent guideline. Compensatory factors might include borrowers level of cash reserves, borrower's down payment, borrower's potential for increased earnings, etc.
- B. Loan-to-Value Ratio

Borrower related factors a lender analyzing high LTV ratio mortgage loans, may consider. Such factors might include an analysis of the borrower's cash reserves, borrower's savings and debt management history, borrower's capacity for increased future earnings, etc.

The Role of Asset Creation in Native American Housing Development

I. Introduction

Increasingly, housing developers and specialists are recognizing that the acquisition of affordable housing is not an isolated social component, but an important aspect of a greater community development strategy, which includes business development, job skills training, and infrastructure development. However, business development, homeownership, and education or training requires individual investment. Investment generally requires asset or wealth accumulation, factors that usually comprise economic barriers or, at best, challenges to most low-income persons. Individual Development Accounts (IDAs) have been developed as a tool to address the challenge of asset creation.

II. Background: What are IDAs?

IDAs are dedicated savings accounts, similar in structure to Individual Retirement Accounts (IRAs), which can only be used for purchasing a first home, education or job training expenses, or capitalizing a small business. They are managed by community-based organizations and accounts are held at local financial institutions. An individual deposits money into an IDA and those funds are matched by public and private sources, accelerating the participant's ability to take advantage of these high-return investments.¹

The IDA program is an asset-accumulation strategy, structured as a partnership between a community-based organization and a financial institution. The community-based organization administers the program, monitors the account and is responsible for providing the economic literacy training IDA participants are required to take.

IDA programs provide financial institutions with several partnership opportunities:

- Provide matching funds for IDA accounts
- Contribute funds to support a community organization operating an IDA program
- Structure IDAs so that no account fees are charged
- Offer an above-market interest rate on IDA savings accounts
- Provide account balance and transaction data to the community group on a monthly basis
- Offer other incentives for IDA depositors, such as no-cost checking, a waiver of minimum balance requirements in checking accounts, free or reduced fees for ATM services, and no-cost children's savings accounts for IDA participants' children
- Designate a bank employee to be the contact person for the IDA participants
- Participate on an IDA advisory committee or board
- Provide economic and/or financial literacy training to IDA participants²

¹ CFED. "Starting Out: What are Individual Development Accounts?" *IDAs/USAs* <http://www.cfed.org/idas/documents/whatareidas.htm> (September 10, 1998)

² Bradley, Melissa. "Individual Development Accounts (IDAs): Strategy for Asset Accumulation" Draft. Office of Thrift Supervision (September 1, 1998)

In September 1997, the Corporation for Enterprise Development (CFED) launched the Downpayments on the American Dream Policy Demonstration (ADD) as an antipoverty and economic independence model. Currently, ADD is the country's largest test of an IDA program. With \$15 million commitment from private and public investors, ADD has funded over thirteen projects, comprising over 2,000 accounts. The ADD demonstration will operate for four years followed by two years of post-program evaluation.³

In addition to this IDA program activity, nine states have legislated IDA programs, with six more having legislation pending. Bipartisan federal legislation, The Assets for Independence Act, which will create a \$100 million national IDA demonstration, has been introduced in the Senate.⁴

III. IDAs and Native American Homeownership

The IDA program can be modified and employed as a part of an overall strategy to overcome creditworthiness issues with regard to homeownership opportunities for Native Americans. The program should be designed to assist in facilitating homeownership opportunities for Native Americans who have the income capacity to afford a reasonable mortgage payment, but who do not have adequate downpayment or closing cost funds.

An IDA program must be structured carefully to ensure the goal of facilitating homeownership opportunities is met. Several factors should be taken into consideration:

- *Clearly defined goals and objectives:* Helps focus and maximize resources.
- *Selection process of program participants:* Since the participants are usually selected by the community-based organization, it is important that criteria are established that will ensure a manageable number of accountholders.
- *Uses, Thresholds & Ceiling, Accumulation Periods:* These factors determine the parameters of the program and establish the participants' expectations upon completion. For instance, the program funds could be used for downpayment/closing cost assistance. Any unused savings and escrow funds could be reserved for emergency repairs, home improvement, or some expense unique to Native Americans, which could jeopardize the homeowner's ability to meet mortgage payment requirements.
- **Match rates and sources of matching funds:** *This is an important area for financial institution participation. Banks that have experienced difficulty in direct mortgage lending on tribal land can contribute and support homeownership through the IDA program. A predetermined group of lenders committed to providing mortgage financing to Native Americans can be established as a source of funds.*
- *Economic Literacy, Training and Counseling:* This also represents an area of potential partnership and tribal self-sufficiency. A pool of lenders working with the One Stop Mortgage Shop can commit to providing the required homeownership counseling and other training designed to mitigate the risk of default.

³ Friedman, Robert E and Broadman, Dorothy. "IDAs... What are they?" *Community Investments* Vol 10, No. 1 (Winter 1998)

⁴ Edwards, Karen. "Individual Development Accounts (IDAs): Creative Savings Opportunities for Individuals and Families. *Bridges* <http://www.stls.frb.org:81/publications/br/1998/b/br> 1998b1.html (November 12, 1998)

APPENDIX E

Resource List

The following represents a list of partners that have demonstrated cultural awareness and sensitivity in past partnerships or have programs that will enhance the development of culturally appropriate partnerships.

GOVERNMENT AGENCIES

Bureau of Indian Affairs, Office of Indian Education Programs

See <http://shaman.unm.edu/oiep/studsch.htm> for information about students and schools, and <http://shaman.unm.edu/oiep/prog2.htm> for information about programs.

Contact:

- Dennis Fox, Assistant Director (202) 208-6123: Very interested, former teacher.
- Dr. Sandra Fox, Oglala Lakota – Chief of monitoring and evaluation.
- Charlie Geboe (202) 208-4040

Tribal Business Information Centers

SBA centers on reservations.

COLLEGES AND UNIVERSITIES

Haskell Indian Nations University

Serves all federally recognized tribes. Mission is to become a national center for Indian education. Offers four-year degree in education, Native American Studies and business administration.

See <http://www.haskell.edu>

Contact:

- Don Bread, Business Department (785) 749-8402
- Frieda Flying Mann, Babson Campus – entrepreneurial programs

Salish Kootenai Community College

Recommended by Rhonda Holman at the Kauffman Foundation.

Contact:

- Michelle Lansdowne (406) 675-4800 ext. 246 – educational literacy issues. E-mail address: michelle_lansdowne@skc.edu.

Tribal Colleges

Thirty tribes operate their own colleges. See <http://niikaan.fdl.cc.mn.us/tcj/tcweblinks.htm> for a complete list of mailing addresses and telephone numbers. See <http://info.pitt.edu/~lmitten/education.html> for website addresses.

EDUCATIONAL ASSOCIATIONS

American Indian Higher Education Consortium

Consortium of 30 tribal colleges. Publishes the *Tribal College Journal*, which includes 12/97 article, "American Indian Culture and Curriculum". See <http://niikaan.fdl.cc.mn.us/tcj/>.

National Federation for Teaching Entrepreneurship

See www.nftebiz.org.

Contact:

- Michael Caslin III (212) 232-2244 (212) 978-0105 (voice mail): Executive Director. E-mail address: nftecaslin@msn.com

National Indian Education Association

Founded in 1969 to give American Indians and Alaska Natives a national voice in improving access to educational opportunity. See <http://www.niea.org/>.

Contact:

- Dr. Sherry R. Allison, President: Senior research scientist at the Center for Development and Disability, University of New Mexico – Albuquerque.
- Gloria Grant, Board Member: Navajo-Omaha, curriculum center director for Chinle Unified School District No. 24.
- Elmer J. Guy, Board Member: Navajo. Executive Director for Navajo Nation, division of Dine education, Window Rock.

FOUNDATIONS

Ewing Marion Kauffman Foundation

Has funded development of curriculum and programs for youth entrepreneurship, given grants to tribal community colleges for curriculum development on entrepreneurship. See www.emkf.org/Entrepreneurship.

Contact:

- Rhonda Holman (816) 932-1151: Overseas grants and programs in Indian Country.
- Dr. Marilyn Karilsky: Expert on curriculum development.

NONPROFIT ORGANIZATIONS

American Indian Business Leaders

Worked with the BIA's Office of Indian Education and others to develop economic education curriculum. Is very interested in doing further work on culturally appropriate education. Board members include: Sherry Salway Black of First Nations and Gerald Sherman.

Contact:

- Dave Archambault, Oglala Lakota, Chairman of the board of directors (701) 854-7201 or (701) 854-7245.
- Michelle Henderson, Asiniboine, Executive Director (406) 243-4879.

America's Promise – Alliance for Youth

This is an initiative started by General Colin Powell and former presidents that supports youth through mentors, safety, health, education, and service. See www.americaspromise.org.

First Nations Development Institute

The primary mission of First Nations is to promote culturally appropriate economic development by and for Native peoples. They have been working with banks and others on financial literacy issues. The organization recently opened a Native Assets Research Center to promote research on native issues and address policy issues. See <http://www.firstnations.org>.

Contact:

- Sherry Salway Black, Oglala Lakota (540) 371-5615

Future Business Leaders of America

Future Business Leaders is an educational association of students preparing for careers in business and business-related fields, divisions for middle school, high school and post-secondary students. 13,000 chapters in the United States, supported by dues and contributions. Suggested as a resource by Robert Cheadle, Chickasaw, whose daughter participates in the program in Ada, Oklahoma. See <http://www.fbla-pbl.org/faq.htm>.

Junior Achievement

Economic education program for students K-12, taught primarily by classroom volunteers. Has been used extensively by tribes in Alaska. See <http://www.ja.org/index.asp>.

Contact:

- Vera Tanier (719) 540-6252: Director of Strategic Alliances and Volunteers.

FOR-PROFIT ORGANIZATIONS

Falmouth Institute

Offers Training, consulting and publications for Indian country. See <http://www.falmouthinsti.com/index.htm>.

Financial Institutions

The following institutions have developed programs and curriculum for use in Indian Country:

Bank of America-Nations Bank, Washington Mutual, Wells Fargo and Norwest.

INDIVIDUALS

Robert Cheadle, Chickasaw

Director of Housing for the Chickasaw Tribe in Oklahoma. Former senior legal counsel in Fannie Mae's Dallas office. Heads statewide Indian housing organization in Oklahoma and is working with others nationally (Federal Home Loan Bank, Private Mortgage Insurers) to develop alternative products for home purchases in Indian Country.

Colleen Hernandez

Executive director of the Kansas City Neighborhood Alliance and former chair of Federal Reserve System Consumer Advisory Council. Done extensive work for financial literacy education.

Richard Moore

President of Commerce Mortgage in Kansas City. Also have done extensive work in financial literacy education.

OTHER ORGANIZATIONS

Fannie Mae
Federal Deposit Insurance Corporation
Federal Home Loan Bank
Federal Reserve System
Freddie Mac
National Association of Indian Housing
Neighborhood Reinvestment Corporation
Office of Comptroller of the Currency
Office of Thrift Supervision
U.S. Department of Housing and Urban Development
U.S. Department of Education
Neighborhood Housing Services

A pool of cultural consultants could be organized to work with program developers and tribal members to ensure that cultural issues are appropriately addressed.

SHARED VISIONS: THE NATIVE AMERICAN HOMEOWNERSHIP, LEGAL AND ECONOMIC DEVELOPMENT SUMMIT I (SPONSORED BY HUD)

Chicago, Illinois, March 30 - April 1, 1999

Speaker: Thomas W. Fredericks
Topic: Tribal Business Development
Time Allotted: 1 hour, 15 minutes
Date: March 31, 1999

OUTLINE

I. INTRODUCTION

- A. TRIBES HAVE, AND MUST CONTINUE, TO PROVIDE A CLIMATE CONDUCIVE TO OBTAINING PRIVATE FINANCING.
- B. TRIBES MAY EXERCISE THEIR SOVEREIGNTY TO ENACT AND IMPLEMENT A SYSTEM OF TRIBAL LAW SO AS TO PROVIDE A STABLE ENVIRONMENT AND MINIMIZE RISKS FOR THE PRIVATE INVESTOR.
- C. CERTAIN TAX AND OTHER INCENTIVES EXIST FOR BUSINESS DEVELOPMENT ON INDIAN RESERVATIONS
- D. THERE ARE MANY FORMS OF BUSINESS ENTITY ORGANIZATION AVAILABLE TO TRIBES

II. FINANCING ON INDIAN LANDS

- A. TYPICAL LENDER CONCERNS
 - 1. Lender Has Difficulty In Securing Itself, In Getting Sufficient And Enforceable Collateral Due In Part To Trust Status Of Indian Lands.
 - 2. Tribal Laws Are Non-Existent And/Or Unfamiliar.
 - 3. Sovereign Immunity Causes Enforcement Problems.
 - 4. Other Lender Concerns Exist, Such As Complex Land Status, Jurisdictional Uncertainty And Lack of Credit History.
- B. DEVELOPING A SYSTEM OF LAWS TO PROVIDE STABILITY FOR THE LENDER
 - 1. One Important Aspect Of Tribal Sovereignty Is The

Authority To Control Economic Development On Indian Lands.

2. Tribes May Adopt Laws To Help Alleviate Some Of The Lender's Concerns.
3. Chief Among The Laws Which Would Give Lenders A Comfort Level In Indian Country Is The Uniform Commercial Code. The UCC Has Been Adopted In All But One State And Governs Most Commercial Transactions.
4. The Fort Mojave Indian Tribe Has Adopted Article 2 (Sales), 3 (Commercial Paper) And 9 (Secured Transactions) Of The UCC And Implemented Same On Its Reservation.
5. Other Laws Which Promote A Stable Lending Environment Are Mechanic's Lien Statutes, Statutes Governing The Creation And Regulation Of Business Entities And Recording Statutes.

C. STRENGTHENING THE TRIBAL COURT SYSTEM

1. One Of The Most Significant Disadvantages Tribes Face In Their Efforts To Access Private Capital Is The Perceived Lack Of Strong Tribal Courts Which Would Enable Lenders To Enforce Their Rights In The Event Of A Loan Default.
2. Tribes Can Strengthen Their Tribal Court System By Providing Minimum Qualifications For Judges. At Least One Law-Trained Judge Should Sit On The Court Who Is Qualified To Address Complex Legal Issues Arising In Lending Transactions.
3. Tribal Court Judges Should Be Free Of Any Influence From The Tribal Council And Other Government Entities. This Can Be Accomplished Through A Separation Of Powers Within The Tribal Constitution.

D. SOVEREIGN IMMUNITY

1. Tribes Possess Sovereign Immunity From Suit And, Therefore, May Not Be Sued For A Breach Of A Loan Obligation Unless They Have Expressly And Unequivocally Waived Their Sovereign Immunity.
2. Tribes Must Be Willing To Waive At Least A Portion Of Their Sovereign Immunity So That Lenders Will Have Redress In The Event Of A Default.

3. The Waiver Need Not Be Absolute, And Tribes May Grant Limited Waivers Which Limit A Lender's Remedies To Revenues Or Assets Derived From The Project Funded With The Loan Proceeds.

E. OTHER SOURCES OF FINANCING - THE INDIAN FINANCING ACT

1. Although The Availability Of Federal Funding Has Diminished, The Indian Financing Act (25 U.S.C. § 1451 Et Seq.) Remains A Potential Source Of Financing.
2. The Act Was Adopted By Congress In 1974 And Provides A Revolving Loan Fund To Aid In The Development Of Indian Resources.
3. Perhaps The Most Significant Provisions Of The Act Are Those Which Allow For BIA-Guaranteed Loans.
4. Up To 90% Of A Loan Obtained From A Private Lender May Be Guaranteed By The Bureau Of Indian Affairs.
5. Upon A Default In Repayment, The Lender May Look To The BIA's Loan Guaranty Certificate For Repayment Of Up To 90% Of The Loan Amount.
6. The Act And BIA Regulations (25 C.F.R. Part 103) Establish Certain Criteria For Guaranteed Loans.
 - a. Underwriting Requirement - reasonable prospect of repayment of the loan.
 - b. Underwriter - state or federally-chartered financial institutions, or tribes making loans from their own funds to other tribes or tribal-organizations.
 - c. Guarantee Amount - up to 90% of principal and interest.
 - d. Loan Amount - no ceiling if to tribe or tribally-owned organization; however, a loan to a partnership or non-tribal organization cannot exceed \$500,000.00.
 - e. Term - the period of maturity of guaranteed loans cannot exceed 30 years.
 - f. Collateral - none required, but lenders must

require security when available.

7. The BIA Is Authorized To Pay Interest Rate Subsidies In Order To Make The Loan Feasible To The Borrower, Yet Marketable.
8. The BIA Is Required To Assure That Competent Management And Technical Assistance Is Available To The Tribe For The Project Financed.

F. OTHER SOURCES OF FINANCING -- THE INDIAN TRIBAL GOVERNMENTAL TAX STATUS ACT OF 1982

1. The Tax Status Act Affords Tribes Many Of The Federal Tax Advantages Enjoyed By States, Including That Of Issuing Tax-Exempt Bonds, To Finance Governmental Projects.
2. Because Interest Income On Qualifying Tribally Issued Bonds Is Not Taxed, The Investment Is Made More Attractive To The Funding Source.
3. Roads, Sewers, Bridges, Utilities And Other Public Infrastructure Are Permissible Types Of Projects That Would Derive The Benefits Of The Tax Status Act.
 - a. "Essential Governmental Function"
4. Private Activity Bonds
 - a. Private Activity Bonds issued by a tribal government do not generally qualify for tax-exempt status.
 - b. Exception: Manufacturing Facilities
5. Bank Qualified Loans
 - a. In addition to lower rates that generally come with tax-exempt financing, commercial banks will often charge lower interest rates on "bank qualified loans."
 - b. Banks are allowed to deduct 80% of the so-called "carry costs" of such loans.
 - c. Banks receive dual tax benefits for certain tribal obligations -- tax-exempt interest and the ability to deduct most "carry costs" of the obligation.

d. For an obligation to be both tax-exempt and "bank qualified" certain requirements must be met, including:

(i) the tribe must reasonably anticipate that it will not issue more than \$10 million in tax-exempt obligations during the calendar year;

(ii) proceeds of the obligations may not be used to finance a tribally-owned manufacturing facility; and

(iii) the tribe must designate the obligation as a "qualified tax-exempt obligation" under Section 265(b) of the Internal Revenue Code.

6. Tribal Governments Restricted In Ways State And Local Governments Are Not.

a. Five year time period and "20 times rule" with respect to manufacturing facilities are not applied to state and local governments.

b. State and local governments may issue private activity bonds for construction of single-family and rental housing for developers; tribes can issue tax-exempt debt only for tribal member housing which is owned by tribe.

c. Tribal tax-exempt obligations are not exempt from Section 3(a) of the Securities Act of 1933.

G. MISCELLANEOUS ISSUES/ADDITIONAL FACTORS CONSIDERED BY INVESTORS

1. Conducive Reservation Legal Environment: Previously Discussed.

2. Credit Enhancement: Tribe May Obtain More Favorable Business Terms, Such As Lower Interest Rates, With An Established Credit History.

3. Collateral: General Obligation Bond Must Be Supported By Strong Tribal Tax Base; Commercial Development May Sometimes Collateralize The Bond Financing Transaction.

4. Tribal Business Organization: Section 17 Tribal Corporation; No BIA Approval Of Ground Leases Means No

Environmental Compliance Process; Ground Leases May Be Pledged To Secure Bonds.

II. TAX AND OTHER INCENTIVES FOR BUSINESS DEVELOPMENT ON INDIAN RESERVATIONS

- A. THE INCENTIVES FOR BUSINESS DEVELOPMENT ON INDIAN RESERVATIONS INCLUDE POTENTIAL EXEMPTIONS FROM STATE REGULATORY AUTHORITY AND TAXATION AS WELL AS CERTAIN FEDERAL PROGRAMS AND LEGISLATION INTENDED TO FACILITATE THE FINANCING OF TRIBAL ECONOMIC DEVELOPMENT PROJECTS.
- B. POTENTIAL STATE REGULATORY AUTHORITY AND TAXATION
1. State Laws Are Not Applicable To Indians On An Indian Reservation Except Where Congress Has Expressly Provided That State Laws Shall Apply. (McClanahan V. Arizona State Tax Comm'n, 411 U.S. 164 (1973)).
 - a. Per Se Rule: State is without authority to tax reservation lands or Indian income from reservation activities (Oklahoma Tax Comm'n v. Chickasaw Nation, 115 S.Ct. 2214 (1995)). If legal incidence of State tax is on Indians, tax is preempted.
 2. The Test For Determining Whether State Law Applies To Non-Indian Activities On Indian Lands Is Whether The Assumption Of State Jurisdiction Is "Preempted By Federal Law" Or "Unlawfully Infringe(s) On The Right Of Reservation Indians To Make Their Own Laws And Be Ruled By Them" (White Mountain Apache Tribe V. Bracker, 448 U.S. 136 (1980)).
 - a. Balancing Test: If legal incidence of tax is on non-Indians, a court must balance the respective federal, state and tribal interests to determine if State may impose tax.
 - b. Case law indicates that the most significant factors to be weighed by a court are (i) the amount of services the Tribe provides to the taxpayer, (ii) the Tribe's regulatory oversight of the taxpayer's presence on the reservation; (iii) the economic burden imposed on the Tribe by the competing State tax; (iv) the State's regulatory presence on the Reservation; and (v) the amount of services that the State provides to the taxpayer. This is a very fact-specific analysis.

C. FEDERAL PROGRAMS AND LEGISLATION

1. Indian Financing Act And Indian Governmental Tax Status Act - Previously Discussed.
2. The Internal Revenue Code: Accelerated Depreciation For Property On Indian Reservations.

a. Under Section 168(j) of the Internal Revenue Code, for a 10 year period beginning January 1, 1994, "qualified Indian reservation property" is eligible for depreciation in accordance with specified accelerated recovery periods as follows:

<u>Normal</u>	<u>Reservation</u>
3-yr. property	2 years
5-yr. property	3 years
7-yr. property	4 years
10-yr. property	6 years
15-yr. property	9 years
20-yr. property	12 years
nonresidential real property (normally 39 years)	22 years

b. To constitute "qualified Indian reservation property," the properties must otherwise be depreciable property under the Code; and:

- (i) used by the taxpayer predominately in the active conduct of a trade or business within an Indian reservation;
- (ii) not used or located outside the Indian reservation on a regular basis;
- (iii) not acquired (directly or indirectly) from a person related to the taxpayer;
- (iv) not used in relation to gaming activities; and
- (v) not subject to an alternative depreciation system under the Code.

c. Exception to requirement that "qualified" property be located on a reservation -- Section 168(j)(4)(C)(ii)(I)-(III)

- (i) Certain infrastructure, such as roads, power lines, water systems, railroad spurs and communication facilities, can be located outside the Reservation if the property is connected with qualified property located within the reservation.

3. The Internal Revenue Code: Indian Employment Credit
 - a. Section 38(b) and 45A of the Internal Revenue Code create an Indian employment incentive.
 - b. For a 10 year period beginning January 1, 1994, employers of "qualified employees" are entitled to a tax credit of 20% of:
 - (i) the qualified wages paid or incurred during a taxable year, plus
 - (ii) qualified employee health insurance costs paid or incurred during a taxable year.
 - c. Restrictions on the tax credit apply, including:
 - (i) the credit is available only with regard to the employee's first \$20,000 of qualified wages and health insurance costs;
 - (ii) The credit can be taken only for employees whose total wages do not exceed \$30,000 during the taxable year; and
 - (iii) the credit can be applied against the amount by which the employer's current taxable year qualified wages and employee health insurance costs exceed such wages and costs during the baseline year of 1993.
 - d. An employee is "qualified" if:
 - (i) the employee is an enrolled member of an Indian tribe or the spouse of an enrolled member;
 - (ii) substantially all of the employee's services for the employer are performed within an Indian reservation; and
 - (iii) the employee's residence during the applicable period is on or near the reservation in which the employee's services are being performed.
4. The Internal Revenue Code: Tax Empowerment Zones
 - a. The Secretary of Agriculture (with respect to rural areas) may designate "tax empowerment zones" pursuant to 26 U.S.C. § 1391 et. seq.
 - b. Indian reservations are eligible for such designation; provided that, the Secretary acted to

designate on or before January 1, 1998.

c. The tax-related advantages include:

(i) Tax-exempt enterprise zone facility bonds can, subject to certain limitations, be used if 95% or more of the proceeds are used by qualified businesses within the zone.

(ii) The amount of Section 179 property (generally, tangible business property acquired for use in the conduct of business) which can be expensed in any taxable year is increased by approximately 8%.

5. Grants And Alternative Sources Of Financing

a. Many sources can be explored, including:

(i) Eligible Economic Enterprise Grants: Under 25 C.F.R. Part 286, the Secretary of Interior can make grants to Indian owned enterprises organized for the purpose of profit and located on an Indian reservation. Grants are, however, generally limited to those applicants that are unable to obtain "adequate" financing from other sources. For purposes of Part 286, an "economic enterprise" is "any Indian-owned . . . business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 per centum of the enterprise." 25 C.F.R. § 286.1. This program provides for grants to "eligible economic enterprises" in an amount up to \$250,000 when 75% of the total financing comes from other sources and certain other conditions are satisfied.

(ii) U.S. Department of Agriculture, Rural Development: Rural Development offers a variety of direct and guaranteed loan programs. Interest on guaranteed loans is negotiated. The guaranteed percentage of each loan varies from 60 to 90 percent depending on the amount. The term of amortization varies from 7 to 40 years depending on the purpose of the loan.

6. Buy Indian Act

a. Pursuant to 25 U.S.C. § 47, the Department of Interior is directed, so far as is practicable, to utilize Indian labor and purchase products of Indian industry.

b. In implementing the Buy Indian Act, the Department of Interior has considered an eligible Indian economic enterprise to be one which:

(i) is at least 51% owned by one or more individuals qualifying as Indians;

(ii) has one or more of the Indian owners involved in the daily business management of the enterprise, and

(iii) has the majority of the enterprise's earnings accrue to such Indian persons.

7. Department Of Defense Set-Aside Program

a. Under 10 U.S.C. § 2323 (a)(1)(A), a goal of 5% of the appropriated annual funds for Department of Defense procurement and contracting is established for contracts and subcontracts entered into with "small business concerns . . . owned and controlled by socially and economically disadvantaged individuals (as such term is used in Section 8(d) of the Small Business Act (15 U.S.C. 637 (d)). . ." Section 8(d) of the Small Business Act provides in part that "[t]he contractor shall presume that socially and economically disadvantaged individuals include . . . Native Americans"

b. 10 U.S.C. § 2323a ("Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses and certain institutions of higher education"), provides an incentive to the Department of Defense to satisfy the 5% goal within 10 U.S.C. § 2323(a)(1) with utilization of Indian contracts.

c. Pursuant to 10 U.S.C. §§ 2323 and 2323a, Congress has, in essence, extended the Indian preference policy of the Buy Indian Act to the Department of Defense with respect to 5% of annual appropriations.

8. TERO

a. The majority of Indian tribes have enacted a TERO (Tribal Employment Rights Office) Ordinance in order to provide Indian preference in employment and contracting.

b. A majority Indian-owned and controlled company will not only enjoy preference under federal law, but will also be afforded preferences under tribal law.

III. FORMS OF ENTITY ORGANIZATION FOR TRIBAL BUSINESS DEVELOPMENT

A. SECTION 17 TRIBAL CORPORATIONS

1. Pursuant To 25 U.S.C. § 477, A Tribe May Incorporate Pursuant To A Charter Which Is Issued By The Secretary Of The Interior And Ratified By The Governing Body Of The Tribe.
2. The Purpose Of 25 U.S.C. § 477 Is To Allow A Tribe To Have A Business Arm, Separate And Distinct From Tribal Government.
3. One Limitation On Section 17 Tribal Corporations Is The Restriction Of 25 Year Leasing Authority. Tribes May Generally Lease Reservation Lands For 25 Years With A 25 Year Option To Renew Under 25 U.S.C. § 415 And 25 C.F.R. § 162.8. In Addition, Some Tribes Have Leasing Authority For Up To 99 Years Pursuant To 25 C.F.R. § 162.8. By Contrast, A Section 17 Tribal Corporation May Only Lease For Up To 25 Years.
4. One Advantage Of Section 17 Tribal Corporation Leases Is That They Do Not Require BIA Approval. By Contrast, A Lease From The Tribe Under 25 U.S.C. § 415 Requires BIA Approval To Be Effective. Said BIA Approval Constitutes A "Major Federal Action" Within The Meaning Of The National Environmental Policy Act, Thereby Triggering The Oftentimes Lengthy Environmental Compliance Process. Because No BIA Approval Is Involved With Section 17 Tribal Corporation Leases, The NEPA Requirements Are Inapplicable.
5. A Tribe Which Has Incorporated Pursuant To 25 U.S.C. § 477 May Conduct All Business And Exercise All Powers Enumerated Within Its Corporate Charter, Said Business And Powers Typically Being Similar To Those Of A State-Chartered Non-Indian Corporation.

B. TRIBALLY-CHARTERED DEVELOPMENT CORPORATIONS

1. Tribes Can Charter A Corporation Pursuant To Authority In Tribal Constitutions And/Or Pursuant To Its Inherent Sovereignty.
 - a. Some Tribal Constitutions may expressly authorize the formation of Tribal business enterprises and/or corporations.
 - b. In the absence of express Tribal constitutional authority, the governing body of the Tribe may either charter a tribal corporation pursuant to the Tribe's inherent sovereign authority, or may adopt a tribal

corporations ordinance and organize the tribal corporation thereunder pursuant to Articles of Incorporation and Bylaws.

c. In order to facilitate business relationships, the tribal corporation must grant limited waivers of sovereign immunity. Because sovereign immunity flows from the sovereign tribe, the tribal governing body should pass an ordinance or resolution authorizing the subordinate tribal corporation to waive the sovereign immunity of the corporation. The Tribe, and assets of the Tribe other than corporation assets, would not be subject to the waiver of sovereign immunity by the tribal corporation.

C. LIMITED LIABILITY COMPANIES

1. Tribes (Or Tribally-Chartered Business Corporations) May Be Members In Limited Liability Companies Organized With Non-Indians.

2. The Limited Liability Companies May Be Created Under A Tribal Limited Liability Company Ordinance Or Pursuant To State Law.

3. Tribal Majority Ownership And Control May Entitle The Indian-Owned Portion Of The Business Entity To The Benefits Of The Federal Programs Previously Discussed.

4. Although Tribes And Tribal Income Derived From Reservation Lands Are Exempt From Federal Income Tax, Tribal Federal Income Tax Benefits Generally Will Not Accrue To The Non-Indian Income. The Non-Indian Members And Non-Indian Income Of The Limited Liability Company Will Be Subject To Federal Income And Other Customary Taxes.

D. GROUND LEASES

1. The Tribe Or Section 17 Tribal Corporation May Participate In On-Reservation Business Development As A Passive Landlord Pursuant To Ground Leases.

2. As Previously Discussed, Some Tribes May Lease For Up To 99 Years, While Section 17 Tribal Corporations Are Limited To 25 Year Leasing Authority.

3. Typically, Ground Leases Will Be Structured So As To Provide The Tribal Lessor With A Guaranteed Minimum Rent Based On Acreage As Well As A Percentage Rent Based On The Profits Of The Lessee Derived From The Lease And Reservation Lands.

E. OTHER BUSINESS ORGANIZATIONS

1. Tribes May Generally Organize For Business Purposes In The Same Manner As Do Non-tribal Entities.

2. A Tribe Or Section 17 Tribal Corporation May Enter Into Partnerships, Joint Ventures And Other Business Forms.

3. The Preferred Form Of Business Entity Will Depend On The Nature Of The Transaction.

IV. CONCLUSION

A. BY UTILIZING THEIR SOVEREIGN AUTHORITY, INDIAN TRIBES CAN ESTABLISH AND MAINTAIN A STABLE BUSINESS ENVIRONMENT ON INDIAN LANDS TO ATTRACT PRIVATE INVESTORS.

B. THIS CAN BE ACHIEVED BY ADOPTION OF TRIBAL LAWS, SUCH AS A TRIBAL UNIFORM COMMERCIAL CODE, AND STRENGTHENED TRIBAL COURT SYSTEMS.

C. IN ADDITION TO CREATION OF A RESERVATION ENVIRONMENT CONDUCIVE TO FINANCIAL INVESTMENT, TRIBES SHOULD TAKE ADVANTAGE OF FEDERAL LAWS, SUCH AS THE TRIBAL GOVERNMENT TAX STATUS ACT, DESIGNED TO STIMULATE FINANCIAL INVESTMENTS IN INDIAN COUNTRY.

Characteristic	General Partnership (GP)	Limited Partnership (LP)	Limited Liability Company (LLC)	Business Trust	Corporation (C Corp/S Corp)
A. General Concepts					
1. Definition	An association of two or more persons to carry on, as co-owners, a business for a profit, but excluding an association formed under any other statute. A general partnership is not a joint venture.	A partnership formed by two or more persons under the laws of a state or a tribe and having one or more general partners and one or more limited partners.	A limited liability company organized and existing under the state or tribal Limited Liability act and having two or more members.	An unincorporated association created by a trust instrument under which property is held or business or professional activities are carried on by trustees for the beneficial owners of the trust property.	A corporation for profit, which is not a foreign corporation, organized under the state or tribal Business Corporation Act.
2. Designation of owners	General partners	General partners and limited partners	Members	Beneficial owners	Shareholders
3. Managers	General partners	General partners	Managers	Trustee	Directors and officers
4. Persons with authority to bind the organization	General partners	General partners	Members or managers	Trustee	Officers
5. Governing documents	Partnership agreement	Partnership agreement	Operating agreement or articles of organization	Governing instrument, sometimes bylaws	Articles of incorporation, by-laws, and shareholder agreement
B. Formation					
1. Jurisdiction of organization	A GP need take no formal action to organize, nor are there foreign GP registration statutes. Some states have statutes requiring or allowing filing of name certificate	A LP may be organized by filing a certificate of limited partnership under the laws of any jurisdiction.	An LLC may be organized by filing articles of organization.	A Business Trust may need to file its governing instrument to qualify to do business under state or tribal corporation laws. A business trust may organize under most states without taking any formal action.	A corporation is incorporated by filing articles (or certificate) of incorporation with filing officer of a state or tribe.
2. Filed document	None, although some states require the filing of a document identifying partners or statements of authority.	Certificate of limited partnership	Articles of organization	Trust instrument or certificates of trust	Articles of incorporation
3. Effect of filed document	Not applicable, although statements of authority have a	Disclosure	Disclosure and governance	Disclosure and prima facie evidence of those identified as	Principal governing document

Characteristic	General Partnership (GP)	Limited Partnership (LP)	Limited Liability Company (LLC)	Business Trust	Corporation (C Corp/S Corp)
	disclosure effect			authorized to act.	
C. Management and Ownership					
1. Statutorily designated agent	General partner	General partner	Member or Manager	Trustee	Board of directors manages, officers execute as agents.
2. Requirement of filing identifying agents for service of process	No	Yes	Yes	Varies	Yes, and consent of registered agent must accompany filing.
3. Voting power of owners	Unless otherwise agreed, general partners determine ordinary disputes by majority of the partners and extraordinary matters by unanimous vote.	Unless otherwise agreed in writing, all partners (including the limited partners) have the right to consent to: admission of new general partners, the admission of assignees, the compromise of a partner=s obligation to contribute, dissolution of the partnership, and continuation after an event of withdrawal.	Voting, other than provisions requiring majority or unanimous vote may be in any manner on which the members agree.	Established in the governing instrument.	Absent alternative provisions in the articles of incorporation or in voting trusts or voting agreements, each share is entitled to one vote.
4. Permissible participation in management.	General partners have statutory right to participate in management.	General partners may participate in management but limited partners prohibited from participating in control of the business.	Members and/or Managers may participate in management.	Generally beneficial owners may direct the trustee. However, under the <i>control test</i> , applicable in some states, beneficial owners who participate in management may be liable as general partners.	Shareholders participate in management by electing representative directors to determine policy and appoint officers as agents.
5. Ability of owners to transact business with the organization.	A general partner=s rights as creditor may be subordinated to those of non-partner creditors, at least on dissolution.	Partners may transact business with the partnership, and will have the same rights and obligations as third parties. On dissolution, creditors who are partners share equally with non-partner creditors.	Members and Managers may transact business with the LLC, and subject to other applicable law, have the same rights and duties as persons who are not managers or members. On dissolution, creditors	There are no provisions under Colorado law, but, presumably, rules against fiduciary self-dealing would interfere with transactions between the trustee and the trust.	While there are no prohibitions on transactions between the corporation and the shareholder, directors may only transact business with the corporation after disclosure and approval or if the transaction is fair to the corporation.

Characteristic	General Partnership (GP)	Limited Partnership (LP)	Limited Liability Company (LLC)	Business Trust	Corporation (C Corp/S Corp)
			who are members share equally with non-member creditors.		
6. Liability of owners for obligations of the organization	General partners are jointly and severally liable for the obligations of the GP.	General partners are jointly and severally liable for the obligations of the LP. Limited partners are not personally liable for the obligations of the LP.	Members and managers are not liable for any debt, obligation, or liability of the LLC. The doctrine of <i>piercing the corporate veil</i> applies to an LLC.	Beneficial owners are generally not liable.	None, except as may arise through piercing the corporate veil (disregarding the corporate entity) and as a shareholder is liability for shareholder 's own acts.
7. Liability of owners to the organization and other owners	A general partner is liable for breaches of fiduciary duties and to contribute to obligations and indemnify other partners.	A general partner has the same liability as in a GP. Limited and general are also liable for unmade contributions and for certain rightful and wrongful returns of contributions.	Managers generally are liable for breaches of fiduciary duties. Members are liable to make their agreed contributions, and for certain rightful and wrongful returns of capital.	Beneficial owners have the same liabilities as shareholders in private corporations. Except as provided in the governing instrument or trust document, a beneficial owner is obligated to perform any promise to contribute or contribute cash equal to the contribution not made.	Shareholders are liable to the corporation and its creditors to pay the consideration for which shares are issued. Directors are liable for wrongful distributions and entitled to contribution from shareholders knowing that the distribution was wrongful.
8. Piercing the <i>corporate veil</i>	The courts may reach the assets of general partners directly, so there is no need to <i>pierce the corporate veil</i> .	With respect to limited partners, courts have other means of imposing personal liability on limited partners that participate in management.	The doctrine of piercing the corporate veil applies to LLCs.	Generally not applied to business trusts. Beneficial owners may be liable if they participate in management.	Generally under common law the corporate entity may be disregarded for several reasons.
9. Duties of owners	A general partner has a duty to account for profits made from the GP=s business without the consent of the other partners, the duty to render information with respect to the partnership business, and to refrain from engaging in a grossly negligent or reckless behavior or a	A general partner in an LP has duties similar to those owed by a general partners in a GP. A limited partner may have a duty not to profit on confidential information.	Manager=s duties are similar to the duties owed by a director of a corporation (an obligation to perform duties in good faith and with such care as an ordinarily prudent person would use in like circumstances).	Trustees have fiduciary duties of care, loyalty and candor to the beneficial owners.	

Characteristic	General Partnership (GP)	Limited Partnership (LP)	Limited Liability Company (LLC)	Business Trust	Corporation (C Corp/S Corp)
	knowing violation of the law.				
D. Nature and Transferability of Ownership Interests					
1. Permissible contribution	A general partner may contribute services and property.	A general or limited partner may contribute cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services.	A member may contribute cash, property, promissory notes, services performed, or promises to contribute property or perform services in the future.	No contributions are required if property is conveyed by grantors. Generally, property or services are permissible.	Tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, and other securities of the corporation, but a promissory note of subscriber or affiliate must be negotiable, recourse, and secured by collateral, other than the shares, having fair market value at least equal to the principal amount of the note.
2. Types of owners	There are no limitations on the ownership of an interest in a GP, but there is a question of the ownership of GP interests by incompetents, minors and corporations.	There are no limitations on the ownership of interest (general or limited) in an LP.	There are no limitations of who may be a member, but managers must be natural persons.	No limitations.	No limitation for a C Corporation. — Nonresident aliens and entities other than certain trusts and estates may not own interests in an S corporation.
3. Multiple classes of ownership and default sharing rules	The partners in a GP may make any financial arrangements they desire, but, in the absence of an agreement, the general partners will share on a <i>per capita</i> basis.	The partners in an LP can make any financial arrangement they desire, but, in the absence of an agreement, the partners will share in distributions <i>in proportion to the value of contributions</i> .	The members can make any financial arrangement they desire. In the absence of an agreement, members share in proportion to their contributions.	A business trust may have different classes or series with different rights.	A C corporation may have different classes of stock with different voting rights. — An S corporation is prohibited from having more than one class of stock, but it may have voting and nonvoting stock.
4. Transferability of interests	A partner's interest may be transferred,	The interest of a general or limited	A membership interest is freely	Beneficial ownership interests are freely	Shares are freely transferable, subject

Characteristic	General Partnership (GP)	Limited Partnership (LP)	Limited Liability Company (LLC)	Business Trust	Corporation (C Corp/S Corp)
	but the assignee will not become a partner without the consent of the remaining partners.	partner is transferable, but the assignee may only be admitted as a substituted partner as provided in the partnership agreement or with the consent of all partners.	transferable, but the assignee may not be admitted as a member without the unanimous consent of the other members.	transferable.	to restrictions contained in the articles of incorporation, bylaws, or a shareholder agreement.

E. Period of Duration

1. Period of Duration	Unless otherwise agreed, a GP does not have a period of duration.	While a LP need not have a definite term or undertaking, a limited partner can only be <i>locked in</i> if there is specified, in writing in the partnership agreement, a definite time or event upon which the limited partner may withdraw.	LLCs are required to have a term, many of which cannot exceed 30 years.	Business trusts have perpetual duration unless a shorter period is provided.	A corporation has perpetual duration unless limited in the articles of incorporation.
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F. Dissolution

1. Effect of dissociation of an owner on the continuity of the organization for state or tribal law purposes.	A GP will dissolve upon the <i>express will of any partner, or the expulsion, bankruptcy, or death of any partner.</i>	An LP will dissolve on the withdrawal of a general partner, unless there is at least one remaining general partner who continues the business under a written provision of partnership agreement or unless all partners agree.	An LLC will dissolve upon the <i>death, retirement, resignation, expulsion, bankruptcy, dissolution of a member or any other event which terminates the continued membership of a member</i> unless there are two remaining, and all the remaining members agree to continue the business under a right to do so contained in the articles of organization within 90 days of the dissolution.	The discussion of a beneficial owner (through redemption or otherwise) will not affect the continuity of the trust.	Shares may be freely traded, redeemed or issued without effecting a dissolution of the corporation.
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G. Most Beneficial Uses

Characteristic	General Partnership (GP)	Limited Partnership (LP)	Limited Liability Company (LLC)	Business Trust	Corporation (C Corp/S Corp)
1. Business that may be conducted	A GP may conduct any lawful business. Partnerships have been used most often in real estate ventures, service businesses (particularly professional services), and general trade. A GP is the <i>default entity</i> if two or more persons co-own any form of business but have not consensually created another form of entity.	An LP may do anything a GP can do except as otherwise limited. Uses of LPs tend to be more heavily concentrated in real estate, finance and insurance, services, wholesale and retail trade, and mineral extraction.	An LLC may conduct any business that an LP may lawfully conduct, and may not conduct any business that is prohibited by law to such partnership.	Business trusts have been used extensively in bundling investments (REITs, REMICs, asset backed securities), family owned businesses, and other businesses.	Any lawful business.
2. Assets that may be owned	Generally a GP is not limited in its ownership of property and may own property in its own name.	Same as GP.	An LLC is expressly authorized to hold real or personal property.	A business trust may own any property, although it may not engage in banking and insurance.	<p>A C corporation may own any type of property. If a C corporation accumulates earnings beyond reasonable needs of business or owns assets which produce personal holding company income (<i>e.g.</i>, dividends, interest, rents, and royalties), it may be subject to penalty taxes.</p> <p>—</p> <p>An S corporation may own any type of property. If S corporation has earnings and profits from prior C year (<i>CEP</i>) and passive investment income in excess of 25% of gross receipts, its excess passive investment is subject to 35% penalty tax. If these conditions exist for 3 consecutive years, S election terminates at beginning of fourth</p>

Characteristic	General Partnership (GP)	Limited Partnership (LP)	Limited Liability Company (LLC)	Business Trust	Corporation (C Corp/S Corp)
					year.
H. Organizational Taxation Issues					
1. Classification for tax purposes	A GP will be almost always be treated as a partnership for federal tax purposes.	An LP will generally be treated as a partnership for federal tax purposes, but is subject to being classified as an association taxable as a corporation.	A Colorado LLC has the choice to be treated as a partnership or as a corporation.	Business trusts may be classified as partnership, association, grantor trust, REMIC, REIT, or RIC.	A C corporation is taxed as corporation. — A domestic corporation meeting certain qualifications may elect to be an S corporation.
2. Taxation of owners on receipt of an interest in the organization in exchange for property.	A partner is generally not taxed on the contribution of property to a partnership. There may be taxation if the liabilities on contributed property are greater than the contributor's basis in the property.	An LP, an LLC, or a business trust may be treated either as a partnership or as an association taxable as a corporation for federal income tax purposes. Depending on the treatment accorded, the rules applicable to either general partnerships or to corporations will apply.			No gain or loss is recognized on the contribution of appreciated or depreciated property for stock so long as contributors own 80% of stock after contribution, provided that fair market value of property contributed is not less than fair market value of stock received.
3. Taxation of owners on receipt of an interest in exchange for services.	If the contributor is given a capital account in the partnership on the contribution of services, the contributor will be taxed on the value of that interest. If a partner is given a share of the profits in exchange for the contribution of services, the contributor will not have income in most situations.	An LP, an LLC, or, generally, a business trust will follow the rules applicable to either partnerships or corporations depending on how it is classified for tax purposes.			Unless the stock is subject to a substantial risk of forfeiture, its value will be included in income when it is received.
4. Taxation of the organization on receipt of property	A GP will not recognize gain on the receipt of property in exchange for an interest.	An LP, an LLC, or, generally, a business trust will follow the rules applicable to either partnerships or corporations depending on how it is classified for tax purposes.			A corporation will not recognize gain on the receipt.

Characteristic	General Partnership (GP)	Limited Partnership (LP)	Limited Liability Company (LLC)	Business Trust	Corporation (C Corp/S Corp)
I. Operational Taxation Issues					
1. Taxation of the organization	Not taxed at the organization level.	An LP, an LLC or a business trust may be classified as a partnership, an association taxable as corporation, or, in the case of a business trusts, as a grantor trust, REIT or REMIC. If taxed as a partnership, the rules applicable to partnerships will apply. Similarly, if treated as an association, the corporate rules will apply. If a grantor trust, the grantor will include the income, loss, deductions and credits of the trust. If treated as a REIT or REMIC, the income is passed through to the owners in accordance with the particular rules applicable to REITs or REMICs as the case may be.			A C corporation is subject to tax on its taxable income at the organization level. — An S corporation is generally not subject to tax. However, an S corporation must pay a tax at the highest rate imposed on corporations, if, for example, it was previously a C corporation, with respect to net recognized built-in gains or passive investment income.
2. Ability of owners to use losses of the organization	Partners are entitled to use the losses of the GP to offset other income as limited by basis, at-risk rules, and passive loss rules.	The losses of an LP treated as a partnership are passed through to the partners. The losses of an LP treated as an association taxable as a corporation do not pass through for federal tax purposes. A limited partner in an LP is more likely to be subject to the at-risk and passive loss rules than a general partner in either a GP or an LP.	The losses of an LLC treated as a partnership are passed through to the members. The losses of an LLC treated as an association taxable as a corporation do not pass through for federal tax purposes. Members of an LLC are more likely to be limited by the at-risk rules, but may have an easier time avoiding the passive loss rules.	The losses of a business trust treated as a partnership are passed through to the owners. The losses of a business trust treated as an association taxable as a corporation do not pass through. The losses of a business trust treated as a grantor trust pass through to the owners. Net losses of a business trust treated as a REMIC may be deducted by the holder of the residual interest.	Shareholders of a C corporation may not deduct the corporation=s operating losses. — A shareholder of an S corporation may deduct the corporation=s operating losses to extent the shareholder has sufficient tax basis for stock or debt and amount at risk. In addition, the passive losses may apply to the shareholder.



Micro-enterprise Development

- Why Micro-lending?
 - To increase home-based incomes.
 - ✓ Lack of employment opportunities.
 - Banks may not lend.
 - ✓ loans to risky.
 - ✓ loans to small.
 - Lack of technical assistance.
 - May be culturally relevant.



Micro-enterprise Development

□ What kinds of Businesses?

- Very small in scale.
 - ✓ arts & crafts.
 - ✓ prepare & serve food.
 - ✓ repair homes & automobiles.
 - ✓ provide music/dance services.
 - ✓ provide cultural awareness services.
- May not operate year-round.

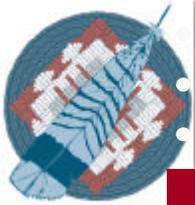


Micro-enterprise Development

□ Defining Priorities.

● What can you do?

- ✓ Know your community/organization capacities.



Micro-enterprise Development

- Involve stakeholders.
 - Community member needs.
 - ✓ Do they want this?
 - Financial intermediary needs/risks.
 - ✓ How can banks help?
 - Tribal Government.
 - ✓ Will you support us?



Micro-enterprise Development

- Conducting a Needs Assessment.
 - Identify Cultural Distinctions.
 - ✓ Is this relevant here?
 - Identify Economic/Demographic Distinctions.
 - ✓ How is our economy?
 - ✓ How isolated/rural are we?



Micro-enterprise Development

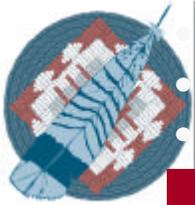
- Identify your objectives.
 - To increase household income.
 - To create business owners.
 - To provide business planning services.
 - To provide capital when needed.
 - To sustain businesses past one year.



Micro-enterprise Development

□ What type of organization?

- IRS-determined 501(c)(3) non-profit corporation.
- 100% resident-controlled board of directors.
- Can be established within your tribe.
 - ✓ Through Resource Development.
 - ✓ Through your Tribal Development Corporation.



Micro-enterprise Development

- Who can take leadership roles?
 - Any community/tribal member who want's to see change.
 - Your tribally-elected public officials.
 - Your local bank officers.
 - Your tribal housing authority.



Micro-enterprise Development

- Mobilizing support for your project.
 - Local tribal members that want to see change.
 - Local banks looking to satisfy CRA requirements.
 - Local tribal, or community-based, colleges.
 - Establish Board of Directors with diverse backgrounds.



Micro-enterprise Development

□ Issues facing development.

- Finding Board & Staff members that:
 - ✓ know how to develop loan underwriting standards.
 - ✓ Know how to effectively develop solid business plans.
 - ✓ giving clients incentives to pay on time.



Micro-enterprise Development

- ❑ Overcoming development issues.
 - Asking local bank officers to join the BOD.
 - Seek technical assistance from:
 - ✓ foundations.
 - ✓ tribal business planners.
 - ✓ non-profit development corporations.
 - Use tribal court system to get repayments.
 - If no tribal court, then use credit bureaus.



Micro-enterprise Development

□ Funding.

- SEC was funded by foundation support.
- Fee-for-service income.
- Interest Income from the loans.
- Tribal Development Corporations (TDC's).
- HUD economic development programs.



Micro-enterprise Development

□ Program Implementation

- Getting a high percentage to stay in business.
- Getting clients to pay on time.

□ Accomplished By

- Solid Business Planning.
 - ✓ focusing on the idea/opportunity at hand.
- Enforce collections.



Micro-enterprise Development

- ❑ How are results tracked & measured?
 - Keeping the delinquency rate below 10%
 - ✓ allow seasonal repayment schedules.
 - Keeping the default rate below 5%
- ❑ What is the impact on the community?
 - Tribal members can:
 - ✓ earn incomes at home.
 - ✓ can come to you with ideas.
 - ✓ provide for their family needs.



Micro-enterprise Development

- What were some surprising results:
 - Peer Group Concept only works when everyone in the circle is held accountable to pay on time.
 - Youth borrowers pay early, or on time, and in full with their loans.
 - ✓ Data suggests they take financial obligations more seriously than other SEC clients.
 - Income earning dis-incentives under AFDC.



Micro-enterprise Development

□ Three important lessons:

- Always enforce collections.
 - ✓ It helps to have a tribal court.
 - ✓ Or, use your local credit bureau.
- Always focus on developing a realistic business plan that focuses on the feasibility of the business.
- Try to secure long-term financing through a TDC, fee-for-service income, or interest.



Micro-enterprise Development

- How do you incorporate lessons?
 - We work with clients to get payments back in an affordable manner.
 - Automated the Business Planning Process.
 - Referring clients to the SBA for loan requests greater than \$2,000.
 - We perform credit checks in the loan application process.



Micro-enterprise Development

- What might be done differently?
 - Perform credit checks with loan applications.
 - ✓ Reduces the risk of the loan.
 - ✓ Provide counseling to applicants that need it.
 - Pay for a small & reasonable stipend to BOD's for their monthly meeting (i.e. \$50)
 - ✓ cover their cost in time for attendance.
 - Staff organization adequately **early.**



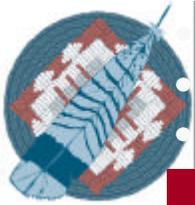
Micro-enterprise Development

- ❑ Can this be replicated elsewhere?
 - Yes, be sure to ask the tribal community if this is needed.
 - Be sure to perform a feasibility study.
 - Be sure to get skilled BOD's from the community.



Micro-enterprise Development

- ❑ Factors unique to location.
 - The more rural, isolated, and larger land-base your reservation has, the more costly it will be to establish a center.
- ❑ Factors critical to effective replication.
 - Having a steady stream of adequate funding.



Micro-enterprise Development

❑ Elements that limit ability to replicate.

- Lack of demand for small home-based business capital, business planning services, and desire to increase personal incomes.
 - ✓ You may be wasting your resources trying to establish a center without adequate demand.
- Lack of skilled BOD's & Staff to operate the center efficiently & successfully.



Some Final Thoughts

- You don't have to lose your culture to do this.
- Economic Development can start within the home.
 - Doesn't have to be one huge industry.
- Fostering an entrepreneurial spirit within the community.
- This is for youth, adults, and senior citizens.



The Navajo Nation



9

5



9

6



Overall Economic Development Program



I. Purpose and Objectives of the
Division of Economic Development

A. Purpose

Division of Economic Development is one of the 14 Offices and Divisions within the executive Branch of the Navajo Nation Government. The main purpose of this Division is to create an environment that is conducive to promoting and developing businesses in the commercial, tourism, industrial and other sectors of the Navajo Nation economy, thereby creating jobs and business opportunities. The organizational units of the tribal government are shown in Figure 1, the organizational chart of the

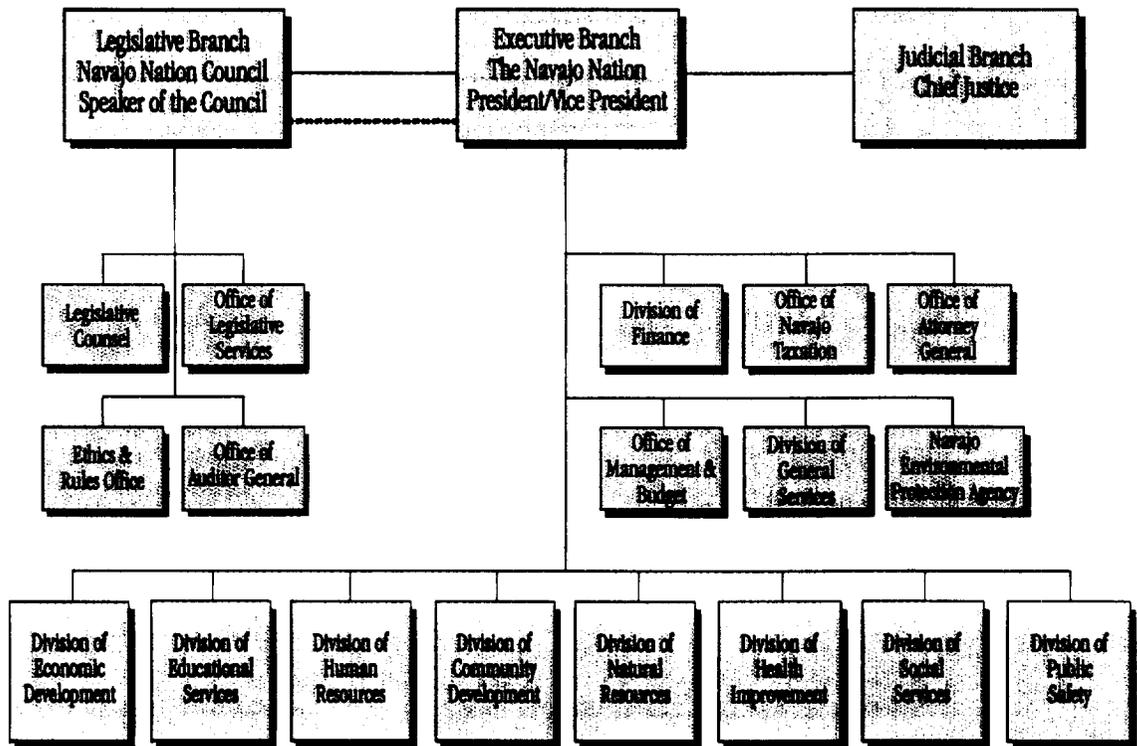
Navajo Nation. The organizational units and areas of responsibilities of the Division of Economic Development are depicted in Figure 2, the organizational chart of the division.

B. Objectives

To carry out its purposes, the Division has established the following objectives:

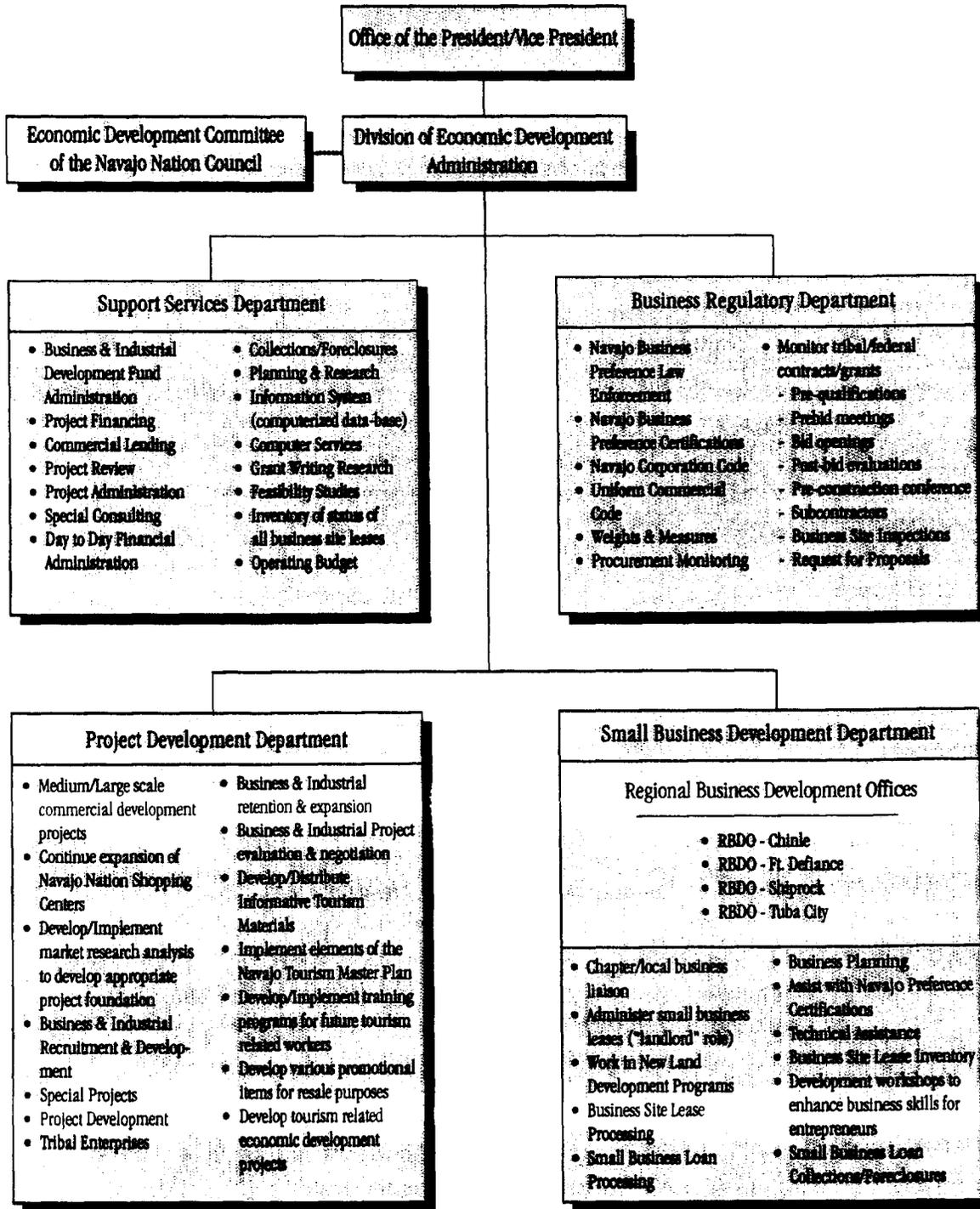
1. To promote and create employment and business opportunities in the commercial, industrial, tourism and other private sectors of the Navajo economy for Navajo individuals residing on or near the Navajo Nation;

Figure 1
The Navajo Nation
Fiscal Year 1996 Organizational Chart



SOURCE: Office of Management & Budget, Division of Finance, The Navajo Nation

Figure 2
Division Economic Development
Fiscal Year 1996 Organizational Chart



NOTE: Kayenta Regional Business Development Office merged with Tuba City Office in May 1, 1995.
Crownpoint Regional Business Development Office merged with Ft. Defiance & Shiprock Office in May 1, 1996.

SOURCE: Division of Economic Development, The Navajo Nation

2. To recommend the enactment, amendment, or rescission of laws and promulgation and/or reduction of regulations to enhance economic development on the Navajo Nation and to create a positive business environment;
3. To maintain a decentralized network of business development offices in the primary growth centers of the Navajo Nation in order to provide Navajo individuals and organizations with technical assistance in developing business plans, feasibility studies, financing, planning, loan and grant packaging, business site lease processing, Business Preference Certification, and industrial park management;
4. To develop and manage a comprehensive financing program to expand or develop new economic enterprises for the Navajo Nation.

C. Authority and Responsibility of the Division

The general authorities and responsibilities of the Division are as follows:

1. Manage all funds identified for economic development in a fiscally responsible manner and administer the Navajo Nation Business and Industrial Development Fund and Micro-Enterprise Lending Fund pursuant to the approved Fund Management Plans;
2. Identify and recommend changes in the laws and regulations of the Navajo Nation or other government agencies to reduce or eliminate barriers to entry and expansion faced by new and growing business enterprises and to eliminate regulatory and jurisdictional conflicts which inhibit the location of major industries within the Navajo Nation;

3. Manage existing and develop industrial parks, business sites, and other lands dedicated to economic development;
4. Solicit proposals from outside businesses and industries to locate facilities and operations in Navajo Nation industrial parks and to assist them in implementing proposed projects;
5. Collect, maintain, analyze and disseminate information relevant to business and economic activity on the Navajo Nation (such as socio-economic data, labor market data, land use data, etc.) and conduct economic feasibility studies and other technical studies to enhance economic development;
6. Propose, plan, and undertake economic development projects by investing resources in ventures that adds to Navajo Nation assets and provide opportunities for related business development and employment, including, but not limited to;
 - a. expanding, diversifying, and privatizing the operations of Navajo Nation Enterprises or other Navajo Nation owned business entities;
 - b. developing tourism facilities and services to capture a major share of the tourism market of the southwest;
 - c. improving industrial parks and related infrastructure to increase the attractiveness and suitability of the Navajo Nation as a place to locate business; and
 - d. developing facilities and services to enhance commercial development;

7. Seek federal, state, and conventional financing for commercial, industrial, and tourism projects and develop other economic programs to enhance economic activity within the Navajo Nation;
8. Execute such directives as may be directed or authorized by the appropriate authority of the Navajo Nation consistent with Navajo and federal law; and
9. Assist Navajo Nation Chapters in the execution of any and all economic development functions and authorities which are properly delegated.

D. Personnel and Organization

There are five Departments under the Division to carry out the above specific functions. They are:

1. Administration Department
2. Project Development Department
3. Business Regulatory Department
4. Support Services Department; and
5. Small Business Development Department.

Also, the Division has four Regional Business Development Offices (RBDO's) - one at each Agency Headquarters - to carry out the functions of the Division. These RBDO's are supervised by the Small Business Development Department.

In addition, there are three quasi-enterprises which are administratively seen by the Division. Their functions have been briefly described below:

1. The Navajo Times

The Navajo Times is the largest Native American owned newspaper in the world with a paid circulation of 17,400. This weekly publication is circulated worldwide and 18,200 issues are printed each Thursday morning from its office in Window Rock, Arizona. The Navajo Times began as a

newsletter in 1959 and became a weekly tabloid in 1960. It's 12 member full-time staff are all Navajo and they take great pride in publishing "The Newspaper of the Navajo People". The Navajo Times has won numerous awards for its news and feature articles, editorial pages, photography, design and layout and printing. The Navajo Times is a member of the Native American Journalists Association, the Arizona Newspapers Association and the National Newspaper Association. It is also a successful quasi-enterprise within the Division of Economic Development.

2. The Navajo Wool Marketing Industry (The Navajo Wool Growers' Marketing Program)

The Navajo Wool Marketing Industry (NWMI) was organized in 1971 by the Navajo Tribal Council as the Navajo Wool Grower's Marketing Program for the purpose of providing a "fair" price to the Navajo wool producers. In 1978 its purpose was extended to establishing a marketing apparatus for the development of wool and mohair resources.

Current Plan of Operation of the Navajo Wool Marketing Industry (NWMI) was adopted in 1982 by Navajo Tribal Resolution ACN-142-82, which established the NWMI's objectives as:

- a. To insure the receipt of fair prices for wool and mohair produced by sheep and goat raisers of the Navajo Tribe.
- b. To produce sufficient revenue to the Navajo Tribe to continue this program in a self-sustaining basis.
- c. To establish a marketing apparatus for the future development of Navajo Wool and Mohair Resources.
- d. To diversify into other profit-making industries that are economically feasible.

Funding for this program, as well as its very existence, has been facing uncertainty since last few years mainly because this program has not been able to generate sufficient revenue to the Navajo Nation coffers. Nonetheless, the program has been providing an important service to the Navajo people by buying wool and mohair from them at better market prices. With cooperation from Four Corners Rural Technology Development Project, this program is exploring other alternatives to provide even better services to the Navajo people as well as to turn itself into a profitable entity.

3. The Navajo Nation Shopping Centers

The Navajo Nation Shopping Centers (NNSC) is a quasi-independent organization under the Division of Economic Development. Quite often this organization is mistaken for some shopping center because of its name. In reality, this organization has been set up to act as a landlord and manager for various shopping centers - nine of them at the moment - established by the Navajo Nation Government. In 1995, the Division also entrusted the NNSC to run a convenience store in Sanostee acquired by the Division till a Navajo entrepreneur is found. Thus, at the moment, NNSC is not only a landlord and a manager, but also a store operator.

D. Background on the Navajo Economy

For many years, the Navajo government has received federal financial and technical assistance to provide economic, health, education, and social welfare services. Federal financial support provides jobs along with service delivery to the Navajo People.

In the past, federal policies on Indian economic development placed tribal governments at the center of business and economic growth. Tribal governments set the stage for economic activity on reservations, acting as the controlling managers.

As such, private sector development was minimized and businesses were burdened with federal rules and regulations and tribal control, thus making business growth minimal. Such strategies, with some notable exceptions, were not effective in producing sustainable growth or building economic self-sufficiency.

Today, the Navajo Tribal Government is making great strides toward decentralizing its business development efforts. For example, the Navajo Nation has established four Regional Business Development Offices. Each office lays the groundwork and provides technical assistance to individuals interested in owning new businesses or expanding existing operations. In addition, DED has implemented an economic growth strategy that designates specific sites on the Navajo reservation as "primary growth centers" and "secondary growth centers", concentrating its economic development activities at these locations to improve the quality of life of the Navajo people by providing new business services. With this strategy, the Navajo Nation is moving away from government-controlled business development toward decentralized private sector development efforts.

The current emphasis in Navajo economic development philosophy is to promote private sector development by creating a stable and viable economy in which Navajo people will have an opportunity for a decent standard of living. This philosophy is based upon the premise that the Navajo people desire, as individuals and as a Nation, to achieve economic self-sufficiency by utilizing land, natural resources, capital, and human resources. This long-term economic goal will be achieved through the growth of the private sector with appropriate, but limited tribal involvement in the development process. The heavy emphasis on private sector development reflects the increasing desire of Navajo individuals to become involved with business activities and to reduce dependency on the federal and tribal governments.

E. Navajo Private Sector Development Policies and Strategies

The concept of the Navajo Private Sector Development Policies and Strategies is to coordinate tribal, federal, and state efforts in developing private businesses on the Navajo reservation by utilizing existing resources in pursuing commercial, small business, tourism, and industrial development activities. Both public and private sector investments are needed to harmonize total development efforts.

The following economic strategies are set forth:

1. The Navajo Government shall encourage and promote private sector development of the Navajo economy by functioning as a facilitator, assistance agent, and regulator, rather than as a business manager.
2. The Navajo Government shall encourage, promote, and generate the development of additional sources of revenue and maximize the use of Navajo Nation financial investment resources for Navajo business and industrial development projects.
3. The Navajo Government shall revise its business leasing system and create a comprehensive real estate program allowing for equitable business investment and ownership.
4. The Navajo Government shall establish financial assistance programs to encourage and promote Navajo small business development.

5. The Navajo Government shall promote the establishment of livestock, agricultural, and handicrafts cooperatives.
6. The Navajo Government shall encourage, promote, and create businesses, as well as industrial and tourism development activities.
7. The Navajo Government shall encourage educational institutions to incorporate programs on economic development in order to enhance the capabilities of the Navajo people and the economic growth of the Navajo Nation.

F. Project Priority List

The Economic Development Committee of the Navajo Nation Council established a priority list of major economic development projects to be pursued in the next two years by the Division of Economic Development, as listed in Table 1. This list of projects is primarily aimed at illustrating the priorities of the DED, with the hope of obtaining development funds from federal sources.

Table 1
1997 Project Funding List
Division of Economic Development

Rank	Project Name	Estimated Cost	Project Location
1.	Karigan Infrastructure	\$8,531,200	St. Michaels, AZ
2.	NAPI Frozen Potato Plant	68,500,000	Farmington, NM
3.	Dilkon Shopping Center	4,400,000	Dilkon, AZ
4.	New Lands Shopping Center	4,400,000	Sanders, AZ
5.	Monument Valley Infrastructure	4,664,000	Ojato, AZ
6.	Churchrock Industrial Site	1,900,000	Gallup, NM
7.	Ganado Shopping Center	2,597,400	Ganado, AZ
8.	Window Rock Re-development	250,000	Window Rock, AZ
9.	I-40 Travel Center Oasis	585,000	Navajo, AZ
10.	Crownpoint Community/Economic Development Infrastructure	3,050,000	Crownpoint, NM
11.	Montezuma Creek Shopping Center	2,064,600	Montezuma Creek, UT
12.	Antelope Point	60,000,000	LeChee, AZ
13.	Shiprock RV Park	300,000	Shiprock, NM
14.	Monument Valley Visitor Center	500,000	Monument Valley, UT
15.	Ganado/Burnside Hotel	500,000	Ganado/Burnside, AZ
16.	ITEA Byways & Rest Areas	1,500,000	Ft. Defiance Plateau, AZ
17.	NFPI Re-development	450,000	Navajo, NM
18.	UST Clean-up	1,600,000	5 Sites Reservation Wide
19.	Cameron Visitor Center	600,000	Cameron, AZ
20.	Sheepsprings Visitor Center	500,000	Sheepsprings, NM
21.	Ft. Wingate - Phase I	14,000,000	Ft. Wingate, NM
22.	Chinle Vendor Village	675,000	Chinle, AZ
23.	Ft. Defiance Industrial Site	2,000,000	Ft. Defiance, AZ
24.	Chinle Industrial Site	2,000,000	Chinle, AZ
25.	Shonto Commercial Tract	150,000	Shonto, AZ
26.	Jeddito Commercial Tract	150,000	Jeddito, AZ
27.	DINE' Aircraft Accessories	125,000	Kinlichee, AZ
28.	Canoncito Comprehensive Development	\$150,000	Canoncito, NM
TOTAL:		\$186,142,200	

SOURCE: Division of Economic Development, The Navajo Nation

Rural Development

Creating New Opportunity for Rural America

Rural America abounds with promise. USDA Rural Development is helping fulfill the promise and overcome the problems of the nation's rural heartland. Rural Development was created in 1994 when rural economic and community development programs that had been splintered among various USDA agencies were forged into a new mission area. With this action, the Farmers Home Administration, Rural Development Administration, Rural Electrification Administration and Agricultural Cooperative Service passed into history, but their tradition of service to America is being carried on by USDA Rural Development.

How USDA Helps Rural Americans

In thousands of communities across the nation, rural people are struggling to pump new life into economies locked into a downward spiral of job losses, out-migration and diminishing services. To reverse this trend, USDA Rural Development is forging new partnerships with rural communities, funding projects that bring housing, community facilities, utilities and other services to rural areas. USDA also provides technical assistance and financial backing for rural businesses and cooperatives to create quality jobs in rural areas.

The stakes in this battle are high. More than 53 million people live in rural America, nearly 16 percent of whom earn wages below the Federal poverty level. There are 2.5 million substandard housing units in rural areas, compared to 2.4 million in cities and 1.2 million in suburbs. More than 418,000 rural households still lack running water.

Each year, USDA Rural Development programs create or preserve tens of thousands of rural jobs and create or improve more than 65,000 units of quality rural housing. To multiply the impact of its programs, USDA Rural Development is working with State, local and Indian tribal governments, as well as private and nonprofit organizations and user-owned cooperatives.

Rural Development programs are administered through three services: the Rural Utilities Service (RUS), the Rural Business-Cooperative Service (RBS) and the Rural Housing Service (RHS). Programs and services are provided through USDA Rural Development's network of State and local offices. Following are overviews of each of the three Rural Development services and their primary program areas.

Rural Housing Service (RHS)

Decent, affordable housing is indispensable to vibrant rural communities. RHS programs help finance new or improved housing for over 65,000 moderate-, low- and very-low-income families each year. No rural community can thrive without adequate community facilities, so RHS programs also help rural communities finance, construct, enlarge or improve fire stations, libraries, hospitals and medical clinics, industrial parks, and other community facilities.

RHS is playing a key role in the Clinton Administration's National Partnership for Homeownership initiative, the goal of which is to help 8 million new families own homes by the year 2000. A major focus of this effort is to help more rural women become homeowners.

Major RHS loan programs include: Home Ownership Loans, which help low-income households purchase, construct, repair, or relocate homes; Home Improvement and Repair Loans and Grants, which enable very-low-income rural homeowners to remove health and safety hazards from their homes and to make homes accessible for people with disabilities; Self-Help Housing Loans, which enable groups of six to ten low-income families to build their own homes by providing materials and the skilled labor they cannot furnish themselves; Rural Rental Housing Loans, which finance construction of rental housing for low- and moderate-income individuals and families and cooperative housing for elderly or disabled persons; Rental Assistance, which enables low-income tenants to pay no more than 30 percent of their income for rent; and Community Facilities Direct Loans, Loan Guarantees and Grants, which help construct, enlarge, extend, or otherwise improve community facilities providing essential services in rural areas and towns.

Rural Utilities Service (RUS)

The Rural Utilities Service helps to improve the quality of life in rural America through a variety of loan and grant programs for electric energy, telecommunications and water and waste disposal projects. RUS programs leverage scarce Federal funds with private capital for investing in rural infrastructure, technology and development of human resources.

RUS electric and telecommunications programs provide financial aid through direct and guaranteed loans and through grants for distance learning and telemedicine programs.

The distance learning and telemedicine program of RUS is helping to develop the Information Superhighway in rural America. Since 1993, RUS has provided 142 grants totaling \$41.5 million to rural schools, hospitals and medical clinics in 39 States and one U.S. territory. These grants jump-start the development and deployment of advanced telecommunications services throughout rural America, bringing the latest information and care to rural education and health service providers.

RUS loans and grants help develop water and waste disposal systems (including solid waste disposal and storm drainage) in rural areas and towns with a population of 10,000 or less. Grants also provide technical assistance and training, solid waste management and emergency water assistance. The RUS on-site technical assistance program helps to ensure the cost-effective operation of rural water systems. The Water and Waste Disposal program is placing strong emphasis on Water 2000, a Clinton Administration initiative to provide safe drinking water in more than 400,000 households (still lacking indoor water) by the beginning of the next century.

By providing infrastructure for rural areas, RUS is helping residents gain access to new and advanced services and job opportunities. By stimulating local economies, RUS is helping give rural residents an opportunity to compete regionally, nationally and globally.

Rural Business-Cooperative Service (RBS)

Promoting a dynamic business environment in rural America is the goal of the Rural Business-Cooperative Service. RBS works in partnership with the private sector and community-based organizations to provide financial assistance and business planning. It also provides technical assistance to rural businesses and cooperatives, conducts research into rural economic issues, and provides cooperative educational materials to the public.

RBS Business Programs help fund projects that create or preserve quality jobs and/or promote a clean rural environment. The financial resources of RBS are often leveraged with those of other public and private credit source lenders to meet business and credit needs in under-served areas. Recipients of these programs may include individuals, corporations, partnerships, cooperatives, public bodies, nonprofit corporations, Indian tribes and private companies. RBS Business Programs include Business and Industry (B&I) Guarantee Loans, Intermediary Relending Program Loans, Rural Business Enterprise Grants, Rural Economic Development Loans and Grants, and Rural Cooperative Development Grants.

The RBS Cooperative Services program helps rural residents form new cooperative businesses and improve the operations of existing cooperatives (user-owned businesses). To accomplish this, Cooperative Services provides technical assistance to cooperatives, conducts cooperative-related research, and produces educational materials that promote

public understanding of cooperatives.

Other Rural Development program areas include:

Office of Community Development — The Office of Community Development administers the Empowerment Zones and Enterprise Communities (EZ/EC) program, a Presidential initiative of the Clinton Administration designed to provide economically depressed rural areas and communities with real opportunities for growth and revitalization. Its mission: to create self-sustaining, long-term economic development in areas of pervasive poverty, unemployment, and general distress, and to demonstrate how distressed communities can achieve self-sufficiency through innovative and comprehensive strategic plans developed and implemented by alliances among private, public, and nonprofit entities.

AARC Corporation— The Alternative Agricultural Research and Commercialization (AARC) Corporation encourages new research and assists with the commercialization of new, non-food uses of agricultural commodities. AARC's goal is to create jobs, enhance economic development of rural communities and diversify markets for raw agricultural and forestry products and animal by-products.

1890, 1862 and 1994 Land-Grant Institutions — This initiative is a cooperative effort between USDA and historically black land-grant universities to develop income-producing projects for underdeveloped rural communities.

For more information, contact your nearest USDA Rural Development State or local office:

Or you may contact the National Office of USDA Rural Development at (202) 720-4323. FAX: (202) 690-0311. Write: USDA Rural Development, Stop 0705, 1400 Independence Ave. SW, Washington D.C. 20250-0705.

Website: <http://www.rurdev.usda.gov>

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PA 1550

Updated March 1997



Counseling Needs & Types of Counseling





Needs Assessment, Defining the Counseling Program Best Suited for the Clients Need

- One-on-One Counseling
- Education Programs
- Credit Counseling
- Group Counseling
- Length of Classes



Homebuyer Education

7 Hour Fast Track

- a course for the near-ready buyer

12 Hour Comprehensive

- a course for prospective homebuyers with obstacles to overcome



Benefits of Structured Homebuyer Ed. Program

- Develops stronger homebuyers
- Provides post-purchase assistance to families
- Assists in achieving fair lending compliance



Various Types of Counseling Programs

- Pre-purchase
- Post-purchase
- Loan Process
- Homebuyers Club
- Default counseling
- Homebuyer fairs
- Reverse mortgage counseling



Leveraging Resources

- Types of potential resources
- Matching dollars
- Developing budgets
- Showing a history



Building Partnerships

- Identifying potential community partners
- How to get partners interested in your program
- Who to talk with
- How to keep their long term interest



Key Areas of Counseling





The House Hunting Experience

- Most exciting and anxious time
- Largest purchase you will ever make
- Many factors to consider
- Most likely will not get everything you want



Neighborhood and Community Amenities

- Education facilities
- Police and fire protection
- safety concerns
- Shopping facilities
- Maintenance of neighborhood
- Recreational facilities
- Religious facilities



Finding A Lender

- Realtor
- Builder
- Developer
- Friends
- Relatives
- Internet



- Mailers
- Newspaper
- Yellow Pages
- Mortgage Lenders Association



Primary Market

- Mortgage Bankers
- Mortgage Brokers
- Commercial Banks
- Savings and Loans
- Credit Unions



Applying For The Loan

- What do you need to bring?
- Face-to-face interview
- Filling out the loan application
- And all that stuff...



Loan Processing

- ❑ Approximately 4-6 weeks (may take less time) - DON'T WORRY!
- ❑ What are they doing?
 - Property appraisal
 - Credit Report
 - VOEs/VODs sent out
 - Evaluating data



FINALLY!!!

**Closing
Your
Loan...**

Shared Visions: Summit I, Sponsored by HUD



Things To Remember

- Never be intimidated by the closer
- Do not sign any form you don't understand
- It's your signature on the dotted line



How To Care For Your Home

Maintenance Responsibilities



A Guide to Homeownership

To receive a copy of Fannie Mae's "A Guide to Homeownership" (both participant and trainer manuals are available), write to:

Fannie Mae
National Housing Impact Division
3900 Wisconsin Avenue, NW
Washington, DC 20016-2899

Guides can also be ordered on-line from Fannie Mae's web site at
<http://www.homepath.com/>



Pre-Occupancy Counseling

Presented by:

TERRIE PAREDES

**NORWEST
MORTGAGE**



Pre-Occupancy Counseling

- ❑ Communication: During the Mortgage Loan Process
- ❑ The Greatest Destroyer: **Mr. FEAR**
 - The customer is initially afraid of You
 - The customer is afraid of making a Mistake
 - The customer is afraid of being Lied To
 - The customer is afraid of Incurring Debt
 - The customer is afraid of losing Face
 - The customer's fear is based on bad Past Experiences
 - The customer's fear is based on Third Party Information
 - The customer's fear is based on Prejudice



Pre-Occupancy Counseling

❑ Fear is created by the pictures we paint with the words we use.

- | | |
|-------------------|---------------------------|
| ● Cost | <u>Total Investment</u> |
| ● Down Payment | <u>Initial Investment</u> |
| ● Monthly Payment | <u>Monthly Investment</u> |
| ● Buy | <u>When You Own</u> |
| ● Problem | <u>Issue / Challenge</u> |
| ● Objection | <u>Area of Concern</u> |
| ● Cheaper | <u>More Economical</u> |



Pre-Occupancy Counseling

□ Who is the IDEAL Person?

- Affordability: Sufficient Income to Purchase a Home
- Credit Issues: None
- Commitment: They are Serious about becoming a Home Owner



Pre-Occupancy Counseling

□ Who is the COMMON Person?

- Affordability: Sufficient Income to Purchase a Home
- Credit Issues: Late Payments, Bankruptcy, Judgements
- Commitment: They want to buy a home, but because of their credit issues they feel it is Impossible
- Knowledge: They don't know where to Start



Pre-Occupancy Counseling

□ EXPLAIN THE PROCESS:

- Run a Credit Report: Indicates a **Responsible Attitude** toward financial obligations. If no established credit, they will need alternate credit.
- Fill out a **Budget.**
- They need to have adequate and **Stable** income to repay the loan.
- They need to have adequate **Assets** for the down payment and closing costs.
- Loan needs to be approved by **HUD** and the **Lender.**



Pre-Occupancy Counseling

□ What to Look For:

- What credit issues do they have? Ask Questions: Why, When and How Much?
- How long have they been on their current job ?
Must have 2 Yr. history in the same field.
- How do they want to purchase Land Trust or Fee Simple?



Pre-Occupancy Counseling

□ What to Look For: (con't.)

- Do they have a Savings Account? How much is in the account?
- Paperwork that will be needed
- They must attend 4 hours of borrower counseling given by a HUD Approved Counseling Agency



Pre-Occupancy Counseling

❑ Calculating Income: When do they get paid ?

- If you have Annual income, divide by **12**
- Weekly: Multiply weekly income by **52**, then divide by 12
- By-Weekly: Multiply by-weekly income by **26**, then divide by 12
- Hourly: Multiply hourly income by the **number of hours** worked per week, then multiply by 52 and divide by 12



Pre-Occupancy Counseling

- ❑ Calculating Income: When do they get paid? (Con't)
 - Overtime and Bonus: Must have a **2 year** history and the employer must verify the overtime and/or bonus will in all probability continue. Only then can the income be counted toward qualifying.
 - Part-Time: Income or Second Job income may be used **IF** it can be verified as having been uninterrupted for the previous **2** years **and IF** it has a strong likelihood of continuation.



Pre-Occupancy Counseling

Pre-Qualifying Form :

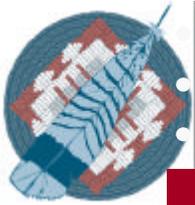
- Establish Maximum Loan Amount
- Go over all Credit Issues
- Also go over:
 - Budget
 - Spending Habits
 - Savings Ability
 - Down Payment Requirements
 - Closing Costs



Pre-Occupancy Counseling

Determine How Long It Will Take To Purchase a Home:

- **Foreclosure:** Must wait 3 years after foreclosure to be eligible for a mortgage loan. The inability to sell a home due to transferring from one area to another or divorce are NOT good reasons nor are they extenuating circumstances.
- **Bankruptcy:** Must be discharged for 2 years to be eligible for a mortgage loan. (Discharged 1 year if bankruptcy was due to loss of employment or serious long-term medical reason). If there is 1 or 2 derogatory items after the bankruptcy has been discharged, the customer must have 1 year of clean credit to be eligible for a loan. If there are several, they must wait an additional 2 years.



Pre-Occupancy Counseling

Determine How Long It Will Take To Purchase a Home: (con't.)

- **6 Months:** Only 1-2 derogatories in the previous 12 months. Savings account established or down payment assistance (if applicable) ** If bankruptcy, see notes under bankruptcy.
- **7-9 Months:** No late payments in the previous 12 months. Less than \$2,000 in outstanding collections, charge-offs, liens/judgements. Sufficient income to pay debt within time frame. ** If bankruptcy, see notes under bankruptcy.
- **10-15 Months :** Some recent late payments. Less than \$5,000 in outstanding collections, charge-offs, liens/judgements.



Pre-Occupancy Counseling

Determine How Long It Will Take To Purchase a Home: (con't.)

- **16-24 Months:** Recent late payments. More than \$5,000 in outstanding collections, charge-offs, liens/judgements. Sufficient income to pay debt within time frame. **If bankruptcy, see notes under BK.
- **25 Months or Longer:** Has a Bankruptcy that was recently discharged or has a recent *Foreclosure. Has a consistent history of derogatory credit.



Pre-Occupancy Counseling

- ❑ Keeping the Customer Enthusiastic and Motivated:
 - Being **Courteous**
 - Show **Interest** / Follow-up
 - **Knowledgeable**
 - **Believe** Them / Believe in what we're doing
 - **Purpose**



Pre-Occupancy Counseling

□ Keeping the Customers Enthusiasm UP and Motivated: (con't.)

● Communication

➤ Reinforce how important communication is with you and their **LOAN OFFICER**.

➤ Reinforce just because they have filled out an application and provided copies of paperwork, does NOT mean they are *Guaranteed* a Mortgage Loan, (go over the process again if necessary).



Pre-Occupancy Counseling

THANK YOU

**for your time and participation in
today's session of**

Pre-Occupancy Counseling

Pre-Occupancy Counseling

Communication:

Is the most important part of the _____

Listening:

Group Participation

- The greatest destroyer : _____
 - The customer is initially afraid of _____
 - The customer is afraid of making a _____
 - The customer is afraid of being _____
 - The customer is afraid of _____
 - The customer is afraid of losing _____
 - The customer's fear is based on bad _____
 - The customer's fear is based on _____
 - The customer's fear is based on _____
- _____ is created by the pictures we paint with the _____ that we use.
 - Cost _____
 - Down Payment _____
 - Monthly Payment _____
 - Buy _____
 - Problem _____ / _____
 - Objections _____
 - Cheaper _____

Who Is The Ideal Person?

- Affordability: _____ Income to Purchase a Home
- Credit Issues: _____
- Commitment: They are _____ about becoming a Home Owner

Who Is The COMMON Person?

- **Affordability:** _____ Income to Purchase a Home
- **Credit Issues:** _____, _____, _____
- **Commitment:** They want to buy a home, but because of their credit issues they feel it's _____.
- **Knowledge:** They don't know where to _____.

Explain The Process:

- **Run a credit report:** Indicates a _____ towards financial obligations. If no established credit, they will need alternate credit
- **Fill out a budget.**
- **They need to have adequate and _____ income to repay the loan.**
- **They need to have adequate _____ for the down payment and closing costs.**
- **Loan needs to be approved by _____ and the _____.**

What To Look For:

- **What credit issues do they have? Ask Questions:** _____, _____, _____
- **How long have they been on their current job? Must have ___ year history in the same field.**
- **Where do want to purchase a home? _____ or _____?**
- **Do they have a savings account? How much in the account?**
- **Paperwork that will be needed.**
- **They must attend ___ hours of borrower counseling given by a _____ approved Counseling Agency.**

Calculating Their Income: When Do They Get Paid?

- **If you have any annual income, divide by _____**
- **Weekly: Multiplying weekly income by _____, and then dividing by 12**
- **By-Weekly: Multiplying bi-weekly income by _____, and then dividing by 12**
- **Hourly: Multiplying hourly income by the _____ of hours worked per week, then multiplying that result by _____, and finally dividing by 12**
- **Overtime and bonus: Must have a _____ history and the employer must verify the overtime or bonus will in all probability continue. Then and only then can the income be counted towards qualifying.**
- **Part-Time: Income or Second Job income may be used _____ it can be verified as having been uninterrupted for the previous _____ years _____ it has a strong likelihood of continuation.**

Pre-Qualifier Form:

- Establish Maximum Loan Amount
- Go Over Credit Issues
- Go Over Budget, Spending Habits, Savings, Down Payment and Closing Cost.

Determine How Long It Will Take To Purchase A Home:

- **Foreclosure:** Must wait __ years after a foreclosure to be eligible for a mortgage loan. The inability to sell a house due to transferring from one area to another or divorce is not a good reason nor is it an extenuating circumstance.
- **Bankruptcy:** Must be discharged for ___ years to be eligible for a mortgage loan. (Discharged ___ year if bankruptcy was due to loss of employment or for serious long-term medical reason). If there is 1 or 2 derogatory items after a bankruptcy has been discharged, the customer must have 1 year of clean credit to be eligible for a mortgage loan. If there are several, they must wait an additional ___ years.
- **6 Months:** Only 1-2 derogatory in the previous 12 months. Savings account established or down payment assistance (if applicable). ** If Bankruptcy, see notes under Bankruptcy.
- **7-9 Months:** No late payments in the previous 12 months. Less than \$2,000.00 in outstanding collections/charge off, lien/judgements. Sufficient income to pay debt within time frame. **If Bankruptcy, see notes under Bankruptcy.
- **10-15 Months:** Some recent late payments. Less than \$5,000.00 in outstanding collections, charge-off, lien/judgements.
- **16-24 Months:** Recent late payments. More than \$5,000.00 in outstanding collections charge off, lien/judgements. Sufficient income to pay debt within time frame. **If bankruptcy, see notes under Bankruptcy.
- **25 Months or Longer:** Has a Bankruptcy that was recently discharged or has a recent Foreclosure.* Has a consistent history of derogatory credit.

Keeping The Customer Enthusiastic and Motivated:

- **Being Courteous**
- **Show Interest/Follow-Up**
- **Knowledgeable**
- **Believe them/Believe in what we're doing**
- **Purpose**
- **Communication**
- Reinforce how important communication is with you and their _____.
- Reinforce just because they have filled out an application and given copies of paper work: **This does not mean** they are _____ a Mortgage Loan (go over the process if necessary).

PRE-QUALIFYER

Notes:

This form provides for a quick estimated calculation of the maximum loan amount a borrower may qualify for. A more detailed and accurate Pre-Qualification can be obtained by contacting your local mortgage loan representative.

CLIENT NAME: _____ Date: _____

INCOME / All incomes must be converted into a monthly dollar amount.

Mo / Income # 1	\$					
Mo / Income # 2	\$					
Mo / Income # 3	\$					
				A	\$	TOTAL Mo / Income

DEBTS / All debts must be converted into a monthly dollar amount.

Mo / Debt	\$	Mo / Debt	\$			
Mo / Debt	\$	Mo / Debt	\$			
Mo / Debt	\$	Mo / Debt	\$			
Mo / Debt	\$	Mo / Debt	\$			
Mo / Debt	\$	Mo / Debt	\$			
				C	\$	TOTAL of all Mo / Debts

A X **0.41** = **B**

B minus **C** = **D**

MAX. monthly allowed for mortgage pmt.

Calculating Max. Loan Amount from "D"

D Divided by = **MAX. Loan Amount**
 Factor from table

Rate Factor Table	Rate	Factor	Rate	Factor
	6.00	0.00600	8.00	0.00734
	6.50	0.00632	8.50	0.00769
	7.00	0.00665	9.00	0.00805
	7.50	0.00699	9.50	0.00841

Things to know about using this PQ form.

1. Income should be calculated using the standard mortgage loan method.
2. Debts should be calculated using all monthly installments and revolving debt should be reduced to their minimum monthly requirement.
3. "D" only calculates principal and interest payment and DOES NOT include any property taxes or insurance that may be required.

IMPORTANT NOTE: This form assumes Property Taxes and Hazard Insurance will NOT be included in the payment. Since this form makes that assumption - the calculation for determining the maximum mortgage amount that could be qualified for does not take into consideration Property Taxes or Hazard Insurance. If these items are to be included into the total mortgage payment, this form should not be used. You should contact your local loan representative to help you calculate maximum loan amount with taxes and insurance included.

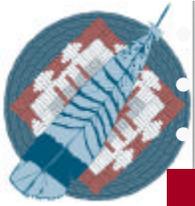


PURCHASING A HOME

WELCOME!

GOOD MORNING!





INTRODUCTION

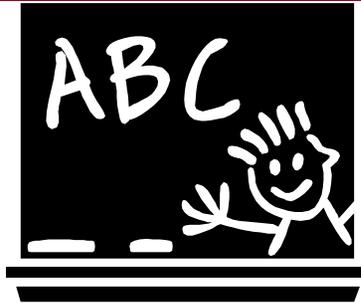
- Carol Wiklund
 - **ABODE Consulting**
 - ✓ 303-986-8365
 - ✓ cwiklund@bwn.net
 - HOME *Link*
 - Paralegal
 - Loan Processor



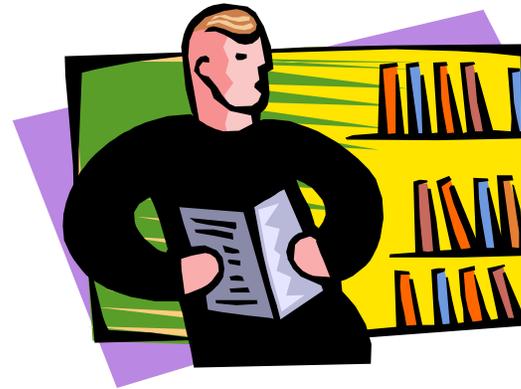
EXPERIENCE LEVEL



0-5



6-13



14-21

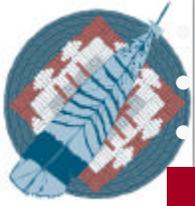


MASTER
OF THE
UNIVERSE



OVERVIEW

- What Will I Do In The Next 1-1/2 Hours?
 - Talk Very Fast!
 - Techniques
 - Tales
 - Tools



OVERVIEW

MATERIALS

- TOO MUCH !?

TAKE NOTES

- LOTS!

PLAGIARIZE!

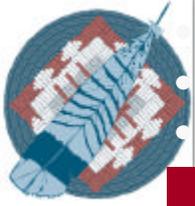
- GO AHEAD!



INTRODUCTION

☐ JEOPARDY!

- Presentation Board
- File Folders
- Printed Dollar Amounts
- Printed Answers
- Bells
- Scorekeeper
- Prizes



OVERVIEW

□ Twelve Steps To Home Ownership -

Part One

- I Want To Buy A House!
- Home Ownership Education Program
- Home Ownership Counseling
- Eliminate Barriers or Ready To Buy
- Financing/Loan Application
- Pre-Approval/Credit-Only Approval



OVERVIEW

□ Twelve Steps To Home Ownership - Part Two

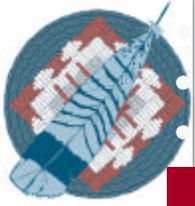
- House Hunting
- Purchase Agreement
- Property Inspections
- Final Loan Approval
- Closing
- MOVE-IN!



Training Tips

□ Adult Learners

- ✓ Cultural Diversity
- ✓ Literacy Issues
- ✓ Answer The Questions: WHY? HOW? WHAT?
- ✓ Emphasize How They Can Apply What Happens
- ✓ Focus on “Real World” Problems
- ✓ Relate Materials to Their Past Experiences
- ✓ Clarify Your Expectations
- ✓ Use Open-Ended Questions
- ✓ Straight-Forward, “How-To” Content



TRAINING TIPS

● Pre- Post- Tests

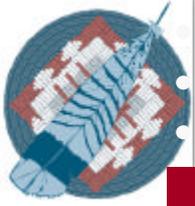
- ✓ What they know before and after the class
- ✓ Post-tests more positive approach

● Games

- ✓ Bingo
- ✓ Jeopardy
- ✓ Alphabet Review
- ✓ Housing Priority Game

● Videos

● “AAHAA” Sheet

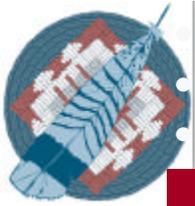


TRAINING TIPS

□ ENCOURAGE

□ EDUCATE

□ EMPOWER



UNDERSTANDING MORTGAGES

□ A MORTGAGE - WHAT IS IT?

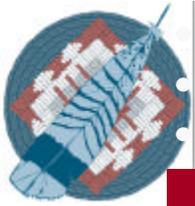
- Lien On Property
- Collateral
- Document that gives the Lender the right to foreclose in the event of default



UNDERSTANDING MORTGAGES

□ A MORTGAGE - WHEN IS IT VALID?

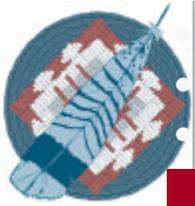
- After it is signed
- After it is recorded



UNDERSTANDING MORTGAGES

□ A MORTGAGE - WHERE DO I GET IT?

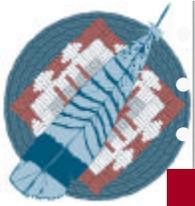
- At the Closing Table
- A few weeks after the document is recorded it will arrive via registered mail



FINDING A LENDER

☐ **WHO ARE THEY?**

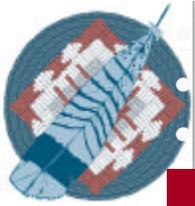
- Mortgage Banking Companies
- Mortgage Companies
- Credit Unions
- Non-Profits, CDC's, State Housing Finance Agencies
- Seller



FINDING A LENDER

□ WHAT DO THEY HAVE TO OFFER?

- Conventional
- FHA
- VA
- Special Products
- Contract For Deed



FINDING A LENDER

□ WHERE DO I FIND THEM?

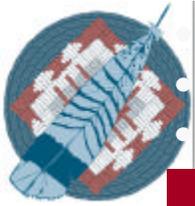
- Realtor Referral
- Banks, Credit Unions
- Non-profits, State Housing Finance Agencies
- Mortgage Brokers
- Newspapers
- Friends
- CLOs - Computer Loan Origination Systems



FINDING A LENDER

□ WHEN DO I SEE THEM?

- AFTER homeownership education classes, counseling, and elimination of barriers
- Before working with a Realtor



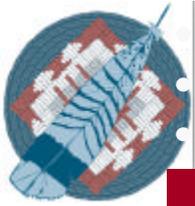
FINDING A LENDER

□ HOW TO COMPARE THEM?

● Mortgage Loan Comparison Worksheet

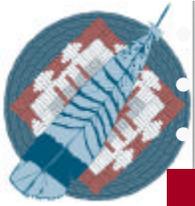
✓ APR - Annual Percentage Rate

- interest rate
- points
- mortgage broker fees
- other fees
- ask for it before application



FINDING A LENDER

- ✓ similar loan products with the same loan amount
- ✓ up-front points and fees
- ✓ settlement costs
 - appraisal
 - credit report
 - mortgage insurance
 - title insurance
 - loan processing
 - document preparation
 - underwriting
 - flood certification
 - origination fee



FINDING A LENDER

□ COMPARE:

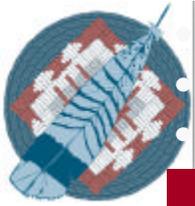
- 30 yr fixed, \$100,000 loan
 - ✓ Loan A = APR 8.35%
 - ✓ Loan B = APR 8.65%



FINDING A LENDER

□ COMPARE:

- 30 yr fixed, \$100,000 @ 8%
 - ✓ Loan A: 2 pts (\$2000) + lender costs \$1800
 - ✓ Loan B: 2 1/4 pts (\$2250) + lender costs \$1200
- CONSIDER:
 - ✓ how long will you live there
 - ✓ tax situation



LAND OWNERSHIP STATUS

- Lending program requirements and processing procedures depend on how land is held
- Land In Indian Area
 - ✓ Area in which a Tribal Housing Entity is authorized to provide housing



LAND OWNERSHIP STATUS

□ TRIBAL TRUST LAND

- Land or interest in land held in trust by the U.S. Government (BIA) for a Tribe
 - ✓ Land may not be encumbered or alienated (leasehold)

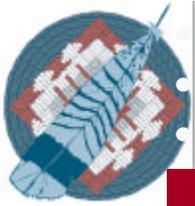


LAND OWNERSHIP STATUS

□ TRIBAL TRUST LAND

● Mortgage Lending

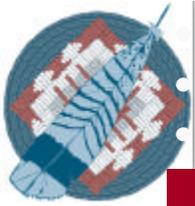
- ✓ Leasehold interest must be established between borrower and tribe
- ✓ BIA approval required to lease
- ✓ Parties to lease: BIA, Tribe, Borrower
 - HUD approval/review
 - Preferably at time of Tribe approval



LAND OWNERSHIP STATUS

□ TRIBAL TRUST LAND

- Leasing Tribal Trust Land
- 184 Lease Requirements
 - ✓ 50 year term
 - ✓ No termination without HUD approval
 - ✓ Lessee can mortgage the leasehold
 - ✓ Foreclosure is allowed
 - ✓ No transfer or assignment of leasehold interest without HUD/Tribe approval



LAND OWNERSHIP STATUS

☐ FEE SIMPLE LAND

- Estate in land
- Absolute and unrestricted
 - ✓ Sell, rent or dispose without hinderance
 - ✓ Pass interest to heirs, upon death
- AKA: Fee Patent



LAND OWNERSHIP STATUS

☐ FEE SIMPLE LAND

- 184 Mortgage Lending
 - ✓ Lease not required
 - ✓ Title policy required
 - ✓ Property must be in area designated Indian Operating Area
 - ✓ No other financing available (NAHASDA requirement)



LAND OWNERSHIP STATUS

□ INDIVIDUAL ALLOTTED TRUST LANDS

- Land or interest in land held in trust by the U.S. Government (BIA) for an individual Indian
 - ✓ Tribe has no interest in land
 - ✓ Subject to restrictions against alienation or encumbrances



LAND OWNERSHIP STATUS

□ INDIVIDUAL ALLOTTED TRUST LANDS

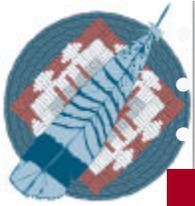
- 184 Mortgage Lending
 - ✓ Lease not required
 - ✓ BIA approval required
 - ✓ Fractionated ownership
 - ✓ Title Status Report
 - ✓ Foreclosure can result in loss of land



THE LOAN APPLICATION

□ REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA)

- Consumer Protection Act
- Administered by HUD
- Enacted in 1974; expanded in 1992
- Requires disclosures re: nature & cost of the real estate transaction



LOAN APPLICATION

- Prohibits

- ✓ giving or taking a fee, kickback, or anything of value due to referral to specific person or organization



LOAN APPLICATION

□ WHAT HOUSING COUNSELORS NEED TO KNOW ABOUT RESPA

- Products from at least three different lenders should be presented to the counseling client



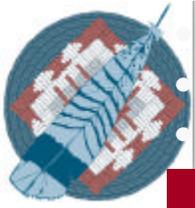
LOAN APPLICATION

- Any compensation to the counseling agency should be the same no matter which lender's product was chosen
- Payment for counseling should be reasonable related to services actually performed, not based on the amount of loan business referred to the lender



LOAN APPLICATION

- ❑ These three conditions appear to be helpful BENCHMARKS when considering the appropriateness of fees paid to counseling agencies



LOAN APPLICATION

□ WHAT IS THE LENDER'S PERSPECTIVE?

- Are they going to get their money back!
- **RISK** Evaluation



LOAN APPLICATION

□ LENDER'S PERSPECTIVE

- **RISK = EXPOSURE TO LOSS**
- Important to explain the lenders' position
 - ✓ It is a business
 - ✓ Relate the idea of risk based on personal experiences or community experiences



LOAN APPLICATION

□ **LENDER'S PERSPECTIVE**

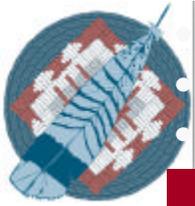
- Secondary Market - Underwriting Guidelines
- Most loans sold on Secondary Market
- Some loans held in Portfolio
- Ratios
- LTV



LOAN APPLICATION

● SECONDARY MARKET

- ✓ Federal National Mortgage Association - FNMA - **"Fannie Mae"**
- ✓ Federal Home Loan Mortgage Corporation - FHLMC - **"Freddie Mac"**
- ✓ Government National Mortgage Association - GNMA - **"Ginnie Mae"**
- ✓ Cousin - **"Sallie Mae"** - SLMA - Student Loans



FIVE C'S OF CREDIT

CREDIT

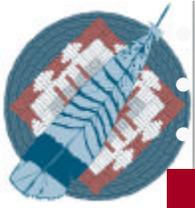
- Do you pay bills regularly and on time?

CAPACITY

- Is your income high enough and debt low enough?

CAPITAL

- Do you have money for down payment and closing costs?



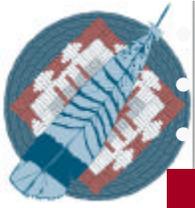
FIVE C'S OF CREDIT

CHARACTER

- Has your income been steady?

COLLATERAL

- Is your house worth what you're paying for it?



LOAN APPLICATION

□ RATIOS

- aka: CAPACITY, AFFORDABILITY
- Front Ratio
 - ✓ Maximum Housing (PITI)
- Back Ratio
 - ✓ Maximum Housing Plus Long Term Debt



LOAN APPLICATION

EXAMPLE

DEBT TO INCOME RATIO - FHA

$$\begin{array}{rclcl} \$1,400. & \times & 29\% & = & \$406. \\ \text{(GROSS Monthly Income)} & & \text{(FRONT Ratio)} & & \text{(MAXIMUM PITI)} \end{array}$$

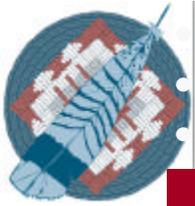
$$\begin{array}{rclcl} \$1,400. & \times & 41\% & = & \$574. \\ & & \text{(BACK Ratio)} & & \text{(MAXIMUM PITI PLUS LT Debt)} \end{array}$$

$$\begin{array}{rcl} \$574. & \text{Maximum PITI Plus Long Term Debt} \\ -\$406. & \text{Maximum PITI} \\ \hline \$168. & \text{Maximum Long Term Debt} \end{array}$$



LOAN APPLICATION

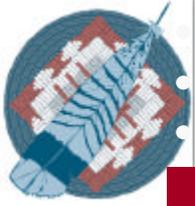
- Conventional
 - ✓ 28/36
- FHA
 - ✓ 29/41
- VA
 - ✓ 41 (Plus regional minimum residual income)
- Special Programs
 - ✓ Various ratios: 35/41, 33/38, 31/41, 38/38, etc.



LOAN APPLICATION

● COMPENSATING FACTORS

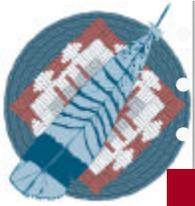
- ✓ Reasons to exceed ratios
 - Excellent Credit History
 - Conservative Use of Credit
 - Substantial Liquid Assets/Savings
 - Low LTV
 - Little or No INCREASE in Housing Expense
 - Do Not Apply If Unsatisfactory Credit



LOAN APPLICATION

□ LOAN To VALUE

- aka: **LTV**, Collateral
- Loans Limited to **VALUE** of Property
- Loan Balance Owed vs. Appraised Value
- Described as a Percentage



LOAN APPLICATION

EXAMPLE

LOAN TO VALUE

Purchase Price = \$100,000.

Loan Program Requires 5% Down Payment
 $\$100,000. \times 5\% = \$5,000.$

Loan Amount = \$95,000.

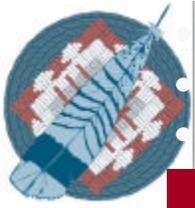


LOAN APPLICATION

EXERCISE

How Much Downpayment is needed to buy a house that cost \$97,900.? And What is the Loan Amount for Each?

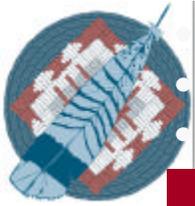
	DownPayment	Loan Amount
... at 97% LTV =		
... at 95% LTV =		
... at 80% LTV =		
... at 75% LTV =		



LOAN APPLICATION

□ MORTGAGE INSURANCE

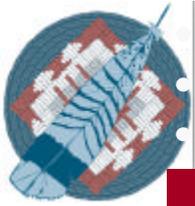
- PRIVATE MORTGAGE INSURANCE
- MORTGAGE INSURANCE PREMIUM



LOAN APPLICATION

□ PRIVATE MORTGAGE INSURANCE

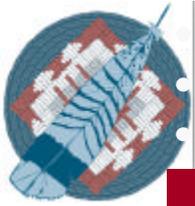
- Financial Guarantee Against Loss From Default
- Insures Lender
- Borrower Pays One-Year Premium At Closing
 - ✓ 1% of Loan Amount
- .5% Collected Monthly (PITI)
- Monthly Premium Payments - Higher
- Conventional Loans
- Requires 5% Downpayment (3/2 Programs)
- Removed After LTV Is 80%



LOAN APPLICATION

HOW DOES PRIVATE MORTGAGE INSURANCE BROADEN A BORROWER'S OPTIONS?





LOAN APPLICATION

Without Mortgage Insurance
\$50,000 Home

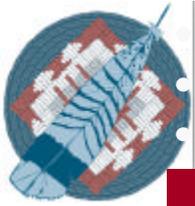


\$10,000. or
20% Downpayment

With Mortgage Insurance
\$100,000. Home



\$10,000. or
10% Downpayment



LOAN APPLICATION

□ BORROWER'S OPTIONS WITH PMI

- \$10,000. Down Payment
- Income and Credit MUST Meet Guidelines
- 10% Down = \$100,000. Home
- 10% Down = \$75,000. Home
 - ✓ \$2,500. Remains
 - Decorating
 - Major Appliances
 - Furniture



LOAN APPLICATION

□ MORTGAGE INSURANCE PREMIUM

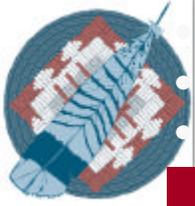
- Government Insured Against Loss From Default
- Insures Lender
- Premium Is Financed
 - ✓ 2.50% - 1.75% of Base Mortgage
- .5% Collected Monthly (PITI)
- FHA Loans
- Continues For The Life Of The Loan
- < 5% Downpayment
- Base Mortgage vs. Loan Amount



LOAN APPLICATION

MIP CALCULATION

$$\text{Maximum Mortgage} \div \begin{array}{l} 1.0225 \\ 1.0200 \\ 1.1750 \end{array} = \text{Maximum Sales Price}$$



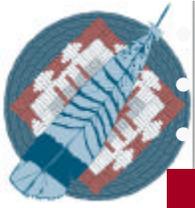
LOAN APPLICATION



BE

PREPARED!

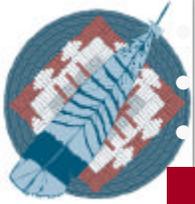




BE PREPARED!

□ LANDLORD/MANAGEMENT COMPANY NOTICE

- Lease Requirements
 - ✓ cancellation notice
 - written or verbal
 - 30, 60, 90 days
 - ✓ security deposit
 - ✓ transfer of keys



BE PREPARED!

- ❑ Everyone involved in buying the home must attend the Loan Application





BE PREPARED!

□ APPLICATION FEES

- Credit Report \$40. - \$60.
- Appraisal Fee \$250. - \$600.
- **NON-REFUNDABLE** (even if loan is denied)
- **Paid at the time of application**
- **Credit-Only Approval:** only the credit report fee is collected at the time of application



LOAN APPLICATION

□ PREQUALIFICATION

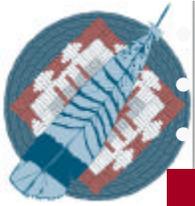
- No verification necessary
- No written commitment
- “Informal” opinion
- Not binding
- Loan Application not completed



LOAN APPLICATION

□ PREAPPROVAL

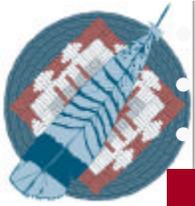
- Verifications necessary
- Written Commitment
- “Formal” opinion
- Binding
- Loan Application Completed



LOAN APPLICATION

□ UNIFORM RESIDENTIAL LOAN APPLICATION - "THE 1003"

- Section I - Type of Mortgage and Terms of Loan
- Section II - Property Information and Purpose of Loan
- Section III - Borrower Information



LOAN APPLICATION

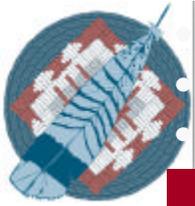
- Section IV - Employment Information
- Section V - Monthly Income and Combined Housing Expense Information
- Section VI - Assets and Liabilities
- Section VII - Details of Transaction
- Section VIII - Declarations
- Section IX - Acknowledgements & Agreement
- Section X - Information for Government Monitoring



LOAN APPLICATION

□ Section I - Type of Mortgage Terms of Loan

- Conventional, FHA, VA, FmHA, Other
- Amount of Loan
- Interest Rate
- 360, 300, 240, or 180 months
- Fixed Rate, ARM, GPM, Other
- Lender and Agency Case Numbers



LOAN APPLICATION

□ Section II - Property Information Purpose of Loan

- Subject Property
 - ✓ address
 - ✓ number of units
 - ✓ year built
- Legal Description



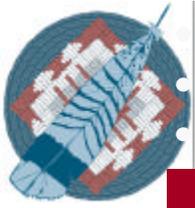
LOAN APPLICATION

- Purpose of Loan
 - ✓ Purchase
 - ✓ Refinance
 - ✓ Construction
 - ✓ Construction-Permanent
- Property will be:
 - ✓ Primary Residence
 - ✓ Secondary Residence
 - ✓ Investment



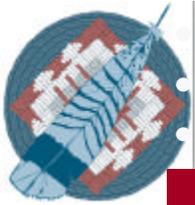
LOAN APPLICATION

- Title will be held:
 - ✓ Legal Name(s)
 - ✓ Sole Ownership
 - ✓ Joint Tenancy
 - ✓ Tenancy-In-Common
 - ✓ Fee Simple
 - ✓ Leasehold



LOAN APPLICATION

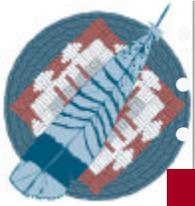
- Source of Downpayment
 - ✓ Savings
 - ✓ Gift
 - ✓ Grant
 - ✓ Loan
 - ✓ Etc.



LOAN APPLICATION

□ Section III - Borrower Information

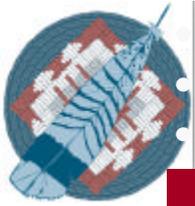
- Name(s) Borrower and Co-Borrower
- Social Security Number
- Home Phone
- Age & Years in School
- Marital Status
- Dependents: How many & ages
- Current Address & Length of Residency
- Previous Address(es)-if current address is less than 2 years



LOAN APPLICATION

DOCUMENTS TO VERIFY BORROWER INFORMATION

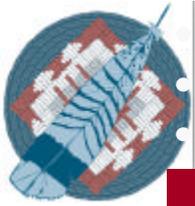
- Social Security Card
- Complete Divorce Decree(s)
- Landlord or management company names and addresses
- Dates of residency



LOAN APPLICATION

□ **Section IV - EMPLOYMENT INFORMATION**

- Employers' Name(s) & Address(es)-for the past 2 yrs.
- Self Employed
- Years on the Job & Years in the Profession
- Position/Title
- Business Phone
- Dates of Employment
- Monthly Income



LOAN APPLICATION

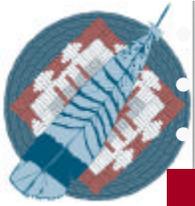
□ DOCUMENTS TO VERIFY EMPLOYMENT INFORMATION

- Name & address of each employer for the past 2 years
- Dates of employment for the past 2 years
- Gross Monthly Wages
- Seasonal Employment
- Union Member



LOAN APPLICATION

- Employment Gaps
 - ✓ Written Explanation
 - ✓ Certified Transcripts
 - ✓ Medical Documents



LOAN APPLICATION

- SELF EMPLOYED

- ✓ Current Year-to-Date Profit and Loss Statement
- ✓ Complete Income Tax Returns for the past **2 years** (include all schedules)

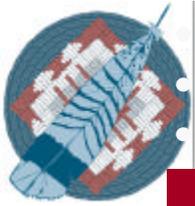


LOAN APPLICATION

□ Section V - MONTHLY INCOME & HOUSING EXPENSE INFORMATION

● Income

- ✓ Gross Monthly Income
- ✓ Overtime
- ✓ Bonuses
- ✓ Commissions
- ✓ Benefit Income
- ✓ Child Support/Maintenance



LOAN APPLICATION

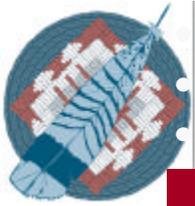
INCOME CALCULATION FORMULA

$$\begin{array}{ccccccc} \$ \underline{\hspace{2cm}} & \times & \underline{\hspace{2cm}} & \times & 52 \text{ weeks} & \div & 12 \text{ months} = \$ \underline{\hspace{2cm}} \\ \$ \text{ per hour} & & \# \text{ hours/week} & & & & \text{GROSS Income/Month} \end{array}$$



LOAN APPLICATION

- Housing Expenses
 - ✓ Present
 - ✓ Proposed



LOAN APPLICATION

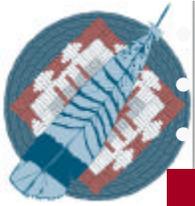
□ DOCUMENTS TO VERIFY MONTHLY INCOME & HOUSING EXPENSES

- Pay Stubs
 - ✓ One month
 - ✓ Current
- Income Tax Returns
 - ✓ FEDERAL only
 - ✓ TWO years
 - ✓ ALL W-2 forms



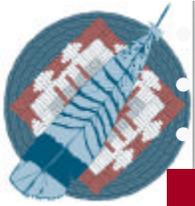
LOAN APPLICATION

- Child Support and/or Maintenance
 - ✓ **Complete** Divorce Decree with amendments
 - ✓ Court Records or Canceled Checks (front and back) for at least the past 12 months
 - ✓ Bank Statements for 12 months
 - ✓ No Disclosure, No “Qualifying” Income



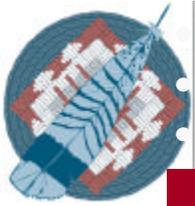
LOAN APPLICATION

- Benefit Income
 - ✓ Award Letter
 - ✓ Last Payment Received



LOAN APPLICATION

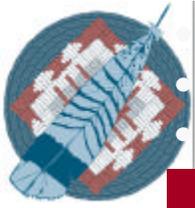
- Housing Expenses
 - ✓ Lease(s)
 - ✓ Rent Receipts (at least 12 months)
 - ✓ Cancelled Checks (front & back)
 - ✓ Purchase Agreement



LOAN APPLICATION

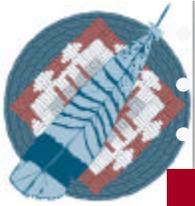
□ SECTION VI - ASSETS

- Cash Deposit
- Bank(s), Credit Unions, etc.
- Stocks & Bonds
- Life Insurance - net cash value & face amount
- Real Estate Owned
- Vested Interest in Retirement Funds
- Net Worth of Business(es) Owned



LOAN APPLICATION

- Automobiles Owned (make & year)
- Other Assets



LOAN APPLICATION

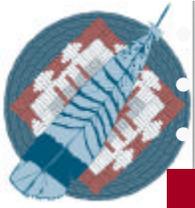
❑ Documents To Verify Assets

● Cash Deposit

- ✓ Purchase Agreement
- ✓ Copy of Earnest Money Check

● Bank Statements

- ✓ current 3 months
- ✓ all checking and savings accounts
 - name & address of each bank
 - all accounts numbers



LOAN APPLICATION

- Stocks & Bonds
 - ✓ current statement(s)
 - ✓ name & number of shares
 - ✓ type & value of bonds
- Life Insurance
 - ✓ net cash value
 - ✓ face amount



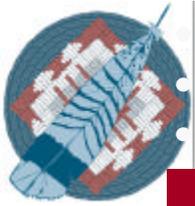
LOAN APPLICATION

- Real Estate Owned
 - ✓ property address
 - ✓ status of property
 - sold
 - pending sale
 - rental
 - ✓ type of property
 - single family
 - duplex
 - commercial



LOAN APPLICATION

- ✓ present market value
- ✓ amount of mortgages & liens
- ✓ gross rental income
- ✓ mortgage payments
- ✓ insurance, taxes, maintenance, misc. payments
- ✓ net rental income



LOAN APPLICATION

- Vested Interest In Retirement Funds
 - ✓ 401K statement(s)
 - ✓ Pension Plan statement(s)
 - ✓ Money Market statement(s)
- Net Worth of Business(es) Owned
 - ✓ Audited Financial Statement(s)
 - ✓ Federal Income Tax Returns
 - complete forms for all schedules
 - past 3 years



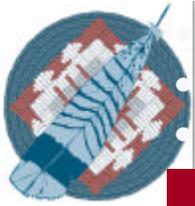
LOAN APPLICATION

- Automobiles Owned

- ✓ make
- ✓ year
- ✓ value

- Other Assets

- ✓ Motorcycle
- ✓ Camper/Motor Home
- ✓ Boat, Trailer, Motor
- ✓ Collectibles



LOAN APPLICATION

□ SECTION VI - LIABILITIES

- Creditors
- Child Support/Maintenance Payments
- Job Related Expenses

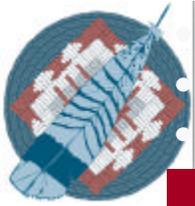


LOAN APPLICATION

□ DOCUMENTS TO VERIFY LIABILITIES

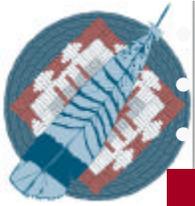
● Creditors

- ✓ name(s) & address(es)
- ✓ account numbers
- ✓ monthly payments
- ✓ unpaid balance
- ✓ current statement(s)
- ✓ credit report



LOAN APPLICATION

- Child Support/Maintenance Payments
 - ✓ divorce decree(s) & amendments
 - ✓ Court Report of payments
- Job Related Expenses
 - ✓ child care
 - monthly payment
 - name & address of provider
 - ✓ union dues
 - ✓ uniforms

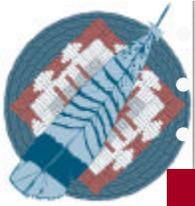


LOAN APPLICATION

SECTION VII - DETAILS OF TRANSACTION

Lender completes this section

- Purchase Price
- Alterations, Improvements, Repairs
- Land (if acquired separately)
- Refinance (incl. debts to be paid)
- Estimated Prepaid Items
- Estimated Closing Costs



LOAN APPLICATION

- PMI, MIP, Funding Fee
- Discount (if Borrower will pay)
- Total Costs
- Subordinate Financing
- Borrower's Closing Costs Paid By Seller
- Other Credits
- Loan Amount
- PMI, MIP, Funding Fee Financed
- Loan Amount
- Cash From Borrower



LOAN APPLICATION

□ SECTION VIII - DECLARATIONS

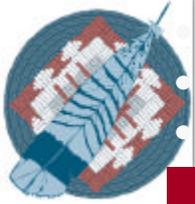
● Questions

- ✓ requires yes/no responses
- ✓ borrower & co-borrower(s) respond
- ✓ some “yes” responses require detailed, written explanations
 - judgments
 - bankruptcy
 - foreclosure
 - lawsuit



LOAN APPLICATION

- Default/Delinquency on Loans
 - Small Business Association
 - Home Improvement
 - Educational
 - Manufactured/Mobile Home
 - Federal Debt
- Child Support/Maintenance Obligation
- Borrowed Down Payment
- Co-signer on a Note



LOAN APPLICATION

- ✓ U.S. Citizen
- ✓ Permanent Resident Alien
- ✓ Property is Primary Residence
- ✓ Ownership Interest in Property in the past 3 yrs
 - type of property
 - principal residence
 - second home
 - investment property
 - title held
 - solely
 - jointly with spouse
 - jointly with another person



LOAN APPLICATION

□ SECTION IX - ACKNOWLEDGEMENT & AGREEMENT

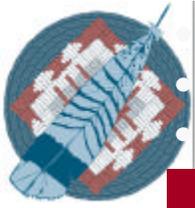
□ THE UNDERSIGNED ACKNOWLEDGES:

- the loan will be secured by a first mortgage or deed of trust
- the property will not be used for illegal or prohibited purposes
- all statements in application are made to obtain a loan
- occupation of property as indicated above: primary, investment, etc.
- verifications may be obtained at any time by the lender & original of application retained by lender



LOAN APPLICATION

- borrower has obligation to amend, supplement, & update information on application prior to closing
- if loan becomes delinquent lender can report to a credit reporting agency
- loan may be transferred to successor or assign of lender without notice to borrower ; and/or administration of loan may be transferred to an agent. successor or assign of the lender with prior notice to borrower
- lender makes no representations or warranties, express or implied, regarding the condition or the value of the property



LOAN APPLICATION

- Certification

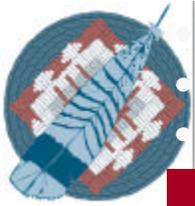
- ✓ information is correct
- ✓ misrepresentation results in civil liability and/or criminal penalties



LOAN APPLICATION

□ SECTION X - GOVERNMENT MONITORING

- Requested by Federal Government
- Lender Compliance
 - ✓ ECOA - Equal Credit Opportunity Act
 - ✓ Fair Housing Act
 - ✓ Home Mortgage Disclosure Act -HMDA



LOAN APPLICATION

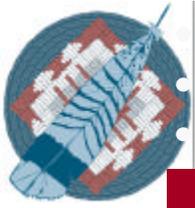
- Race/National Origin
 - Sex
- If the above information is not furnished, it will be determined by visual observation or surname.



LOAN APPLICATION

❑ Other Information Needed at Application

- Driver's License or other form of picture identification
- Resident Alien Card/"Green Card"
- Certificate of Eligibility and DD214 for VA
- Purchase Agreement and other documents from Realtor
- New Construction: Plans and Specs



LOAN APPLICATION

□ Documents From Lender

- *Must be received at the time of application, or within three days after the application is taken*
- **Settlement Procedures and You**
- **Truth-In-Lending Disclosure (TIL)**
- **Good Faith Estimate (GFE)**
- **Transfer of Servicing**
- **Verification Documents**
- **Blanket Authorization Form**



LOAN APPLICATION

❑ SETTLEMENT PROCEDURES AND YOU

- Required to be provided within three (3) business days of application
- Published by HUD
- Concise, consumer friendly guidance
- available on the Web at <http://www.hud.gov/fha/res/sfhrestc.html>



LOAN APPLICATION

□ TRUTH-IN-LENDING DISCLOSURE (TIL)

- Annual Percentage Rate
- Amount Financed
- Finance Charge
- Total of Payments



LOAN APPLICATION

□ GOOD FAITH ESTIMATE (GFE)

- “Estimates” the costs to close the loan
 - ✓ Lender’s Fees
 - ✓ Title Company Fees
 - ✓ Government Fees
 - ✓ Prepaids



LOAN APPLICATION

□ TRANSFER FOR SERVICING

- Lender's intent regarding servicing of the loan after closing
- What percentage of loans have been transferred in the past



LOAN APPLICATION

□ VERIFICATION DOCUMENTS

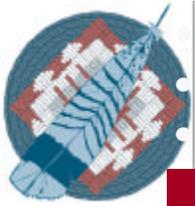
- Borrower signature needed
 - ✓ on each Verification
 - ✓ Blanket Authorization Form
- Verification Of:
 - ✓ Deposits (VOD)
 - ✓ Rent (VOR)
 - ✓ Employment (VOE)



LOAN APPLICATION

☐ LOCK-IN AGREEMENT PRICE PROTECTED APPLICATION ELECTION

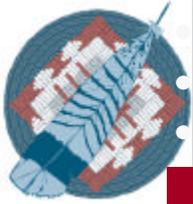
- Secures an interest rate for 30-90 days
- Signed after property is obtained
- Usually, no changes made if rate is lower during the 30-90 day period



LOAN APPLICATION

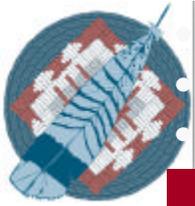
□ POINTS, DISCOUNTS, BROKER FEES, OR NEW LOAN FEES

- Increase the YIELD (Rate of Return)
- One Point = 1% of loan amount
- Fewer Points = higher interest rate
- More Points = lower interest rate



THE CLOSING





THE CLOSING



HISTORY LESSON

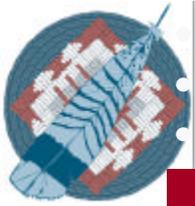
- Tom Lincoln - Abe's Dad
 - ✓ lost two homesteads in Kentucky
 - someone had a better claim to his property
 - sued as a trespasser
 - ✓ moved to Indiana
 - government land
 - clear title
 - “right kind of papers”



THE CLOSING

● Land Title Insurance Companies

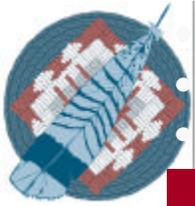
- ✓ first established in 1876
- ✓ developed out of land owners anxiety and losses
- ✓ protect against
 - forgeries
 - faulty surveys
 - hidden liens
 - conveyances by a minor or mentally incompetent person
 - false representation of a married person as being single
 - and others



THE CLOSING

□ TITLE INSURANCE COMPANY

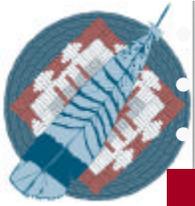
- Title Insurance
- Title Examination
- Closing Services
- Abstract Services
- Escrow Services
- Construction Disbursements



THE CLOSING

□ HOLDING TITLE TO A PROPERTY

- “Concept” of Real Estate Ownership
- Bundle of Rights
 - ✓ ...to use & occupy
 - ✓ ...to excavate minerals
 - ✓ ...to add improvements
 - ✓ ...to rent to someone else
 - ✓ ...to sell it
 - ✓ ...to leave it to someone in your will



THE CLOSING

□ TITLE INSURANCE -WHAT?

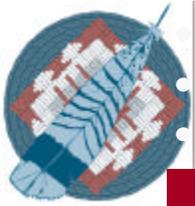
- Protection against hazards of title

□ TITLE INSURANCE - WHY?

- To safeguard against loss arising from hazards and defects already existing in the title.

□ TITLE INSURANCE - HOW?

- Financial protection through negotiation with third parties
- Payment for defending an attack on title
- Payment of claims



THE CLOSING

□ TYPES of TITLE INSURANCE

- LENDER'S/MORTGAGEE'S POLICY
- OWNER'S/MORTGAGOR'S POLICY



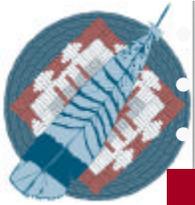
THE CLOSING

☐ LENDER'S

- Protects Lender's Interest
- Insured for amount of loan
- Required
- One-Time Fee charged to Buyer

☐ OWNER'S

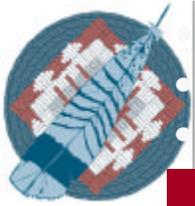
- Protects Owner's Interest
- Insured for the value of property
- Optional
- One-Time Fee charged to Buyer



THE CLOSING

□ TITLE EXAMINATION

- Abstract or Torrens Examined
- Examination by Title Company or Attorney
- Marketable Title
 - ✓ Free and Clear of Encumbrances
 - “clouds on title”
 - easements
 - liens



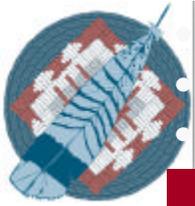
THE CLOSING

□ ABSTRACT

- Complete History of property
- Entire Abstract is examined
- Original kept by Owner
- Expensive to Replace
- No surrender to record documents

□ TORRENS Certificate

- Current Owner's History
- RPA is examined
- Original kept at County
- Owner's Duplicate kept by Owner
- Less expensive to replace
- Must be surrendered to record documents



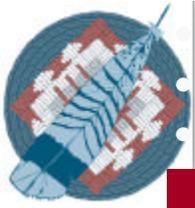
THE CLOSING



ENCUMBRANCES

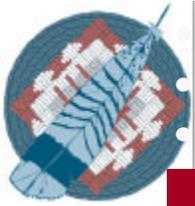
● Easements

- ✓ gives someone who is not the owner of the property, the right to use the property for a specific reason
- ✓ no legal access to and from your property
- ✓ utility and drainage
- ✓ restrictive covenants
- ✓ encroachment



THE CLOSING

- **Liens**
 - ✓ placed against the property to enforce payment of a debt
 - ✓ taxes
 - ✓ mortgage
 - ✓ judgments
 - ✓ homeowners associations
 - ✓ mechanic's liens



THE CLOSING

- **Someone Else Owns an Interest due to:**
 - ✓ forgery, fraud, or impersonation
 - ✓ defective recording of documents
 - ✓ duress, incompetency, or incapacity
 - ✓ unknown leases, contracts, or options

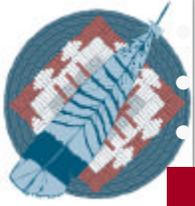


CLOSING

□ “THE CLOSING”

- Transfer of Ownership
- Lending of Money





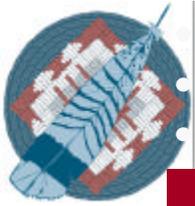
CLOSING



BE

PREPARED!



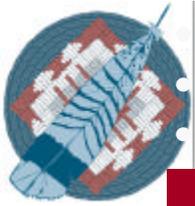


BE PREPARED!

☐ Preparations For Closing

● MONEY

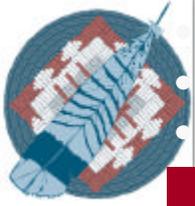
- ✓ Cashier's or Certified Check
- ✓ Amount on GFE
- ✓ Made out to yourself
- ✓ Endorsed to title company



BE PREPARED!

● HOMEOWNERS INSURANCE

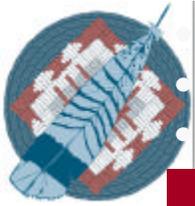
- ✓ Binder
 - commitment to provide insurance
- ✓ Receipt
 - one year, paid in full
- ✓ Loss Payee Clause for the Lender
- ✓ Name, address & phone number for Insurance Agent



BE PREPARED!

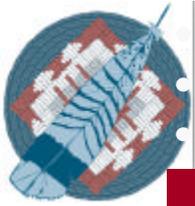
● IDENTIFICATION

- ✓ Driver's License - Picture ID
- ✓ Social Security Card
- ✓ Addresses of all places of residence for the past 10 years



BE PREPARED!

- ASK QUESTIONS!**
- READ THE CLOSING DOCUMENTS!**
- KEEP DOCUMENTS IN A SAFE, FIRE-PROOF PLACE.**



THE CLOSING

☐ THE CLOSING

- After Loan Approval
- Schedule the following
 - ✓ walk through inspection
 - before closing date/after seller moves out
 - good condition
 - personal property
 - repairs completed
 - new repairs - escrow account set up @ closing



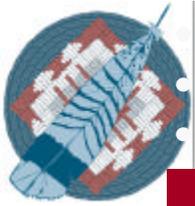
THE CLOSING

✓Utilities

- change to your name
- gas, electric, water, telephone, trash removal, newspaper

✓Locks

- hire locksmith to change all locks
- recode alarm system

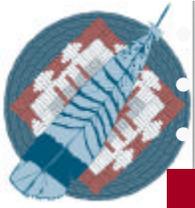


THE CLOSING

□ WHO IS INVOLVED IN THE CLOSING?

- Buyer(s)
 - ✓ Buyer's Attorney
- Seller(s)
 - ✓ Seller's Attorney
- Title Company Closer
- Real Estate Agent
- Lender



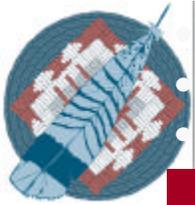


THE CLOSING

□ WHAT DOCUMENTS ARE INVOLVED?

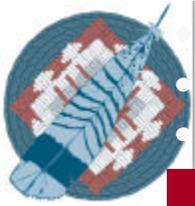
- Settlement Statement (HUD I)
- Truth-In-Lending Disclosure
- Mortgage
- Promissory Note
- Warranty Deed
- Affidavits





THE CLOSING

- ❑ Settlement Statement (HUD 1)
 - Corresponds with GFE
 - Some items POC - Paid Outside Of Closing
 - Itemization of Costs
 - Summary of Transaction
 - Keep This Document



THE CLOSING

☐ Truth-In-Lending Disclosure

- Final Disclosure
- APR = ↑
- Finance Charge
- Amount Financed = ↓
- Total of Payments



THE CLOSING

☐ Mortgage

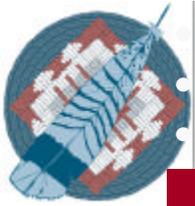
- Collateral for the Promissory Note
- Default = Foreclosure
- Blank Spaces
 - ✓ date
 - ✓ name(s)
 - ✓ amount of loan
 - ✓ interest rate
 - ✓ due date (15, 20, 25, 30 years)
 - ✓ legal description





THE CLOSING

- Signature
 - ✓ will sign more than one
 - ✓ original signature copies need to be filed
- Printed Form
 - ✓ no changes in language

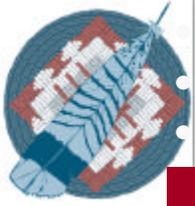


THE CLOSING

□ Promissory Note

- Promise To Repay the Loan
- Blank Spaces
 - ✓ date
 - ✓ loan amount
 - ✓ interest rate
 - ✓ due date
 - ✓ monthly P&I
 - ✓ late charges
- Signature - once



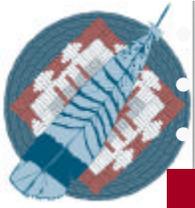


THE CLOSING

□ Warranty Deed

- Original recorded
 - ✓ copy received at closing
- Original sent via Registered Mail
- Proof of Ownership
 - ✓ Transfer ownership from Seller to Buyer
 - ✓ Keep in safe, fire-proof place





THE CLOSING

☐ Affidavits

● Non-Identity

- ✓ name search reveals judgments or liens
- ✓ common names affected
- ✓ verify and validate that you are who you say you are
- ✓ 10 years of residency

● Cooperation

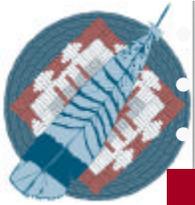
- ✓ mistakes = return to sign again
- ✓ false info = criminal penalties



THE CLOSING

CONGRATULATIONS!





CONCLUSION

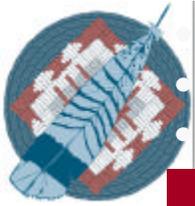
- **“THE TELLING TALE OF TRAINING”**
 - TELL THEM WHAT YOU’RE GOING TO TELL THEM
 - TELL THEM ---
 - THEN, TELL THEM WHAT YOU TOLD THEM



CONCLUSION

□ RECRUIT

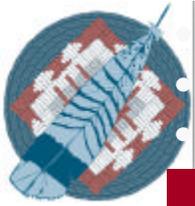
- LOAN OFFICERS/LOAN PROCESSORS
- TILE INSURANCE COMPANY REPRESENTATIVE/CLOSER



CONCLUSION

□ EXPERIENCE THE PROCESS YOURSELF

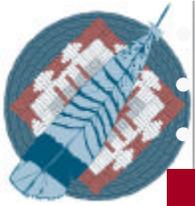
- “Shadow” Loan Officer
- “Shadow” Loan Processor
- “Shadow” Title Insurance Company Closer
- Attend a Closing
- Current Rules and Regs
 - ✓ Fannie Mae (www.fanniemae.org)
 - ✓ HUD/FHA (www.hud.gov)



CONCLUSION

□ MATERIALS

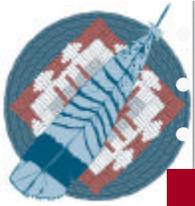
- MANUAL
- HANDOUTS
- HOMEWORK
- COMICS
- GAMES



CONCLUSION

□ RESPECT

- Listen To and Respect Their Opinions
- Treat Everyone In An Adult-Like Manner
- Talk **WITH** Them, Not At Them
- Serve Food
- Take Pictures
- Certificates Of Completion
- Have Fun



CONCLUSION

TELL ME AND I WILL FORGET;

TEACH ME AND I WILL REMEMBER;

INVOLVE ME AND I WILL LEARN.



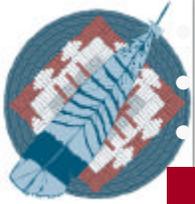


RESOURCES

NeighborWorks
Neighborhood Reinvestment Corporation
www.nw.org

Enterprise Foundation
www.enterprisefoundation.org

American Homeowner Education and Counseling Institute - AHECI
www.aheci.org



RESOURCES

Fannie Mae
www.fanniemae.org

HUD/FHA
www.hud.gov

HUD Mortgagee Letters 1976-1999
www.hud.gov/fha/mletters/mltrmenu.html

APPLICATION CHECKLIST

1. INFORMATION ABOUT YOUR HOUSING

- ⇒ All addresses for the past TWO years
- ⇒ All Landlords or management companies names and addresses for the past TWO years
- ⇒ Rent receipts and/or canceled rent checks (front and back) for the past 12 months

2. INFORMATION ABOUT YOUR EMPLOYMENT

- ⇒ ALL employers' names and addresses for the past TWO years
- ⇒ Dates worked at each position (FROM: month/day/year - TO: month/day/year)

3. INFORMATION ABOUT YOUR INCOME

- ⇒ ONE MONTH of CURRENT paystubs
- ⇒ Last payment received or award letter for AFDC, Food Stamps, Social Security, SSI, or any other benefit income
- ⇒ Copies of the past THREE years FEDERAL Income Tax Returns, including ALL W-2 forms
- ⇒ Court records or canceled checks (front and back) of Child Support and/or Maintenance payments you RECEIVE
- ⇒ SELF-EMPLOYED: TWO years FEDERAL Income Tax Returns, including ALL schedules, and a CURRENT year-to-date Profit and Loss statement

4. INFORMATION ABOUT YOUR DEBTS

- ⇒ Credit Report: a credit report can be obtained through a homeownership counseling agency prior to application with a lender
- ⇒ CURRENT statements for ALL accounts: credit cards, car loans, student loans, furniture rental, installment loans.
- ⇒ Child Support and/or Maintenance payments you MAKE, including court records and 12 months canceled checks
- ⇒ COMPLETE Bankruptcy documents, including Discharge Paper and List of Creditors
- ⇒ Name and Address of CHILD CARE PROVIDER and the amount paid monthly.

5. INFORMATION ABOUT YOUR ASSETS

- ⇒ CURRENT TWO Months bank statements from ALL checking and savings accounts
- ⇒ Make, model, year and value of your automobiles
- ⇒ Face value and cash value of life insurance
- ⇒ Vested interest in retirement funds or 401K
- ⇒ Number of shares and estimated value of stocks and bonds
- ⇒ Description and value of any other assets, for example, motorcycle, boat, trailer, camper, jewelry, collectibles, etc.

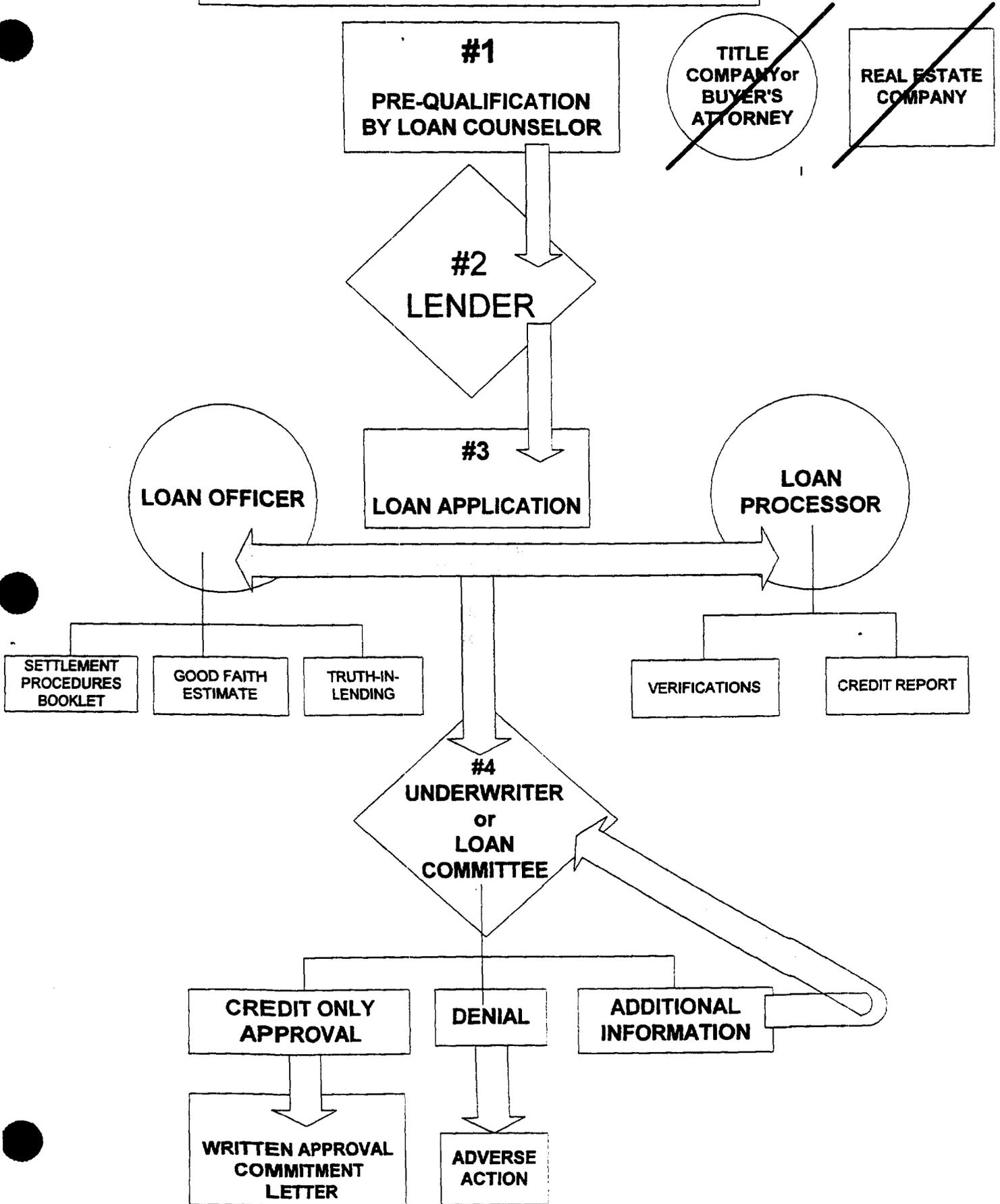
6. INFORMATION ABOUT YOUR PERSONAL IDENTITY

- ⇒ Driver's License or other form of picture identification
- ⇒ Social Security number and card
- ⇒ Resident Alien Card/"Green Card" or copy of your Visa, if you are not a US citizen

7. OTHER INFORMATION

- ⇒ COMPLETE Divorce Decree(s)
- ⇒ Transcripts or Diploma, if you were in school full-time during the past two years
- ⇒ Certificate of Eligibility, if you are applying for a VA loan
- ⇒ Purchase Agreement and any other documents given to you by the Realtor

CREDIT ONLY APPROVAL STEPS IN THE LOAN PROCESS



OVERVIEW OF THE CLOSING PROCESS

LENDER

#1 Purchase Agreement Signed

TITLE CO / BUYER'S ATTORNEY

REAL ESTATE COMPANY

#3 Loan Application

#4 Title work ordered. Processor orders credit report; verifications of employment and deposit; appraisal; good faith estimate sent.

#7 Loan committee reviews income and deposit verifications, appraisal, and credit report; requests any additional information.

#9 Title reviewed and added to file for underwriting.

#11 Underwriter/Loan Committee: approve, ask for additional info, or reject loan

#12 Loan Approval notification to: borrower, title company, and Real estate company.

#14 Lender prepares Supplemental Closing Instructions for Title Company

#16 THE CLOSING: Closers balance seller's and buyer's costs; Mortgage documents are signed and loan requirements met; Funds taken in from buyer / seller; Title transferred; Funds accounted for and disbursed; Deeds are signed; Water bills, electric bills changed over; keys exchanged; closer advised of homestead filing requirement.

#18 Closing package prepared for service or sale to secondary market if applicable.

#20 Assignment to Secondary lender, if applicable.

#5 Abstract, or certificate of title located and updated.

#6 Examination of: abstract, assessment searches, public maps, title insurance application, plat drawings.

#8 Title Binder or Attorney's opinion prepared and sent to lender and real estate company.

#10 Seller contacted to resolve title problems.

#17 Package prepared for lender; package prepared for recording; package prepared for Title Insurance.

#19 Documents filed at County.

#2 Purchase Agreement and closing info sheet given to real estate company processor. Real estate company coordinates name of title company with lender. Requests copy of title work; Notifies lender / vendor of payoff. Periodically checks progress of new loan.

#13 Real Estate company and Title Company schedule closing with buyers, sellers, Title company / Attorney, etc.

#15 Title Company and Real Estate Company prepare closing documents, buyer / seller statements.

BUYER'S ESTIMATED ENTRY COSTS WORKSHEET*

Purchase Price: \$ _____

1. Down Payment (Estimate 3% minimum FHA; 5% Conventional) \$ _____

CLOSING COSTS

2. Title Insurance (Lender) (\$2.50 per \$1000 of Loan Amount) \$ _____

3. Title Ins. (Owner) or Attorney's Opinion (\$1.50 per \$1000 of Sale Price) \$ _____

4. Plat Drawing Inspection (\$40 - \$50) \$ _____

5. Recording Fees (\$50 - \$60) \$ _____

6. Name & Judgement Search (\$25.00) \$ _____

7. Mortgage Registration Tax (\$2.30 per 1000 of Loan Amount) \$ _____

8. Settlement / Closing Fee (\$200 - \$275) \$ _____

9. Origination Fee (1% of Base Loan) \$ _____

10. Credit Report (\$50) \$ _____

11. Appraisal Fee (FHA, VA \$250; Conventional \$325) \$ _____

12. Discount Points Paid by Buyer \$ _____

13. Commitment / Tax Service Fee (\$210 when applicable) \$ _____

14. VA Funding Fee \$ _____

15. Other \$ _____

TOTAL CLOSING COSTS \$ _____

PREPAID ITEMS

16. Mortgage Insurance (First Year) (2.25%FHA if paid up front.
Conventional estimate at 1% of loan, depending upon LTV) \$ _____

17. Homeowners Insurance Premium (1st Year) (\$4 per \$1000 of Sale Price) \$ _____

18. Interim Interest or Mortgage Payment (estimate one month) \$ _____

ESCROW ACCOUNT

19. Homeowner's Insurance (two months) \$ _____

20. Mortgage Insurance (two months) \$ _____

21. Property Taxes (four months) \$ _____

22. Sub-total

Closing Costs + Prepays + Escrows + Down payment (line 1) \$ _____

TOTAL ENTRY COSTS \$ _____

*This is an estimate. Actual costs will vary.

** Paid at time of loan application.

***Must be paid to insurance company before closing. Binder and paid receipt must be brought to closing.

QUALIFYING WORKSHEET

Step 1:

Gross Monthly Income \$ _____
 Times (29% FHA) x _____ %
 Equals = _____
 PITI

Step 2:

Gross Monthly Income \$ _____
 Times (41% FHA) x _____ %
 Equals = \$ _____
 Minus Monthly Long-Term Debt - \$ _____
 Equals = \$ _____
 PITI

Step 3:

Enter the Lowest PITI \$ _____
 Minus: Monthly Estimated Taxes - \$ _____ (estimate at 10% of
 PITI, but not less than \$50)
 Minus: Monthly Estimated Insurance - \$ _____ (estimate at \$4 per
 \$1,000 of purchase price or \$30)
 Minus: Monthly Estimated MIP (FHA) - \$ _____ (estimate at \$30)
 or PMI (insured conventional)
 Equals = \$ _____
 PI

Step 4:

\$ _____ x 1000 = \$ _____
 PI Payment Factor Maximum Mortgage

Step 5:

\$ _____ + _____ = \$ _____
 Maximum Mortgage Down Payment Maximum Sales Price

Step 6:

\$ _____ + _____ = \$ _____
 Down Payment Closing Costs Cash Needed to Close

*Estimate closing costs at 4-5% of maximum mortgage. For more information, see "Buyer's Estimated Entry Cost" worksheet.

	Payment Factors							
Loan Term	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%
15 Yrs	8.71	8.99	9.27	9.56	9.85	10.14	10.44	10.75
30 Yrs	6.32	6.66	7.00	7.34	7.69	8.05	8.4	8.78

GOOD FAITH ESTIMATE OF SETTLEMENT COSTS

APPLICANT(S)	DATE
PROPERTY ADDRESS	
LOAN TYPE	

The information provided below reflects estimates of the charges which you are likely to incur at the settlement of your loan. The fees listed are estimates - the actual charges may be more or less. Your transaction may not involve a fee for every item listed. The numbers listed beside the estimates generally correspond to the numbered lines contained in the HUD-1 settlement statement which you will be receiving at settlement. The HUD-1 settlement statement will show you the actual cost for items paid at closing.

Sales Price	\$ _____	Estimated Principal & Interest	_____ % _____ yrs	\$ _____
Downpayment	\$ _____	MIPVA Insurance		\$ _____
Mortgage Amount	\$ _____	Taxes		\$ _____
FHA MIPVA Funding Fee		Hazard/Flood Insurance		\$ _____
Financed MI Premium	\$ _____	Association Dues		\$ _____
Adjusted Mortgage Amount	\$ _____	Total ESTIMATED Monthly Payment		\$ _____
Based on an ESTIMATED closing date of _____		First Payment Due		

SCHEDULE OF CASH REQUIREMENTS A+B+C

DOWN PAYMENT	\$ _____	(A)
ESTIMATE OF CLOSING COSTS		
801 Loan Origination Fee (_____ % of \$ _____)	\$ _____	
802 Loan Discount (Points) (_____ % of \$ _____)	\$ _____	
803 Appraisal Fee	\$ _____	
804 Credit Report	\$ _____	
805 Lender's Inspection Fee	\$ _____	
807 Assumption Fee	\$ _____	
808/810 Buydown Funds	\$ _____	
% \$ _____ Seller; \$ _____ Applicant	\$ _____	
808/810 Underwriting Fee	\$ _____	
808/810 Commitment Fee	\$ _____	
808/810 Tax Service Fee	\$ _____	
1101 Settlement or Closing Fee	\$ _____	
1102 Abstract or Title Search	\$ _____	
1103 Title Examination	\$ _____	
1104 Title Insurance Binder	\$ _____	
1105 Document Preparation Fee	\$ _____	
1107 Attorney's Fees	\$ _____	
1108 Title Insurance	\$ _____	
1109 Lenders Coverage \$ _____		
1110 Owners Coverage \$ _____ (Optional)		
1111/1113 Adjustable Rate Mortgage Endorsement to Title Insurance	\$ _____	
1201 Recording Fees	\$ _____	
1202 City/County Tax/Stamp (MIN ONLY - INCLUDE \$5.00 CONSERVATION FEE)	\$ _____	
1203 State Tax/Stamp	\$ _____	
1301 Survey/Plat Drawing	\$ _____	
1302 Pest Inspection	\$ _____	
1303/1305 Name Search	\$ _____	
1303/1305 Assessment Search	\$ _____	
Other	\$ _____	
Other	\$ _____	
TOTAL CLOSING COSTS	\$ _____	(B)
ITEMS TO BE PAID IN ADVANCE (Prepaid Expenses)		
901 Interest from _____ to _____ @ _____ per day	\$ _____	
902 Mortgage Insurance Premium @ _____ %	\$ _____	
(MI Payable to: _____)		
902 Uplifted FHA MIP Premium/VA Funding Fee - (CASH PORTION ONLY)	\$ _____	
903 Hazard Insurance Premium (1 year premium)	\$ _____	
904 Flood Insurance Premium (1 year premium)	\$ _____	
1001 Hazard Insurance for _____ months @ \$ _____ per month	\$ _____	
1002 Mortgage Insurance for _____ months @ \$ _____ per month	\$ _____	
1004 County Property Taxes _____ months @ \$ _____ per month	\$ _____	
1006 Flood Insurance for _____ months @ \$ _____ per month	\$ _____	
TOTAL ESTIMATE OF ITEMS TO BE PAID IN ADVANCE	\$ _____	(C)
TOTAL CASH INVESTMENT (A+B+C)	\$ _____	
LESS CASH PREVIOUSLY DEPOSITED		
Earnest Money	\$ _____	
Appraisal Fee and Credit Report	\$ _____	
One Year's Hazard Insurance	\$ _____	
Other	\$ _____	
LESS TOTAL CASH PREVIOUSLY DEPOSITED	\$ _____	
ESTIMATED FUNDS NEEDED AT CLOSING	\$ _____	

(Reminder: Certified funds are required for remainder of down payment. Please make certified funds payable to yourself.)

The undersigned hereby requests that Firstar Home Mortgage Corporation process a loan on my/our behalf. I/We agree to pay all legally allowed fees and charges, including appraisal and credit report fees, incurred in the connection with said processing. I/We understand that this statement is just an estimate. These estimates are provided pursuant to the Real Estate Settlement Procedures Act of 1974, as amended (RESPA).

The undersigned hereby acknowledges and understands the important information on the reverse side of this disclosure in addition to the HUD Guide for Home Buyers, "Settlement Costs," and if applicable the "Consumer Handbook on ARM Mortgages."

Section 223 of the FDIC Improvement Act and Section 701(e) of the Equal Credit Opportunity Act entitles you to a copy of your appraisal report. If you wish a copy, please write to us at the mailing address we have provided. Your written request must be made within 90 days after we notify you about the action taken on your credit application or you withdraw your application.

APPLICANT	DATE
APPLICANT	DATE
THIS STATEMENT WAS PREPARED BY (NAME)	DATE
AND <input type="checkbox"/> DELIVERED <input type="checkbox"/> MAILED ON	DATE

INCOME CALCULATION

APPLICANT ONLY

Hourly pay:

\$ _____ X _____ X 52 weeks \div 12 months - \$ _____
(per hour) (# hrs. worked per week) (Income Per Month)

All other income: Divide the yearly amount by 12, if you are receiving the income on a yearly basis.

\$ _____ per month

\$ _____ per month

APPLICANT'S TOTAL MONTHLY INCOME FROM ALL SOURCES:

\$ _____

CO-APPLICANT ONLY

Hourly pay:

\$ _____ X _____ X 52 weeks \div 12 months - \$ _____
(per hour) (# hrs. worked per week) (Income Per Month)

All other income: Divide the yearly amount by 12, if you are receiving the income on a yearly basis.

\$ _____ per month

\$ _____ per month

CO-APPLICANT'S TOTAL MONTHLY INCOME FROM ALL SOURCES:

\$ _____

**GRAND TOTAL MONTHLY INCOME
FOR APPLICANT & CO-APPLICANT:**

\$ _____

Worksheet 8

Mortgage terms checklist

Use this checklist to compare terms of mortgages offered by lenders to find the type of financing most favorable to your situation.

Name of Lender	1. _____	2. _____
Name of Contact/Phone No.	_____	_____
Amount of Mortgage Needed	_____	_____

Item

Type of mortgage available
(Fixed-rate, ARM, FHA, VA,
Other _____)

Interest rate

Points

Annual percentage rate (APR)

Loan term (15, 20, 30 years)

Minimum down payment required
Without PMI
With PMI

If PMI will be required:
Up-front cost
Monthly premiums
How long required?

Lock-ins
Upon application or approval?
Interest rate and points?
Written agreement?
Effective how long?
Cost of lock-in?
Lower lock-in if rates drop?

Prepayment
Is there a penalty?
Extra payments allowed?

Assumable?

Escrow required
For taxes?
For insurance?

Loan Application Process

FEDERAL TRUTH-IN-LENDING DISCLOSURE STATEMENT

Borrower:
 JAMES D. BUYER
 1234 APPLE STREET
 ANYWHERE, MN 55555

Creditor:
 BURNET HOME LOANS
 7550 FRANCE AVENUE SOUTH SUITE 340
 EDINA, MN 55435

Loan Number: 4444

Date: 11/14/97

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of payments
The cost of your credit as a yearly rate	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
7.4311%	\$124,984.31	\$84,600.72	\$209,585.03

Your payment schedule will be:

No. of Pmts.	Amount of Pmts.	Monthly Pmts. Begin	No. of Pmts.	Amount of Pmts.	Monthly Pmts. Begin	No. of Pmts.	Amount of Pmts.	Monthly Pmts. Begin
12	594.35	02/01/1999	12	585.29	02/01/2013	12	562.68	02/01/2027
12	593.94	02/01/2000	12	584.27	02/01/2014	11	560.13	02/01/2028
12	593.51	02/01/2001	12	583.18	02/01/2015	1	564.08	01/01/2029
12	593.04	02/01/2002	12	582.02	02/01/2016			
12	592.54	02/01/2003	12	580.78	02/01/2017			
12	592.01	02/01/2004	12	579.45	02/01/2018			
12	591.44	02/01/2005	12	578.04	02/01/2019			
12	590.84	02/01/2006	12	576.53	02/01/2020			
12	590.19	02/01/2007	12	574.91	02/01/2021			
12	589.50	02/01/2008	12	573.19	02/01/2022			
12	588.77	02/01/2009	12	571.36	02/01/2023			
12	587.98	02/01/2010	12	569.39	02/01/2024			
12	587.14	02/01/2011	12	567.30	02/01/2025			
12	586.25	02/01/2012	12	565.07	02/01/2026			

INSURANCE: The following insurance is required to obtain credit: * Property
 You may obtain the insurance from anyone that is acceptable to creditor.

SECURITY: You are giving a security interest in the real property being purchased.
 Property Address: 1234 APPLE STREET, ANYWHERE, MN 55555

LATE CHARGE: If a payment is more than 15 days late, you will be charged 4 % of the payment.

PREPAYMENT: If you pay off your loan early, * You may have to pay a penalty of up to 30 days interest. * You will not be entitled to a refund of part of the finance charge.

ASSUMPTION: Someone buying your property may, subject to conditions assume the remainder of your loan on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

JAMES D. BUYER

DATE

Request for Verification of Deposit

Instructions Lender — Complete items 1 through 6. Have depository complete item 7. Forward directly to depository named in item 1.
Depository — Please complete items 8 through 12 and return **DIRECTLY** to lender named in item 2.

Part I—Request

1. To (Name and address of depository) Associates Services Inc. 2810 Humphreys Rd. Phoenix, Az. 85019	2. From (Name and address of lender) Windtree Mortgage Company 15300 Ventura Blvd. Suite 525 Sherman Oaks, Calif. 91403
---	---

3. Signature of Lender <i>John F. ...</i>	4. Title Loan Processor	5. Date 8-9-90	6. Lender's No. (Optional)
---	-----------------------------------	--------------------------	-----------------------------------

7. Information To Be Verified

Type of Account	Account in Name of	Account Number	Balance
401K	Jennifer Smith		8,000

The depository will verify the information provided on this form and forward the results to the lender. The depository will not be responsible for any errors or omissions on this form. The depository will not be responsible for any errors or omissions on this form.

8. Name and Address of Depositor Jennifer Smith 6020 N. 38TH Avenue #17 Phoenix, Az. 85019	9. Signature of Depositor
--	----------------------------------

To Be Completed by Depository

Part II—Verification of Depository

10. Current Accounts of Depositor

Type of Account	Account Number	Current Balance	Average Balance For Previous Two Months	Date Opened
401K	HR	\$ 11,000	\$ 10,800	1985

11. Loans Outstanding To Depositor

Loan Number	Date of Loan	Original Amount	Current Balance	Installments (Monthly/Quarterly)	Secured By	Number of Late Payments
22015		\$	\$	\$ per		
		\$	\$	\$ per		
		\$	\$	\$ per		

12. Please include any additional information which may be of assistance in determination of credit worthiness. (Please include information on items paid-in-full in item 11 above.)

13. Signature of Depository <i>Paul ...</i>	14. Title Plan Trustee	15. Date 9/12/90
---	----------------------------------	----------------------------

The depository will verify the information you have furnished and be prepared except where depository of this information is required by applicable law. The form is to be completed directly to the lender and is not to be transmitted through the depository or any other party.

SETTLEMENT STATEMENT



A. Settlement Statement

B. Type of Loan

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FmHA	3. <input type="checkbox"/> Conv. Unins.	6. File Number	7. Loan Number	8. Mortgage Insurance Case Number
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for information purposes and are not included in the totals.

D. Name and Address of Borrower JAMES GRIFFIN DEBRA GRIFFIN	E. Name and Address of Seller JOHN ROBBINS MARY ROBBINS	F. Name and Address of Lender CHATTANOOGA NEIGHBORHOOD ENTERPRISE 535 CHESTNUT ST CHATTANOOGA, TN 37402
---	---	--

G. Property Location 555 HOMEBUYER LANE APPLECOVE, TN 33777	H. Settlement Agent Place of Settlement FIRST TITLE AGENCY 99 WEST FIRST ST., APPLECOVE, TN, 33778	I. Settlement Date
---	--	--------------------

J. Summary of Borrower's Transaction

K. Summary of Seller's Transaction

100. Gross Amount Due From Borrower		400. Gross Amount Due to Seller	
101. Contract sales price	53,000.00	401. Contract sales price	53,000.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	4,343.28	403.	
104.		404.	
105. EXISTING LIENS		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
120. Gross Amount Due From Borrower	57,343.28	420. Gross Amount Due To Seller	53,000.00
200. Amounts Paid By Or In Behalf of Borrower		500. Reduction in Amount Due to Seller	
201. Deposit or earnest money	790.00	501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	51,500.00	502. Settlement charges to seller (line 1400)	4,368.00
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. OTHER FINANCING (APPLECOVE HOUSING	5,053.28	504. Payoff of first mortgage loan	
205. AGENCY NON-PROFIT)		505. Payoff of second mortgage loan	
206. COSTS PAID BY SELLER		506.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
207. City/town taxes to		507. City/town taxes to	
208. County taxes to		508. County taxes to	
209. Assessments to		509. Assessments to	
210.		510.	
211.		511.	
212.		512.	
213. Total Paid By/For Borrower	57,343.28	513. Total Reduction Amount Due Seller	4,368.00
300. Cash At Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
301. Gross Amount due from borrower (line 120)	57,343.28	601. Gross amount due to seller (line 420)	53,000.00
302. Less amounts paid by/for borrower (line 213)	(57,343.28)	602. Less reductions in amt. due seller (line 513)	(4,368.00)
303. Cash <input type="checkbox"/> From <input type="checkbox"/> To Borrower	0.00	603. Cash <input checked="" type="checkbox"/> To <input type="checkbox"/> From Seller	48,632.00

SAMPLE INSURANCE POLICY

HP 532 75 73

04

37343-4239 04276

ACME INSURANCE CO.
620 Any St.
Chattanooga, TN 37403

Homeowners Policy—Occupancy Residential
New Declaration * * * * Effective 06/03/93

COVERAGE IS CONDITIONED UPON YOUR BANKS PAYMENT OF CHECK WHEN PRESENTED

POLICY NUMBER	POLICY EFFECTIVE DATE	CONTROL NUMBER	AGENCY
HP 5386512	06/03/93 06/02/93	04-12302	06281

INSURED NAME/ADDRESS

John F. Homebuyer
535 Anywhere Rd.
Chattanooga, TN 37402

MORTGAGE/LOSS PAYEE

Anybank of Tennessee
815 Any St.
Chattanooga, TN 37402

The Premises covered by this policy is located on 1/2 acre in Chattanooga, TN at 535 Anywhere Rd.

Rating information-Frame, Constructed in 1980, Primary Residence, Territory, 01, \$250 Section I Loss Deductible, 1 Family,

Coverage at the above described location is provided only where a limit of liability is shown or a premium is stated

	Section I Coverage	Limit of Liability	Premiums
100%	A. Dwelling	83,500	322.00
10%	B. Other Structures	8,350	
40-60%	C. Personal Property	33,400	17.00CR
Actual	D. Loss of Use	Actual Loss Sustained	
	SECTION II Coverage		
	E. Personal Liability	100,000	
	F. Medical Pay. To Others	5,000 per person, 25,000 per Accd	

Total Basic Premium- - - - - 305.00

Additional Premiums

Deductible Credit	35.00CR	
Personal Property Replacment Cost Endorsement, TF6	24.00	
Total Additional Premiums- - - - -		11.00C
Total Annual Premium- - - - -	\$294.00	

Policy Period-12.01 am standard time at the residence premises

First Mortgage

Anybank
815 Broad St.
Chattanooga, TN 37402

Second Mortgage

Forms and endorsements - TF2 07/87*, TF90 08/91*, TF76 07/89*, TF79 04/90*, TF6 05/87*

Agent- Joe Jones/John Davis
221 Somewhere St. Chattanooga, TN 37416
Phone: 615 321-1234

Authorized Representative

Date

The mortgage has been billed for premium on this policy

04-12302 0006 John F. Homebuyer
Amount Recieved- - - - - 292.00

Amount
2.00

Policy Number
HP 5386512

MORTGAGE

File Number: 123456

THIS MORTGAGE ("Security Instrument") is given on March 5, 1998.
The mortgagor is John A. Doe and Mary B. Doe, husband and wife

("Borrower"). This Security Instrument is given to Skyhigh Mortgage Company
under the laws of the State of, which is organized and existing
Minneapolis, MN 55232, and whose address is 222 Milky Way, ("Lender").

Borrower owes Lender the principal sum of ONE HUNDRED FIFTY THOUSAND AND NO/100
----- Dollars (U.S.S. 150,000.00). This debt is evidenced by Borrower's note
dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if
not paid earlier, due and payable on April 1, 2028 and for interest at the yearly rate
of Seven and Seven-Eighths percent. This Security Instrument secures to Lender: (a) the repayment
of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the
payment of all other sums, with interest advanced under paragraph 7 to protect the security of this Security Instrument;
and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this
purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described
property located in Ramsey County, Minnesota:

Lot 1, Block 2, Galaxy Addition, according to the recorded plat thereof.

which has the address of 1234 Anywhere Lane, Somewhere,
[Street] [City]
Minnesota 55555 ("Property Address");
[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances,
and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security
Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage,
grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants
and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

MINNESOTA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 8/90

Initial(s) _____
DCMN511

Page 1 of 6
FIRST DATA SYSTEMS, INC.

Loan Number:
1-615-361-8404

for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgement could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

7. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. Mortgage Insurance. If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in

Loan Number:

Initial(s) _____

16. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. **Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

19. **Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

21. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law, Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees.

Loan Number:

Initial(s) _____

No delinquent taxes and transfer entered; Certificate of Real Estate Value (---) filed () not required
Certificate of Real Estate Value No. _____

, 19 _____

County Auditor

by _____

Deputy

STATE DEED TAX DUE HEREON: \$ 660.00

Date: March 5, 19 98

(reserved for recording data)

FOR VALUABLE CONSIDERATION, Michael W. Smith and Jane Y. Smith, husband and wife
_____, Grantor(s).

(marital status)

herby convey (s) and warrant (s) to John A. Doe and Mary B. Doe, husband and wife
_____, Grantees as joint

tenants real property in Ramsey County, Minnesota, described as follows:

Lot 1, Block 2, Galaxy Addition, according to the recorded plat thereof.

(if more space is needed, continue on back)

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions:

Affix Deed Tax Stamp Here

Michael W. Smith

Jane Y. Smith

STATE OF MINNESOTA

COUNTY OF Ramsey

} ss.

The foregoing instrument was acknowledged before me this 5th day of March, 19 98,
by Michael W. Smith and Jane Y. Smith, husband and wife

_____, Grantor(s).

NOTARIAL STAMP OR SEAL (FOR OTHER TITLE OR RANK)

SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

Tax Statements for the real property described in this instrument should be sent to (Include name and address of Grantee):

John A. Doe
Mary B. Doe
1234 Anywhere Lane
Somewhere, MN 55555

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS):

Capital Title Corporation
1210 West County Road D
Arden Hills, MN 55112

INVENTORY OF LEARNING METHODS

LEARNING METHODS

There are various learning methods which can be employed within the formats listed previously. Trainers often combine a "mix" of these methods to engage an audience and present information in a variety of ways to get their message across.

A solid understanding of adult learning is required of the trainer plus a familiarity of methods so that, as the trainer "reads" shifting audience needs, she/he can adapt and adjust by offering one or more of the following training options. I list them here with characteristics, suggested uses, positive and negative points, etc.:

LECTURE

1. Allows trainer to give a lot of information in a short time.
2. Demands great preparation and practice.
3. Can easily be "over-used" and thus abused or boring.
4. Does not allow for much (if any) feedback.
5. Gives trainer complete control over what is said (not what is thought, though).
6. Can be used well with very large groups.
7. Needs visual punctuation (flip chart, overhead, etc.).
8. Demands great vitality and stage presence of trainer.
9. Needs clear verbal examples to bring learning "home".
10. Appropriate humor helps ease the "sit-still-while-I-instill" effect.
11. Is enhanced by insuring that trainees can take notes easily (offer tables, etc.).

SKITS

1. Requires careful selection of skit actors. . .do not force people to act.
2. Can show contrasting actions (right vs. wrong, etc.) well.
3. Humorous actions can get lessons across.
4. Do not allow audience to ridicule or criticize actors. . .keep them focused on actions.
5. Be prepared to prompt actors if they falter.

DEMONSTRATION

1. Great learning if everyone can see/hear well, poor if not.
2. Allow participants to then practice skill, encourage creativity.
3. Be prepared to coach demonstrators if they falter.
4. Allow participants to share results of their attempts to duplicate demonstration.

BRAINSTORMING

1. Lay out rules of Brainstorming:
 - a. anything goes . . . creativity is encouraged.
 - b. link ideas together for expansion. . . build on one another.
 - c. play with ideas. . . go for quantity of thoughts with no evaluation.
 - d. no one allowed to "shoot down" anyone's ideas.
 - e. capture ideas so they don't get lost.
2. Use small groups (4-8) when possible.
3. Give any needed background information to get folks off to a solid start (too little data will set them up for failure/too much will direct them toward the "answer" they think the trainer wants).
4. High level managers can sometimes intimidate a group. . . people tend to defer to the boss . . . it is helpful to group people in peer settings.
5. Encourage fun . . . I often ask groups to write down ideas and tell them we'll count to see who has the greatest number in a given time. This encourages the quick responses I want. You can also offer a silly gift or reward for the most "off the wall" idea, etc.

DISCUSSIONS

Group discussions are the most commonly employed training method. To do them correctly the trainer must know how to stimulate, instruct and manage them well. (See Figure 4-1, p. 72, at end of chapter) Various groups take on varied characteristics.

1. Whole group discussions can work if the trainer can control the flow, draw people out, limit any rambling and keep the group on target. To do so the trainer needs:
 - a. visuals available (flip chart, overhead, handout, etc.) to show progression of discussion point or pertinent information.
 - b. to set time limits on discussion at start.
 - c. to reinforce and highlight good points made from the audience.
 - d. to sum up key points to bring leadership focus back to trainer.
2. Small group discussions are best when limited to 4-8 people:
 - a. give them clear instructions, reinforce by having them in writing on board, flip chart or overhead screen.
 - b. ask participants if they have any questions about the instructions.
 - c. have group appoint a facilitator, recorder and/or reporter.
 - d. allow people as much control as possible in forming their groups . . . you may suggest ways (all at one table, those in particular department, by years of experience, etc.) but allow them to decide on groups that "feel" right.
3. Dyads or Triads:
 - a. 2-3 people discussing ideas.
 - b. frequently does not require feedback from each set, but a general invitation from trainer for volunteers to share learnings.
 - c. useful when you are asking trainees to explore feelings or softer issues of relationships, visions, needs, etc.

PARTICIPATORY TRAINING (TEACHING) TECHNIQUES

1. Multiple choice

Give each participant four pieces of colored paper, each one with a different letter written on it (A, B, C, D). Prepare multiple choice questions on an overhead or flip chart. Tell participants to hold up the appropriate piece of colored paper to respond to the question. When errors are made, review the content.

2. Examples

Divide participants into small groups to create examples or analogies of a point or concept you have taught. A variation would be to create exceptions to the point. Encourage participants to use their own experiences.

3. Fill in the blank

Prepare a printed outline of key ideas and leave out key words or phrases. Ask participants to fill in the missing words.

4. Graphic association

Divide a flip chart into 4-6 sections with a graphic in each section. Deliver a lecture while referring to the graphics, one section at a time. When finished, remove the graphics and ask participants to sketch the graphics quickly from memory. As a group, recall the content using the graphics as prompts.

5. Listening teams

Assign participants to listening teams (of 2-5 members each) in advance. Give the teams particular issues or questions on which to reflect. At the end, have the teams discuss their assignment. Ask a spokesperson from each team to report their conclusions to the entire group.

6. Case study

Provide participants with a written description of relevant data. Individually or in small groups have participants analyze and define the problem, then generate possible solutions. This can be shared with the larger group.

7. Small group discussions

Divide participants into small groups and provide them with a topic of predetermined objectives.

8. The whip

Go quickly around the room and ask each person to respond to a question, word, or phrase.

9. Brainstorming

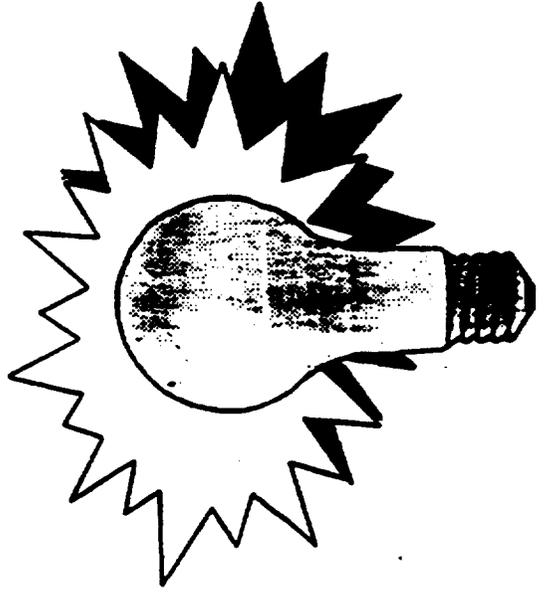
List ideas to a given topic withholding judgment. Later the list can be used for discussion or basis for a lecture.

HOW TO DEMYSTIFY & SIMPLIFY TECHNICAL SUBJECT MATTER

- Clarify terminology -- solicit basic definitions
- Demystify acronyms
- Get at learners' burning questions
- Ask the group to think about/answer a specific question
- Solicit specific problems they encounter
- Find out the worst and the best experience they've had
- Use a cartoon to poke fun at the topic
- Do a short quiz
- Do a self-assessment survey

TECHNIQUES BEYOND Q & A:

- Index cards
- dyads or triads
- Newsprint charts
- draw a picture
- scrabble letter
- round robin
- cartoons & caricatures



FUNDERS ACRONYM SCRABBLE FOR NONPROFIT BOARDS

DIRECTIONS:

1. Print 4 sets of individual letters on 2" x 2" squares (like a scrabble game).
2. Break participants into four groups and give them each one set of letters.
3. Ask each group to spell out as many acronyms of affordable housing funding sources with the provided letters as they can within 5 minutes. (Letters can be used more than once).
4. Each group gets 2 points per acronym and another 2 points for knowing what the abbreviations stand for (and/or what kind of assistance the source provides).
5. Group with the most total points wins.
6. Give out list of acronyms and names at the end for their future reference.

POSSIBLE ACRONYMS:

FNMA	Federal National Mortgage Association or "Fannie Mae"
HUD	U.S. Dept. of Housing and Urban Development
CDBG	Community Development Block Grants
HOPE	Homeownership for People Everywhere
HOME	Home Investment Partnership Program
FHLBB	Federal Home Loan Bank Board
NRC or NR	Neighborhood Reinvestment Corporation
AHP	Affordable Housing Program
NHSA	Neighborhood Housing Services of America
FHA	Federal Home Administration
FmHA	Farmers Home Administration
RTC	Resolution Trust Corporation
NPP	[NYS] Neighborhood Preservation Program
DHCR	[NYS] Division of Housing and Community Renewal
UIG	[NYS] Urban Initiatives Grant
HTF	[NYS] Housing Trust Fund
AHC	[NYS] Affordable Housing Corporation
LHC	Low-Income Housing [Tax] Credit [Program]
SONYMA	State of New York Mortgage Agency

LETTERS NEEDED:

A,B,C,D,E,F,G,H,I,L,M,N,O,P,R,S,T,U,Y

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower", as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or the income or assets of the Borrower's spouse will not be used as a basis for loan qualification, but his or her liabilities must be considered because the Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

I. TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for:	<input type="checkbox"/> VA	<input type="checkbox"/> Conventional	<input type="checkbox"/> Other:	Agency Case Number	Lender Case No.
	<input type="checkbox"/> FHA	<input type="checkbox"/> FmHA			
Amount	Interest Rate	No. of Months	Amortization Type:	<input type="checkbox"/> Fixed Rate	<input type="checkbox"/> Other (explain):
\$	%		<input type="checkbox"/> GPM	<input type="checkbox"/> ARM (type):	

II. PROPERTY INFORMATION AND PURPOSE OF LOAN

Subject Property Address (street, city, state, & zip code)		No. of Units
Legal Description of Subject Property (attach description if necessary)		Year Built
Purpose of Loan	<input type="checkbox"/> Purchase <input type="checkbox"/> Construction <input type="checkbox"/> Other (explain):	Property will be:
	<input type="checkbox"/> Refinance <input type="checkbox"/> Construction-Permanent	<input type="checkbox"/> Primary Residence <input type="checkbox"/> Secondary Residence <input type="checkbox"/> Investment
Complete this line if construction or construction-permanent loan.		
Year Lot Acquired	Original Cost	Amount Existing Liens
\$	\$	\$
	(a) Present Value of Lot	(b) Cost of Improvements
	\$	\$
Complete this line if this is a refinance loan.		
Year Acquired	Original Cost	Amount Existing Liens
\$	\$	\$
	Purpose of Refinance	Describe Improvements <input type="checkbox"/> made <input type="checkbox"/> to be made
		Cost: \$
Title will be held in what Name(s)	Manner in which Title will be held	Estate will be held in:
		<input type="checkbox"/> Fee Simple
		<input type="checkbox"/> Leasehold (show expiration date)
Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain)		

III. BORROWER INFORMATION

Borrower				Co-Borrower			
Borrower's Name (include Jr. or Sr. if applicable)				Co-Borrower's Name (include Jr. or Sr. if applicable)			
Social Security Number	Home Phone (incl. area code)	Age	Yrs. School	Social Security Number	Home Phone (incl. area code)	Age	Yrs. School
<input type="checkbox"/> Married <input type="checkbox"/> Unmarried (include single, divorced, widowed) <input type="checkbox"/> Separated	Dependents (not listed by Co-Borrower) no. ages			<input type="checkbox"/> Married <input type="checkbox"/> Unmarried (include single, divorced, widowed) <input type="checkbox"/> Separated	Dependents (not listed by Borrower) no. ages		
Present Address (street, city, state, zip code) <input type="checkbox"/> Own <input type="checkbox"/> Rent ____ No. Yrs.				Present Address (street, city, state, zip code) <input type="checkbox"/> Own <input type="checkbox"/> Rent ____ No. Yrs.			
If residing at present address for less than two years, complete the following:							
Former Address (street, city, state, zip code) <input type="checkbox"/> Own <input type="checkbox"/> Rent ____ No. Yrs.				Former Address (street, city, state, zip code) <input type="checkbox"/> Own <input type="checkbox"/> Rent ____ No. Yrs.			
Former Address (street, city, state, zip code) <input type="checkbox"/> Own <input type="checkbox"/> Rent ____ No. Yrs.				Former Address (street, city, state, zip code) <input type="checkbox"/> Own <input type="checkbox"/> Rent ____ No. Yrs.			

IV. EMPLOYMENT INFORMATION

Borrower				Co-Borrower			
Name & Address of Employer <input type="checkbox"/> Self Employed				Name & Address of Employer <input type="checkbox"/> Self Employed			
Yrs. on this job		Yrs. employed in this line of work/profession		Yrs. on this job		Yrs. employed in this line of work/profession	
Position/Title/Type of Business		Business Phone (incl. area code)		Position/Title/Type of Business		Business Phone (incl. area code)	
If employed in current position for less than two years or if currently employed in more than one position, complete the following:							
Name & Address of Employer <input type="checkbox"/> Self Employed				Name & Address of Employer <input type="checkbox"/> Self Employed			
Dates (from - to)		Monthly Income		Dates (from - to)		Monthly Income	
		\$				\$	
Position/Title/Type of Business		Business Phone (incl. area code)		Position/Title/Type of Business		Business Phone (incl. area code)	
Name & Address of Employer <input type="checkbox"/> Self Employed				Name & Address of Employer <input type="checkbox"/> Self Employed			
Dates (from - to)		Monthly Income		Dates (from - to)		Monthly Income	
		\$				\$	
Position/Title/Type of Business		Business Phone (incl. area code)		Position/Title/Type of Business		Business Phone (incl. area code)	



VI. ASSETS AND LIABILITIES (cont.)

Schedule of Real Estate Owned (If additional properties are owned, use continuation sheet.)

Property Address (enter S if sold, PS if pending sale or R if rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Insurance, Maintenance, Taxes & Misc.	Net Rental Income
		\$	\$	\$	\$	\$	\$
	Totals	\$	\$	\$	\$	\$	\$

List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):

Alternate Name	Creditor Name	Account Number

VII. DETAILS OF TRANSACTION

a. Purchase price	\$
b. Alterations, improvements, repairs	
c. Land (if acquired separately)	
d. Refinance (incl. debts to be paid off)	
e. Estimated prepaid items	
f. Estimated closing costs	
g. PMI, MIP, Funding Fee	
h. Discount (if Borrower will pay)	
i. Total costs (add items a through h)	
j. Subordinate financing	
k. Borrower's closing costs paid by Seller	
l. Other Credits (explain)	
m. Loan amount (exclude PMI, MIP, Funding Fee financed)	
n. PMI, MIP, Funding Fee financed	
o. Loan amount (add m & n)	
p. Cash from/to Borrower (subtract j, k, l & o from i)	

VIII. DECLARATIONS

If you answer "yes" to any questions a through i, please use continuation sheet for explanation.	Borrower		Co-Borrower	
	Yes	No	Yes	No
a. Are there any outstanding judgments against you?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Have you been declared bankrupt within the past 7 years?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Are you a party to a lawsuit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? (This would include such loans as home mortgage loans, SBA loans, home improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, financial obligation, bond, or loan guarantee. If "Yes," provide details, including date, name and address of Lender, FHA or VA case number, if any, and reasons for the action.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Are you obligated to pay alimony, child support, or separate maintenance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Is any part of the down payment borrowed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Are you a co-maker or endorser on a note?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. Are you a U.S. citizen?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. Are you a permanent resident alien?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. Do you intend to occupy the property as your primary residence? If "Yes," complete question m below.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. Have you had an ownership interest in a property in the last three years? (1) What type of property did you own - principal residence (PR), second home (SH), or investment property (IP)? (2) How did you hold title to the home - solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IX. ACKNOWLEDGMENT AND AGREEMENT

The undersigned specifically acknowledge(s) and agree(s) that: (1) the loan requested by this application will be secured by a first mortgage or deed of trust on the property described herein; (2) the property will not be used for any illegal or prohibited purpose or use; (3) all statements made in this application are made for the purpose of obtaining the loan indicated herein; (4) occupation of the property will be as indicated above; (5) verification or reverification of any information contained in the application may be made at any time by the Lender, its agents, successors and assigns, either directly or through a credit reporting agency, from any source named in this application, and the original copy of this application will be retained by the Lender, even if the loan is not approved; (6) the Lender, its agents, successors and assigns will rely on the information contained in the application and I/we have a continuing obligation to amend and/or supplement the information provided in this application if any of the material facts which I/we have represented herein should change prior to closing; (7) in the event my/our payments on the loan indicated in this application become delinquent, the Lender, its agents, successors and assigns, may, in addition to all their other rights and remedies, report my/our name(s) and account information to a credit reporting agency; (8) ownership of the loan may be transferred to successor or assign of the Lender without notice to me and/or the administration of the loan account may be transferred to an agent, successor or assign of the Lender with prior notice to me; (9) the Lender, its agents, successors and assigns make no representations or warranties, express or implied, to the Borrower(s) regarding the property, the condition of the property, or the value of the property. Certification: I/we certify that the information provided in this application is true and correct as of the date set forth opposite my/our signature(s) on this application and acknowledge my/our understanding that any intentional or negligent misrepresentation(s) of the information contained in this application may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq, and liability for monetary damages to the Lender, its agents, successors and assigns, insurers and any other person who may suffer any loss due to reliance upon any misrepresentation which I/we have made on this application.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X		X	

X. INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of loans related to a dwelling, in order to monitor the Lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a Lender may neither discriminate on the basis of this information, nor on whether you choose to furnish it. However, if you choose not to furnish it, under Federal regulations this Lender is required to note race and sex on the basis of visual observation or surname. If you do not wish to furnish the above information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the Lender is subject under applicable state law for the particular type of loan applied for.)

BORROWER				CO-BORROWER			
<input type="checkbox"/> I do not wish to furnish this information	<input type="checkbox"/> American Indian or Alaskan Native	<input type="checkbox"/> Asian or Pacific Islander	<input type="checkbox"/> White, not of Hispanic origin	<input type="checkbox"/> I do not wish to furnish this information	<input type="checkbox"/> American Indian or Alaskan Native	<input type="checkbox"/> Asian or Pacific Islander	<input type="checkbox"/> White, not of Hispanic origin
<input type="checkbox"/> Race/National Origin:	<input type="checkbox"/> Black, not of Hispanic origin	<input type="checkbox"/> Hispanic		<input type="checkbox"/> Race/National Origin:	<input type="checkbox"/> Black, not of Hispanic origin	<input type="checkbox"/> Hispanic	
<input type="checkbox"/> Other (specify)				<input type="checkbox"/> Other (specify)			
<input type="checkbox"/> Sex:	<input type="checkbox"/> Female	<input type="checkbox"/> Male		<input type="checkbox"/> Sex:	<input type="checkbox"/> Female	<input type="checkbox"/> Male	
To be Completed by Interviewer:				Name and Address of Interviewer's Employer			
This application was taken by:				Interviewer's Signature			
<input type="checkbox"/> face-to-face interview				Date			
<input type="checkbox"/> by mail				Interviewer's Phone Number (incl. area code)			
<input type="checkbox"/> by telephone							



AGREEMENT TO LOCK-IN INTEREST RATE AND DISCOUNT POINTS
FHA

This Agreement is made by the undersigned applicants ("Applicant") and FBS Mortgage Corporation ("FBSMC"), and relates to Applicant's application to FBSMC for a mortgage loan for the property located at _____

Applicant and FBSMC agree that the annual interest rate for such loan will be _____%. If the loan is to be an adjustable rate loan, such interest rate will be the initial interest rate, and will change as described in the Adjustable Rate Mortgage Disclosure Statement which FBSMC has provided to Applicant.

Applicant and FBSMC also agree that the discount points for such loan will be _____% of the loan amount, based on _____ [type of loan] for _____ months. The discount points will _____ will not _____ include the loan origination fee charged by FBSMC.

THE INTEREST RATE AND DISCOUNT POINTS STATED ABOVE WILL BE EFFECTIVE UNTIL _____, 19__ (THE "EXPIRATION DATE"). THE INTEREST RATE AND DISCOUNT POINTS WILL NOT BE REDUCED UNDER ANY CIRCUMSTANCES.

In exchange for FBSMC's agreement to fix the interest rate and discount points stated above, Applicant agrees to obtain and promptly provide to FBSMC the documents and information requested by FBSMC to process Applicant's application. Applicant understands that Applicant's failure to promptly provide such documents or information may result in Applicant's application being denied, or may delay processing of the application. Such a delay may prevent the loan from being closed and the loan funds disbursed by the Expiration Date.

If Applicant's application is approved, Applicant will promptly take all actions necessary to fulfill all conditions of approval imposed by FBSMC and to close the loan by the Expiration Date.

If the loan is not closed and all loan funds disbursed on or before the Expiration Date, and the failure to close and disburse is not caused by FBSMC, FBSMC may increase the interest rate and/or discount points as a condition to closing the loan after the Expiration Date, but the interest rate and discount points will not be less than those stated above.

This is not an agreement by FBSMC to make any loan, but is an agreement fixing the interest rate and discount points for the loan if and when FBSMC approves the loan for which Applicant has applied. FBSMC will provide Applicant with written notice of approval or disapproval of the loan.

Applicant acknowledges receipt from FBSMC of The Mortgage Loan Process Disclosure Statement. The statement describes the steps necessary to process Applicant's application, and to close the loan if that application is approved. Applicant agrees to read the statement.

Applicant is paying to FBSMC when this Agreement is signed a lock-in fee of \$ _____. That lock-in fee will be refunded to Applicant only if Applicant's application is not approved by FBSMC, or if such application is approved and Applicant closes on or before the Expiration Date pursuant to this Agreement.

Applicant understands that Applicant will be required to pay at closing a commitment fee of \$ _____, and that such commitment fee is in addition to the lock-in fee.

Applicant has not made any application to, or signed any agreement with, any other lender to fix or lock-in any interest rate or discount points for a loan for the above property (excepting any such agreement which has expired or been terminated). Applicant agrees not to make application for a loan for the above property to any other lender while this Agreement is in effect.

FBSMC's "Re-lock Program" has been offered and explained to Applicant. The Re-Lock Program is available if Applicant pays the applicable re-lock fee. Applicant has decided _____ to participate or _____ not to participate (initial one) in the Re-lock Program.

THIS IS A VERY IMPORTANT DOCUMENT. IT IS ENFORCEABLE BY APPLICANT AND BY FBSMC. IF YOU DO NOT UNDERSTAND IT, YOU SHOULD CONSULT A LAWYER.

FBS MORTGAGE CORPORATION

By: _____ Date: _____
Its: _____

APPLICANT(S):

Date: _____

Date: _____

NO INTEREST RATE OR DISCOUNT POINTS COMMITMENT (FLOAT)

The undersigned ("Applicant") has applied to FBS Mortgage Corporation ("FBSMC") for a mortgage loan for the property located at _____

Applicant has decided not to lock-in an interest rate and discount points for the proposed loan at this time. Applicant understands that the Applicant is taking the risk that the interest rate, discount points and characteristics of the proposed loan may change before Applicant does lock-in an interest rate and discount points. Applicant is responsible for deciding when to lock-in an interest rate and discount points.

Applicant has received The Mortgage Loan Process Disclosure Statement. Applicant also understands that the interest rate and discount points for the proposed loan will not be locked-in until Applicant signs and delivers the above lock-in agreement to FBSMC. Such signed agreement must be delivered to FBSMC between 10:30 a.m. and 4:30 p.m. on the business day of Applicant's request for a lock-in, and will be effective when accepted in writing by FBSMC.

APPLICANT(S):

Date: _____

Date: _____

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note, is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

.....(Seal)
John A. Doe -Borrower

.....(Seal)
Mary B. Doe -Borrower

.....(Seal)
-Borrower

[Sign Original Only]

Continuation Sheet/Residential Loan Application

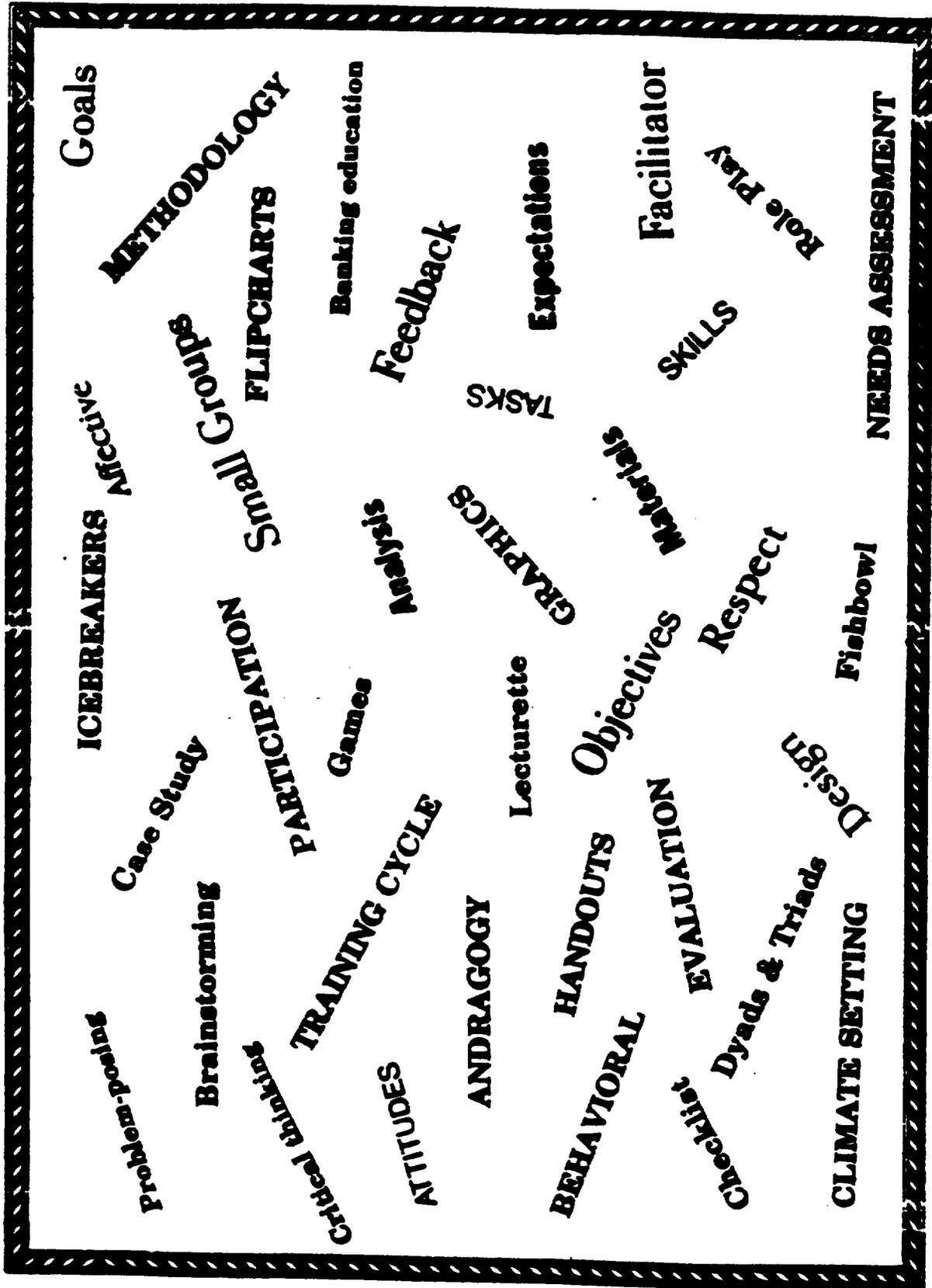
Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.	
Borrower:	Agency Case Number:
Co-Borrower:	Lender Case Number:

I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature:	Date:	Co-Borrower's Signature:	Date:
X		X	

Fidelity Mac Form 65 10/92
 Page 4 of 4 pages
 Fannie Mae Form 1003 10/92

TERMS AND TECHNIQUES IN COMMUNITY EDUCATION



2. MUSICAL CARDS – MASTERING HOUSING TERMINOLOGY

This activity is very content-oriented, but provides a fun, collective way to learn new vocabulary related to the home purchase or community development process.

Materials

- 11" x 4" colored construction paper
- markers
- bell or music (optional)

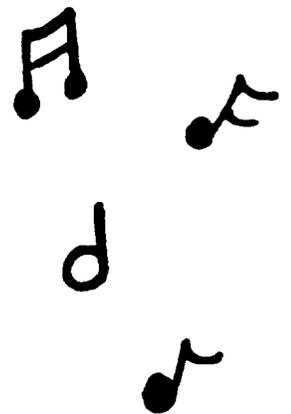
Steps

Write 5 key terms, each on a piece of colored construction paper. (about 11" x 4" in size or larger if the word is long). Participants sit in pairs. Each group is handed a strip of paper with one of the words written on it. The group will have 2 minutes to discuss the meaning of the word or phrase. After 2 minutes, the trainer can either blow a whistle, ask them to pass on their words, or if music can be arranged, stop the music as if it were a game of musical chairs. The vocabulary cards are passed around clockwise, so that each group gets a new word. After each group has discussed all the words (10-15 minutes in all), the entire group comes together to share questions or comments about the terminology.

Depending on the word and its usage, exact definitions may not be desirable; a grasp of the general meaning and application are likely more useful.

Possible vocabulary:

credit	credit union
a mortgage term	judgements
credit bureau	bankruptcy
Fair Credit Reporting Act	a credit file
Equal Credit Opportunity Act	interest rates
condominium	amortization tables
cooperative	savings and loan association
Fannie Mae	inside and outside ratios
principal	housing code
consolidation loan	settlement
default	points



10. Current vs. ideal states

Ask participants to respond to two questions applicable to the topic: 1) how is the current situation? 2) what is the ideal situation?

11. What if questioning

Ask participants challenging "what if" questions to stimulate responses, creativity, and discussion.

12. Action plan

At the end of a session, give participants a worksheet that offers a guide for action to complete individually or by household. This could be action before the next session or before loan application or another stage of home ownership. After participants have completed their action plan ask them to share with another in the session.

13. Values auction

Divide participants into teams. Give each team the same amount of play money. Have a list of values (good schools, parks nearby, big houses, walk to work, safe streets, diverse neighborhood, friendly neighbors, etc.) listed on a flip chart or overhead. Auction off each value to the highest bidding team. Before bidding begins allow a little time for each team to develop a strategy. After the auction discuss the values without judgment.

14. Problem solving

Present a problem in writing to participants in small groups and ask them to offer 1-2 solutions. Then share answers and discuss within the larger group. Prioritize the options.

15. Icebreakers

Give participants a structured, content-free activity or exercise to relax them, get acquainted with one another, and/or energize them.

16. Yes - no exercise

Prepare or read a series of statements or questions. Ask participants to agree or disagree. You may want to offer a scoring device for this exercise.

17. Other interactive techniques

Pop quizzes

Small groups

Worksheets

Flash cards

Role play

Scavenger hunt

Calculations

Field trip

4. Experience sharing:
 - a. having the audience share a particular problem and asking others to offer suggestions.
 - b. develop a list of options, since one can't work for everyone.
 - c. keep control of length and direction of responses. (See Figure 4-2, p. 73, at end of chapter)
 - d. if solutions are very complex, invite two participants to get together over break to match problem and solution, possibly reporting back to whole group later.
5. Ice Breakers: (See Figure 4-3, pp. 74-78, at end of chapter)
 - a. used to help people get to know one another.
 - b. must be used carefully – some people feel threatened or simply dislike them.
 - c. start simply – you'll be able to read the audience's acceptance/rejection of this exercise.

ON-SITE VISITS

1. With smaller groups this can be invaluable as trainees observe work in progress.
2. Allow for questions to help trainees clarify what they are seeing.
3. You may want to assign tasks of observations to individuals (i.e.: "What technique was used by the worker to help the client?", etc.).

ROLE PLAYING

1. Must be carefully prepared in advance.
2. Do not simply grab people from an audience without their enthusiastic approval. Choose carefully.
3. Role playing in front of an entire audience needs to be rehearsed and coached before performance. Insure participants understand role and mind set.
4. Small group role playing is best when they employ three people ... two roles and one observer ... then have people switch places so that all parties take all three parts during exercise.
5. When people disagree on an issue, you might be able to have them reverse roles and debate from the opposite point of view. Be careful, however, I would not try this if there had not been a high degree of trust built in the session already!

CASE STUDIES

1. Present case study for groups or individuals to work on, then have them discuss response options.
2. Set time limits at start.
3. Offer any background information needed.
4. Write case studies from actual experiences you encounter so they do not sound contrived.
5. Encourage creativity ... do not give the impression that there is one right answer to a study.

VISUALIZING

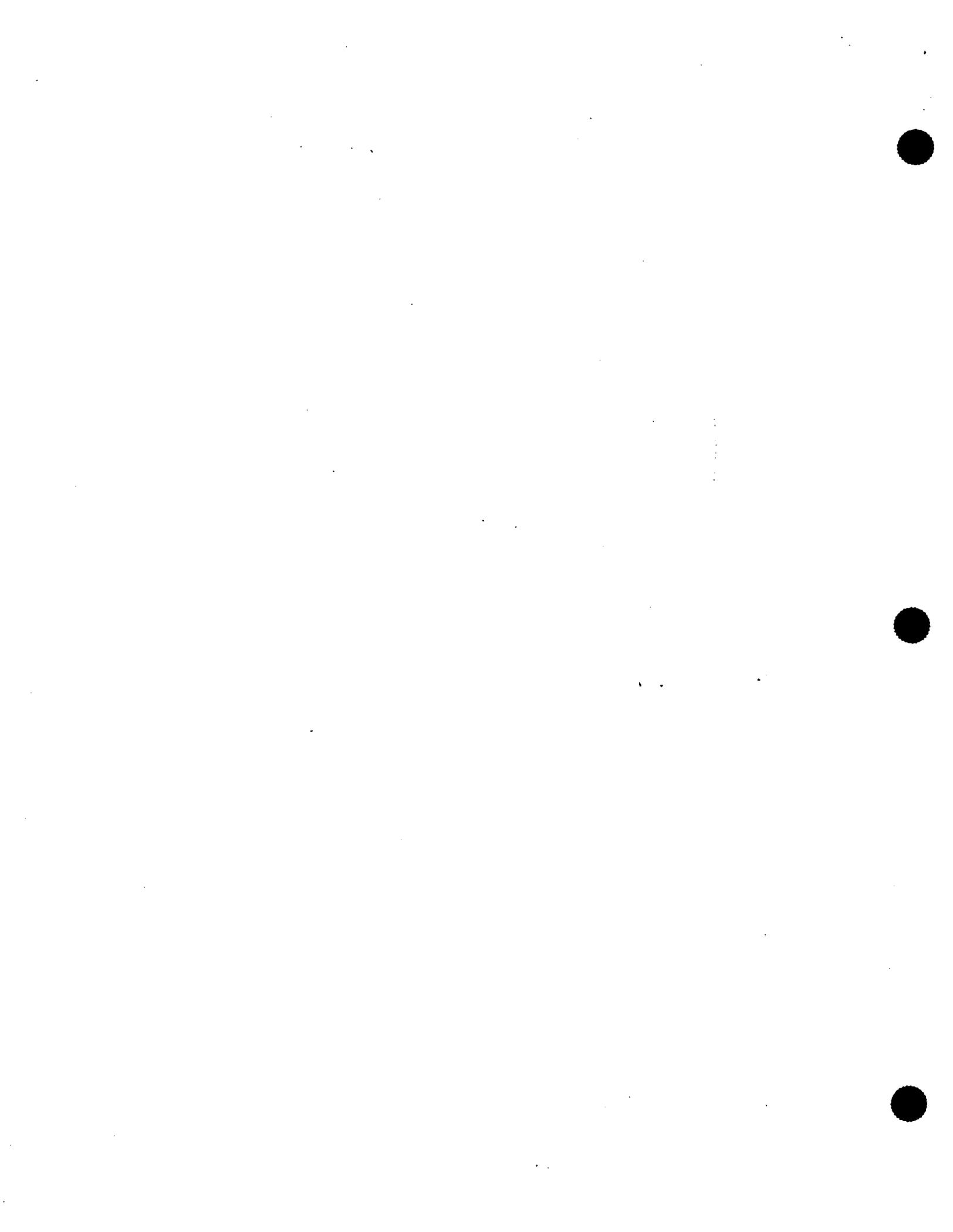
1. Use only where audience has built solid trust in trainer.
2. Guide people gently, with simple instructions, step-by-step.
3. Do not force those who are resistant (the exercise has probably produced a painful memory or fear).
4. Allow people to proceed at their own pace.
5. Assign the task of a follow-up to visualization (i.e.: a letter written to themselves to be sent by the trainer 30 days after the seminar to remind them of their 30 day goal).
6. Insure confidentiality when appropriate.

PRACTICE

1. Provides opportunity to rehearse actions.
2. Can offer feedback from audience and/or trainers to sharpen a presentation, lecture, speech, etc.
3. Can build confidence of trainees by practicing skills such as a receptionist needs in answering a phone, directing people, etc.
4. Can provide ways to help people solve problems by having someone play role of person presenting a problem.
5. Can be used with small groups and assigned subject (i.e.: problem, challenge, work set-up, etc.).
6. Use carefully if participants are insecure. .coach people gently toward appropriate responses and actions.
7. You can use video taping if deemed appropriate. This is especially helpful when training trainers.

PROBLEM SOLVING

1. Present problem in writing to small groups of participants and ask them to offer one or two solutions.
2. Have group share answers and discuss.
3. Have group prioritize best options for response and present to entire training audience.
4. You may find it valuable to group people by categories. (i.e.: Board members, upper administration, managers, line workers, volunteers, clients or consumers, etc.) to show different perspectives of same problem.
5. Emphasize the fact that all problems have more than one solution.
6. Offer written problem solving rules at start of exercise for guidance.



If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

24. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

- Adjustable Rate Rider
- Graduated Payment Rider
- Balloon Rider
- Other(s) [specify]
- Condominium Rider
- Planned Unit Development Rider
- Rate Improvement Rider
- 1-4 Family Rider
- Biweekly Payment Rider
- Second Home Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

_____ (Seal)
 John A. Doe -Borrower
 Social Security Number _____

_____ (Seal)
 Mary B. Doe -Borrower
 Social Security Number _____

_____ [Space Below This Line For Acknowledgement]
 State of Minnesota)
) ss:
 County of Ramsey)

On this 5th day of March, 1998, before me personally appeared John A. Doe and Mary B. Doe, husband and wife to me known to be the person(s) described in, and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

 Notary Public, Gregory Lemmons, Ramsey
 County, Minnesota
 My commission expires

THIS INSTRUMENT PREPARED BY:
 Capital Title Corporation
 1210 West County Road D
 Arden Hills, MN 55112

the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

9. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

11. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

14. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

Loan Number: _____

Initial(s) _____

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. § 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the escrow items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Hazard or Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and



SETTLEMENT STATEMENT - Continued

L. Settlement Charges

		Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Sales Broker's Commission based on price:	53,000.00 @ 7.0000 %= 3,710.00		
Division of Commission (line 700) as follows:			
701. \$	3,710.00 to		
703. Commission paid at Settlement			3,710.00
800. Items Payable in Connection With Loan			
801. Loan Origination Fee	1.0000 %	500.00	
802. Loan Discount	1.500 %	772.00	
803. Appraisal Fee	to POC (APPLECOVE HOUSING AGENCY NON PROFIT)	250.00	
804. Credit Report	to POC (APPLECOVE HOUSING AGENCY NON PROFIT)	40.00	
805. Lender's Inspection Fee	to		
806. Mortgage Insurance Application Fee			
807. Assumption Fee			
808. UNDERWRITER FEE			125.00
809. TAX SERVICE FEE			
900. Items Required by Lender To Be Paid In Advance			
901. Interest from	07/15/93 to 07/31/93 @ \$ 11.2877 /day	180.80	
902. Mortgage Insurance Premium for	XXXXXXX UPFRONT MIP	1,500.00	
903. Hazard Insurance Premium for	1 years to	250.00	
1000. Reserves Deposited With Lender			
1001. Hazard Insurance	2 months@ \$ 20.83 per month	41.66	
1002. Mortgage Insurance	2 months@ \$ 20.75 per month	41.50	
1003. City property taxes	2 months@ \$ 24.17 per month	48.34	
1004. County property taxes	2 months@ \$ 25.17 per month	50.34	
1005. Annual assessments	months@ \$ per month		
1006.	months@ \$ per month		
1100. Title Charges			
1101. Settlement or closing fee	to	75.00	75.00
1102. Abstract or title search	to		
1103. Title examination	to		
1104. Title insurance binder	to		
1105. Document preparation	to	40.00	50.00
1106. Notary fees	to		
1107. Attorney's fees	to		
(includes above item numbers)			
1108. Title insurance	to	138.34	368.00
(includes above item numbers)			
1109. Lender's coverage	\$		
1110. Owner's coverage	\$		
1200. Government Recording and Transfer Charges			
1201. Recording fees: Deed \$ 13.00 ; Mortgage \$ 67.00 ; Releases \$		80.00	
1202. City/county tas/stamps: Deed \$; Mortgage \$		160.00	
1203. State tax/stamps: Deed \$ 100.00 ; Mortgage \$ 60.00			
1300. Additional Settlement Charges			
1301. Survey to SMITH SURVEYORS		175.00	
1302. Pest inspection to TNT PEST COMPANY			40.00
1400. Total Settlement Charges (enter on lines 183, Section J and 502, Section K)		4,343.28	4,368.00

JAMES GRIFFIN

JOHN ROBBINS

DEBRA GRIFFIN

MARY ROBBINS

**Request for Verification
of Employment**

U.S. Department of Labor
and
U.S. Customs Service
Office of Foreign
Employment Verification
Washington, D.C.
U.S.A. Foreign Administration



OMB Approval No. 1545-0047 (Rev. 4-23-87)

FORWARD AND RETURN: This information is to be used by the employer verifying a job candidate's employment history and by a processing agency under its direction. It and the information derived therefrom are to be used only for the purposes of verification of employment and are not to be disseminated outside of the agency. This information is to be used only for purposes of the U.S. U.S.C. Chapter 27 of Title 22 U.S.C., Section 1701 et seq. of PUBLIC LAW 96-481 and Title 22 U.S.C., 1471 et seq. of U.S.C., 222 et seq. of U.S.A. Code.

FORWARDING AGENCY OR LOCAL PROCESSING AGENCY (LPA): Complete items 1 through 7. Have the candidate complete item 8. Forward the completed form to the processing agency or LPA. **EMPLOYER:** Complete items 9 through 11. Forward this document to the lender or local processing agency listed in item 8 of Part I.

Part I - General

1. **Requesting Agency:**
 NAME: **MS200**
 10745 Santa Monica Blvd.
 BEVERLY HILLS, CA 90210

2. **Employer Name:**
Winterra Mortgage Co.
 15300 Ventura Blvd. #525
 Sherman Oaks, CA 91403

3. **Requesting Agency Contact Person:**
 Name: *[Signature]*
 Title: **SR 1555-00-1111**

4. **Employer Contact Person:**
 Name: **Michael James**
 20849 Parkman 4411
 CANOGA PK, CA 91304

5. **Job Title:**
LOAN PROCESSOR

6. **Date:**
10/10/89

Part II - Verification of Previous Employment

1. Name of Employer	2. Date Started	3. Position of Candidate	4. Candidate's Title	5. Date Left	6. Reason for Leaving

YEAR-TO-DATE EARNINGS THRU 6/30/88
(1988)

Part III - Verification of Previous Employment

1. **Amount:** **13,415.09**

2. **Period:** **2/15/88 - 6/10/88**

3. **Reason for Leaving:**
TO ACCEPT ANOTHER POSITION

SUPPLEMENT - CONT.

Part IV - Comments

1. **Comments:**
[Signature]

2. **Date:**
11/22/89

3. **Signature:**
PERSONNEL ADMINISTRATOR

4. **Date:**
11/22/89

RETURN SPECIALLY TO LENDER OR LOCAL PROCESSING AGENCY

VA-22-2487; Form 10-82; FWD-0000-0-12-89
 NO 4155.1

WINDTREE RESIDENTIAL FUNDING

Landlord Name: Jim Dlab
Address: 2029 Melbolland Drive
Los Angeles, CA 90062

REQUEST FOR RENTAL PAYMENT INFORMATION

Borrower: Linda Jones (Formerly Linda Nichols)
28947 Hassett
Canoga Park, CA 91306

Contingencies:

The above named borrower(s) has applied to us for a loan and has given your name as a landlord. It would be greatly appreciated if you would complete the following items in order that we might have the benefit of your credit experience with this applicant.

Your prompt completion and return of this form in the enclosed envelope will be appreciated.

Sincerely,

Jilly Reynolds

I hereby authorize you to release the following information regarding my rental history with you to Windtree Mortgage Company.

Linda Jones 11/25/15
Borrower Date

(To be completed by landlord)

How long a tenant? 3 yrs Monthly Rent \$ 650.00

Utilities included? Yes No

Payment Experience: Never late paying the rent

Remarks: Left the apartment in great condition

Landlord's Signature: Jim Dlab Date: 11/20/15



Name of Lender

1. _____

2. _____

Loan processing time

Closing cost estimates

Application/origination fee

Credit report fee

Appraisal fee

Survey fee

Lender's attorney fee

Title search/title insurance

Document preparation fee

Assumption fee

Payment schedule

Monthly, bimonthly, or biweekly

Adjustable-rate mortgages only:

Initial interest rate

Adjustment interval

Financial index/margin

Rate caps: Periodic

Lifetime

Payment cap

(Can negative amortization occur?)

If convertible:

When can you convert?

Fees

Index used

Margin used

Request for Verification of Employment

INSTRUCTIONS:

Lender — Complete items 1 through 7. Have applicant complete item 8. Forward directly to employer named in item 1.
 Employer — Please complete either Part II or Part III as applicable. Sign and return directly to lender named in item 2.

Part I—Request

1. To (Name and address of employer) Associates Services Inc., 2810 Humpback Road Phoenix, Az. 85017		2. From (Name and address of lender) Windsor Mortgage Company 15300 Ventura Blvd. Suite 525 Sherman Oaks, Calif. 91304	
3. Signature of Lender <i>Jolly Reynolds</i>	4. Title Loan Processor	5. Date 8/9/90	6. Lender's Number (Optional)
I have advised the mortgagee herein and stated that I am never was formerly employed by you. My signature below constitutes verification of the information.			
7. Name and Address of Applicant (Include employee or badge number) JONELLE SMITH 6020 N. 38TH Avenue #17 Phoenix, Az. 85017		8. Signature of Applicant	

Part II—Verification of Present Employment

Employment Data	Pay Data	
9. Applicant's Date of Employment 7/11/86	12A. Current Base Pay (Enter amount and Check Period) <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Monthly <input type="checkbox"/> Weekly <input type="checkbox"/> Other (Specify)	12C. For Military Personnel Only
10. Present Position Bookkeeper	\$ 21528	Pay Grade Type: _____ Monthly Amount: _____
11. Possibility of Continued Employment Excellent	12B. Earnings	Base Pay \$ _____
12. Is Overtime or Bonus in Applicant's Job Description?	Type: _____ Year To Date: _____ Post Year: _____	Rights or Incentive \$ _____
<input type="checkbox"/> Overtime <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Bonus <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Overtime \$ N/A	Cash Pay \$ _____
	Commission \$ N/A	Overtime \$ _____
	Bonus \$ N/A	Pro Pay \$ _____
		Overhead or Carrel \$ _____
14. Reported (in base salary, gross or total average hours worked each week during current and past year) 1989 yrs - calendar year = \$21,560		

Part III—Verification of Previous Employment

15. Date of Employment	16. Salary/Rate at Termination Per (Year) (Month) (Week) Base _____ Overtime _____ Commission _____ Bonus _____	
17. Reason for Leaving	18. Position Held	
19. Signature of Employer <i>Paul C...</i>	20. Title V.P.	21. Date 8/19/90

The confidentiality of the information you have furnished will be preserved except where disclosure of the information is required by applicable law. The form is to be transmitted directly to the lender and is not to be forwarded through the applicant or any other party.

GOOD FAITH ESTIMATE OF SETTLEMENT COSTS

APPLICANT(S)	DATE:
PROPERTY ADDRESS	
LOAN TYPE	

The information provided below reflects estimates of the charges which you are likely to incur at the settlement of your loan. The fees listed are estimates - the actual charges may be more or less. Your transaction may not involve a fee for every item listed. The numbers listed beside the estimates generally correspond to the numbered lines contained in the HUD-1 settlement statement which you will be receiving at settlement. The HUD-1 settlement statement will show you the actual cost for items paid at closing.

Sales Price	\$ 61,000	Estimated Principal & Interest	\$ 426.52
Downpayment	\$ 1,372	① _____ % _____ yrs	\$ 25.00
Mortgage Amount	\$ 59,628	MIP/VA Insurance	\$ 77.00
FHA MIP/VA Funding Fee		Taxes	\$ 25.00
Financed MIP Premium	\$ 1,192	Hazard/Flood Insurance	\$ _____
Adjusted Mortgage Amount	\$ 60,820	Association Dues	\$ _____
		Total ESTIMATED Monthly Payment	\$ 533.52

Based on an ESTIMATED closing date of _____ First Payment Due _____

SCHEDULE OF CASH REQUIREMENTS A+B+C

DOWN PAYMENT	\$ 1,372.00 (A)
ESTIMATE OF CLOSING COSTS	
801 Loan Origination Fee (1 % of \$ 59,628)	\$ 596.28
802 Loan Discount (Points) _____ % of \$ _____	\$ _____
803 Appraisal Fee	\$ 275.00
804 Credit Report	\$ 55.00
805 Lender's Inspection Fee	\$ _____
807 Assumption Fee	\$ _____
808/810 Buydown Funds	\$ _____
808/810 _____ % Seller \$ _____ Applicant \$ _____	\$ _____
808/810 Underwriting Fee	\$ _____
808/810 Commitment Fee	\$ 200.00
808/810 Tax Service Fee	\$ _____
1101 Settlement or Closing Fee	\$ 250.00
1102 Abstract or Title Search	\$ _____
1103 Title Examination	\$ _____
1104 Title Insurance Binder	\$ _____
1105 Document Preparation Fee	\$ _____
1107 Attorney's Fees	\$ _____
1108 Title Insurance	\$ 275.00
1109 Lenders Coverage \$ 275.00	\$ _____
1110 Owners Coverage _____ (Optional)	\$ _____
1111/1113 Adjustable Rate Mortgage Endorsement to Title Insurance	\$ _____
1201 Recording Fees	\$ 60.00
1202 City/County Tax/Stamp (MIN ONLY - INCLUDE \$5.00 CONSERVATION FEE)	\$ 5.00
1203 State Tax/Stamp	\$ 128.00
1301 Survey/Plot Drawing	\$ 60.00
1302 Pest Inspection	\$ _____
1303/1305 Name Search	\$ 25.00
1303/1305 Assessment Search	\$ _____
Other FLOOD ZONE DETERMINATION FEE	\$ 24.00
Other RECORDING SERVICE FEE	\$ 30.00
TOTAL CLOSING COSTS	\$ 1,993.28 (B)
ITEMS TO BE PAID IN ADVANCE (Prepaid Expenses)	
901 Interest from 12% to 15% @ 12.70 per day	\$ 190.62
902 Mortgage Insurance Premium @ _____ % (MI Payable to _____)	\$ _____
902 Upfront FHA MIP Premium/VA Funding Fee - (CASH PORTION ONLY)	\$ _____
903 Hazard Insurance Premium (1 year premium)	\$ 300.00
904 Flood Insurance Premium (1 year premium)	\$ _____
1001 Hazard Insurance for 3 months @ \$ 25 per month	\$ 75.00
1002 Mortgage Insurance for 1 months @ \$ 25 per month	\$ 25.00
1004 County Property Taxes 5 months @ \$ 77 per month	\$ 385.00
1006 Flood Insurance for _____ months @ \$ _____ per month	\$ _____
TOTAL ESTIMATE OF ITEMS TO BE PAID IN ADVANCE	\$ 975.62 (C)
TOTAL CASH INVESTMENT (A+B+C)	\$ 4,340.90
LESS CASH PREVIOUSLY DEPOSITED	
Earnest Money	\$ _____
Appraisal Fee and Credit Report	\$ 330.00
One Year's Hazard Insurance	\$ _____
Other	\$ _____
LESS TOTAL CASH PREVIOUSLY DEPOSITED	\$ 1,305.62
ESTIMATED FUNDS NEEDED AT CLOSING	\$ 3,035.28

(Reminder: Certified funds are required for remainder of down payment. Please make certified funds payable to yourself.)

The undersigned hereby requests that First Home Mortgage Corporation process a loan on my/our behalf. I/We agree to pay all legally allowed fees and charges, including appraisal and credit report fees, incurred in the connection with said processing. I/We understand that this statement is just an estimate. These estimates are provided pursuant to the Real Estate Settlement Procedures Act of 1974, as amended (RESPA).

The undersigned hereby acknowledges and understands the important information on the reverse side of this disclosure in addition to the HUD Guide for Home Buyers, "Settlement Costs," and if applicable the "Consumer Handbook on ARM Mortgages."

Section 223 of the FDIC Improvement Act and Section 701(e) of the Equal Credit Opportunity Act entitles you to a copy of your appraisal report. If you wish a copy, please write to us at the mailing address we have provided. Your written request must be made within 90 days after we notify you about the action taken on your credit application or you withdraw your application.

APPLICANT	DATE
APPLICANT	DATE
THIS STATEMENT WAS PREPARED BY (NAME)	DATE
AND <input type="checkbox"/> DELIVERED <input type="checkbox"/> MAILED ON	

QUALIFYING WORKSHEET

Sample worksheet is based on buyers with gross monthly income of \$1,700, no debt, and \$5,000 available cash. Buyers would like to make a \$2,500 down payment.

Step 1:

Gross Monthly Income		\$ <u>1,700</u>
Times (29% FHA)	x	<u>29%</u>
Equals		= \$ <u>493.00</u> PITI

Step 2:

Gross Monthly Income		\$ <u>1,700</u>
Times: (41% FHA)	x	<u>41%</u>
Equals		= \$ <u>697</u>
Minus Monthly Long-Term Debt	-\$	<u>0</u>
Equals		= \$ <u>697</u> PITI

Step 3:

Enter the Lowest PITI		\$ <u>493</u>
Minus: Monthly Estimated Taxes	-	<u>60</u> (estimate at 10% of PITI, but not less than \$60)
Minus: Monthly Estimated Insurance	-	<u>25</u> (estimate at \$4 per \$1,000 of purchase price or \$25)
Minus: Monthly Estimated MIP (FHA) or PMI (insured conventional)	-	<u>30</u> (estimate at \$30)
Equals		= \$ <u>378</u> PI

Step 4:

$$\frac{\$ 378}{PI} \times \frac{7.69}{\text{Payment Factor}} \times 1,000 = \frac{\$ 49,155.00}{\text{Maximum Mortgage}}$$

Step 5:

$$\frac{\$ 49,155}{\text{Maximum Mortgage}} + \frac{2,500}{\text{Down Payment}} = \frac{\$ 51,655.00}{\text{Maximum Sales Price}}$$

Step 6:

$$\frac{\$ 2,500}{\text{Down Payment}} + \frac{2,458}{\text{Closing Costs}^*} = \frac{\$ 4,958.00}{\text{Cash Needed to Close}}$$

*Estimate closing costs at 4-5% of maximum mortgage. For more information, see "Buyer's Estimated Entry Cost" worksheet on page 59.

Loan Term	Payment Factors							
	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%
15 Yrs	8.71	8.99	9.27	9.56	9.85	10.14	10.44	10.75
30 Yrs	6.32	6.66	7.00	7.34	7.69	8.05	8.4	8.78

BUYER'S ESTIMATED ENTRY COSTS WORKSHEET*

Sample is based on a \$50,000 home, \$2,500 down payment,
 FHA 30-year financing at 8.5%. 0 points; Base mortgage \$47,500 + \$1,069 financed MIP;
 total mortgage \$48,569. Property taxes \$720.00 / year

Purchase Price: \$ 50,000

1. Down Payment (Estimate 3% minimum FHA; 5% Conventional) \$ 2,500

CLOSING COSTS

2. Title Insurance (Lender) (\$2.50 per \$1000 of Loan Amount) \$ 121.50

3. Title Ins. (Owner) or Attorney's Opinion (\$1.50 per \$1000 of Sale Price) \$ 75.00

4. Plat Drawing Inspection (\$40 - \$50) \$ 40.00

5. Recording Fees (\$50 - \$60) \$ 50.00

6. Name & Judgement Search (\$25.00) \$ 25.00

7. Mortgage Registration Tax (\$2.30 per 1000 of Loan Amount) \$ 112.00

8. Settlement / Closing Fee (\$200 - \$275) \$ 200.00

9. Origination Fee (1% of Base Loan) \$ 475.00

** 10. Credit Report (\$50) \$ 50.00

** 11. Appraisal Fee (FHA, VA \$250; Conventional \$325) \$ 250.00

12. Discount Points Paid by Buyer \$ -

13. Commitment / Tax Service Fee (\$210 when applicable) \$ 210.00

14. VA Funding Fee \$ -

15. Other \$ -

TOTAL CLOSING COSTS \$ 1608.50

PREPAID ITEMS

16. Mortgage Insurance (First Year) (2.25%FHA if paid up front.
 Conventional estimate at 1% of loan, depending upon LTV) \$ financed

*** 17. Homeowners Insurance Premium (1st Year) (\$4 per \$1000 of Sale Price) \$ 200.00

18. Interim Interest or Mortgage Payment (estimate one month) \$ 354.00

ESCROW ACCOUNT

19. Homeowner's Insurance (two months) \$ 34.00

20. Mortgage Insurance (two months) \$ 40.00

21. Property Taxes (four months) \$ 240.00

22. Sub-total \$ 2476.50

23. Closing Costs + Prepays + Escrows [Down payment (line 1)] \$ 2500.00

TOTAL ENTRY COSTS \$ 4976.50

*This is an estimate. Actual costs will vary.

** Paid at time of loan application.

***Must be paid to insurance company before closing. Binder and paid receipt must be brought to closing.

Counselor Presents File To Lender

Loan Application

CREDIT-ONLY
PRE-APPROVAL

FULL APPROVAL

Loan Processing

Good Faith
Estimate

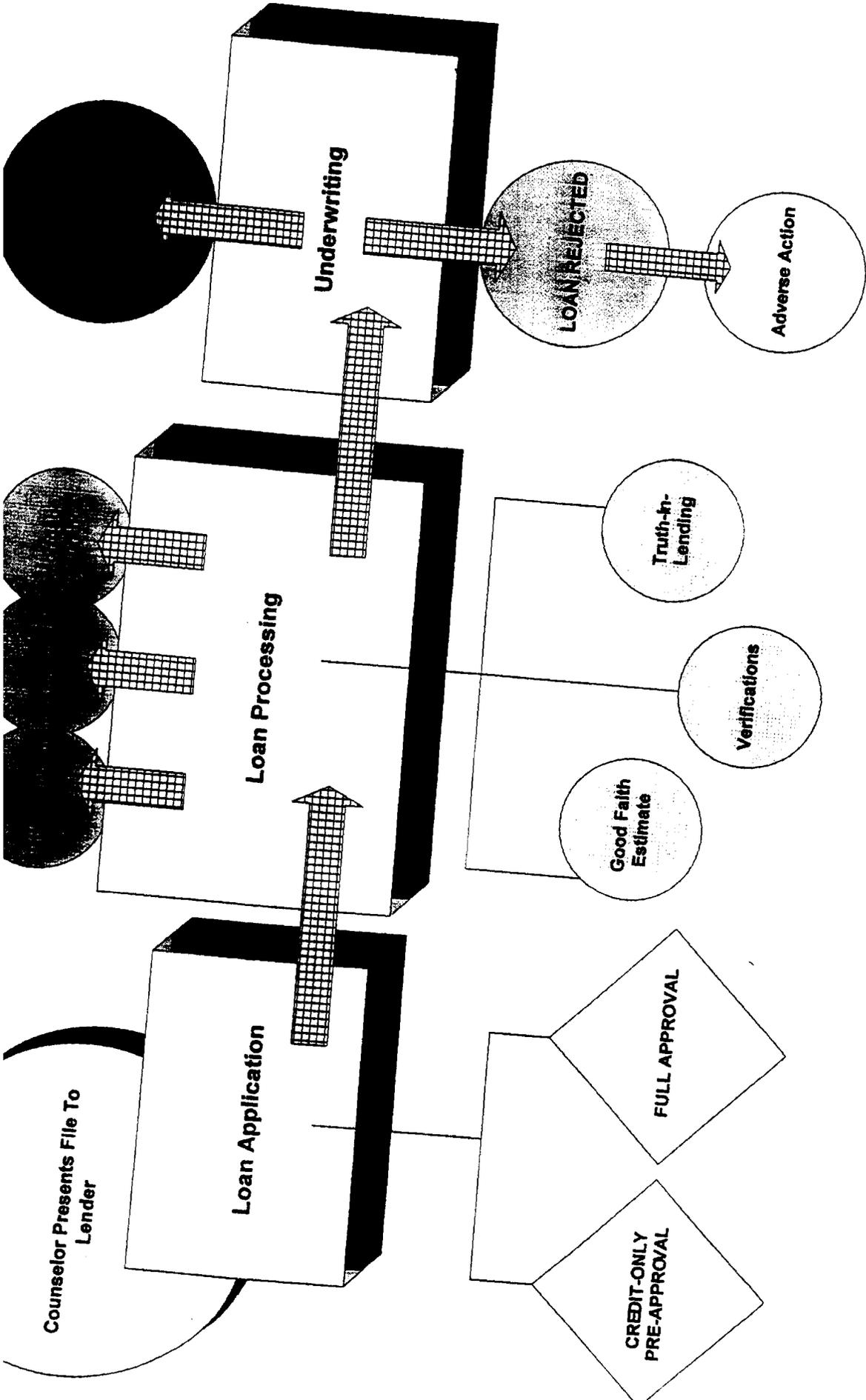
Verifications

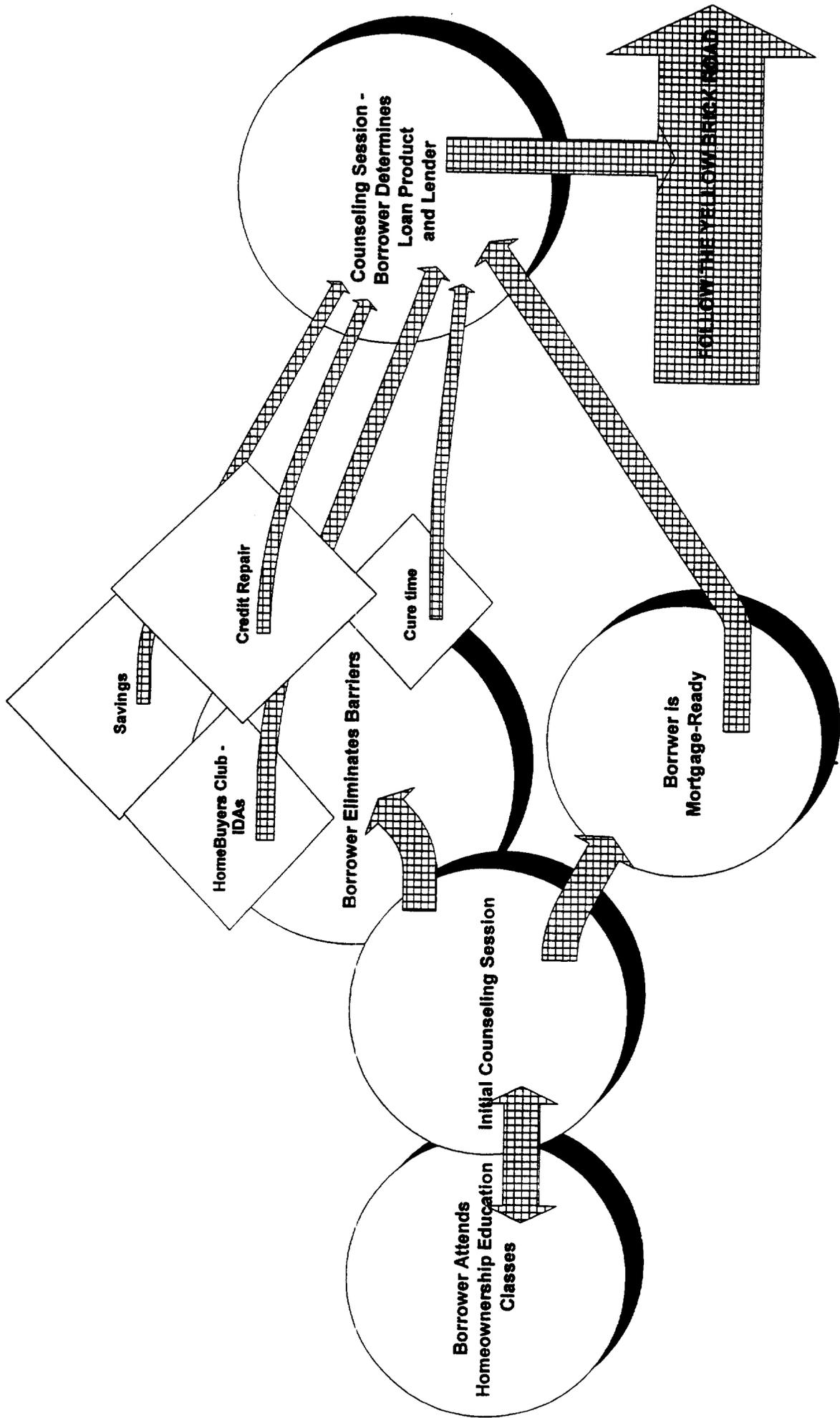
Truth-in-
Lending

Underwriting

LOAN REJECTED

Adverse Action





THE LOAN APPLICATION

APPLICATION FEES

CREDIT REPORT \$40. - \$60.

APPRAISAL FEE \$250. - \$600.

NON-REFUNDABLE

even if loan is denied

RESPONSIBILITIES OF HOMEOWNERSHIP

Establishing a Reserve

No one purchasing a home wants to think about losing that home. But the reality is that recessions, layoffs, illnesses, injuries or deaths could dramatically affect anyone's financial picture with little or no warning.

Once you own a home, you have an investment to protect. After all, you've put money down and you have made your mortgage payments each month. The best way to protect that investment is to continue to budget and save. Experts suggest that you build a reserve of three months' take-home pay. Naturally, you can't save this much money overnight, but you should make it your goal to establish such a reserve as soon as possible once you own a home. This money should be deposited in the bank and be used only for emergencies.

It is very important to continue to keep a budget once you own a home. You may find it helpful to keep using the Monthly Spending Planner, especially if there has been a change in your financial situation. You should also monitor your monthly bills and use credit cards wisely.

Getting Help

If you do experience unexpected financial difficulties, don't be afraid to ask for help. The worst thing you can do is wait until you are so far behind in all your payments that your creditors resort to collection agencies. By contacting your creditors right away, you may be able to make lower payments temporarily, until you get back on your feet.

If you are unable to make your monthly mortgage payment, the best thing you can do is to contact your lender. Many lenders will work with borrowers who have a good payment history to arrange a temporarily reduced payment plan until they get back on their feet.

MONTHLY SPENDING PLANNER

I. INCOME

CATEGORY	DESCRIPTION	ACTUAL	PLANNED
Income	Net Monthly Income (from all sources)		
TOTAL			

II. EXPENSES

CATEGORY	DESCRIPTION	ACTUAL MONTHLY PAYMENT	BUDGETED MONTHLY PAYMENT	BALANCE DUE
Monthly Payments	Rent/Mortgage Alimony/Child Support Child Care Automobile			
Loans	Automobile Furniture/Appliances Finance Company Installment VISA			
Credit Cards	MASTERCARD			
Utilities	Electricity Heating Telephone Water/Sewage Automobile			
Insurance	Health Life Dental Renters/Homeowners Disability			
Donations	Church Charity			
Dues	Union Organizations			
Medical (Not Covered by Insurance)	Doctor/Dentist Drugs Hospital Gasoline			
Transportation	Maintenance Parking Public Transportation			
Food	Groceries School or Work Lunches New Clothes			
Clothing	Dry Cleaning/Laundry Uniforms/Required Items			
Household Operations/ Maintenance	Repairs Supplies Other Clubs, Sports & Hobbies Entertainment*			
Misc.	Vacations Gifts Pet Supplies Other			
Savings	Savings Bond Financial Institutions			
TOTAL				

* Includes eating out, movies, etc.

Borrower name (please print)

Social Security Number

Date

Co-Borrower name (please print)

Social Security Number

Date

AFFORDABLE HOUSING

VISION STATEMENT

First time, low and moderate income, minority and immigrant home buyers and homeowners believe that

Norwest Mortgage provides them the greatest value for their mortgage financing investment in home ownership and that they act on that belief.

IDEAL PERSON

 **Affordability**

-Sufficient Income To Purchase Home.

 **Credit Issues**

-Able To Resolve Within 1 Year.

 **Commitment**

-Their Serious About Buying A Home.

We'll analyze each members situation and develop and plan to turn the member into a qualified buyer.

**OUR PRIMARY GOAL IS TO
- PROVIDE**



Personalized Counseling



Credit Resolution



**Assistance In Budgeting And
Saving**

**(Establish And Learn Budgeting
And Savings Skills.)**



(If Needed)

**- With The Help Of
Special Programs Administration
Payment Assistance.**



4 Hours Of Borrower Counseling

(HUD Approved)

Lower One Time M.I.P.

WHEN THE FILE IS READY

**HBC
Will Submit To
Underwriting
For Pre-Approval.**

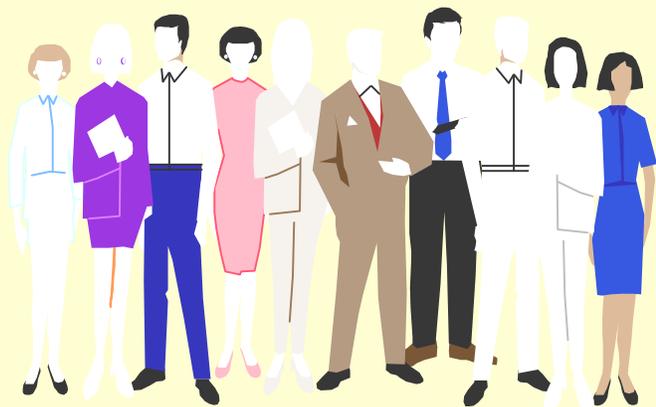
**Underwriter Reviews The
Members Credit History
And
Overall Qualifying Ability.**

**Once The File Is
Pre-Approved**

Multi-lingual Capabilities

Credit Counselors are fluent in:

- ★ **Spanish**
- ★ **Chinese**
- ★ **Portuguese**
- ★ **Japanese**
- ★ **Tagalog**
- ★ **French**



**NORWEST MORTGAGE HOMEBUYERS CLUB
CREDIT RATING GUIDELINES**

Each Norwest Mortgage HomeBuyers Club Member is given a credit rating based on their credit report. The following information is used as a guideline in making the determination.

The ratings are as follows:

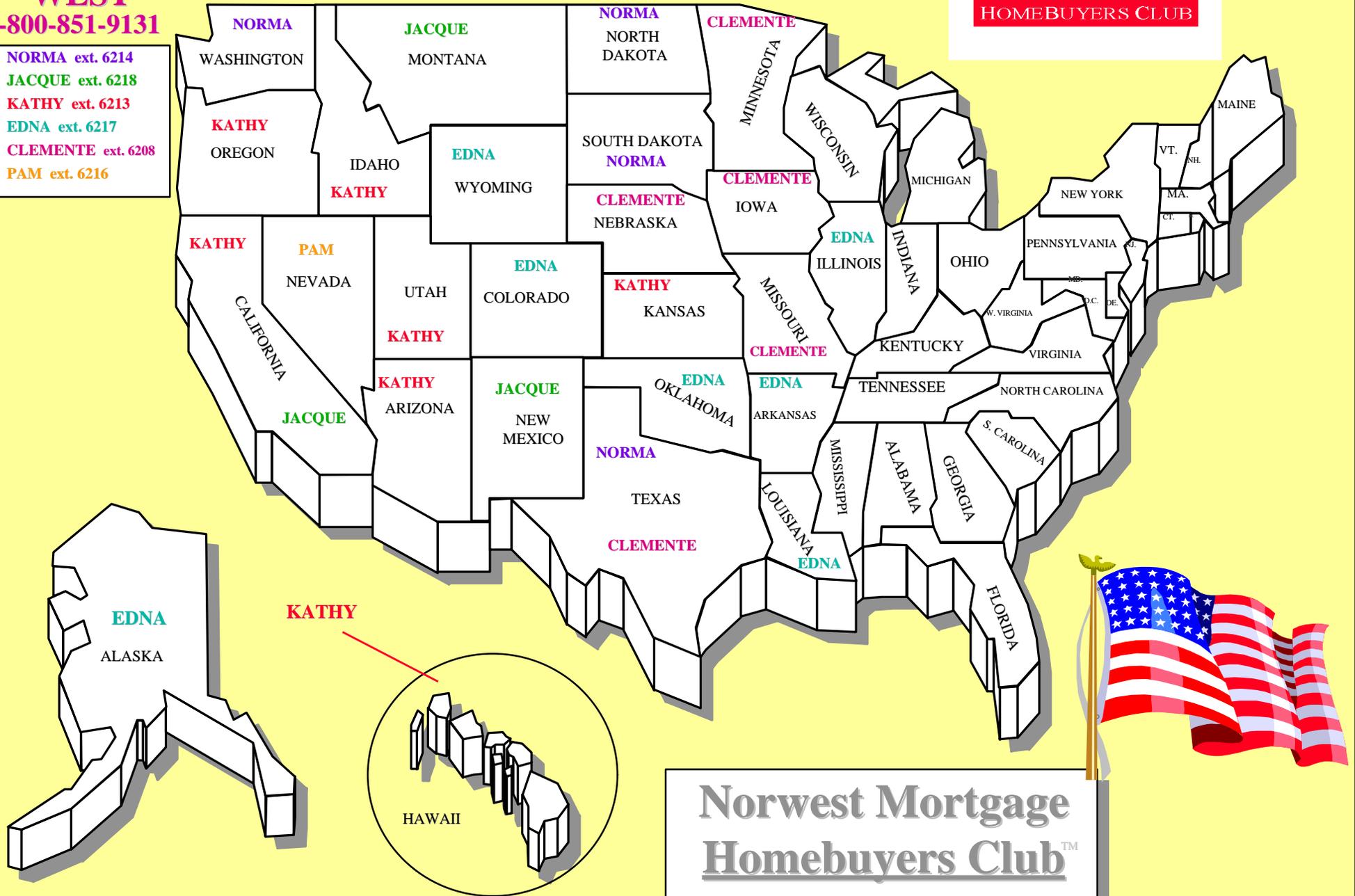
- **Rating 0: Inactive**
Referral has been received by HBC; member has not returned all documentation requested in the starter kit .
- **Rating 1: 0 mos. – 6 mos.**
Only 1 to 2 derogatory in the previous 12 months. Savings account established or down payment assistance (if applicable). **If Bankruptcy, see footnote.
- **Rating 2: 7 mos. – 9 mos.**
No late payments in the previous 12 months. Less than \$2,000.00 in outstanding collections/charge off, lien/judgements. Sufficient income to pay debt within time frame.
**If Bankruptcy, see footnote.
- **Rating 3: 10 mos. – 15 mos.**
Some recent late payments. Less than \$5,000.00 in outstanding collections, charge-offs, lien/judgements.
- **Rating 4: 16 mos. – 24 mos.**
Recent late payments. More than \$5,000.00 in outstanding collections, charge-offs, lien/judgements. Sufficient income to pay debt within time frame. **If Bankruptcy, see footnote.
- **Rating 5: 25 mos. or longer**
Has a bankruptcy that was recently discharged or has a recent foreclosure.* Has a consistent history of derogatory credit.
- **Rating 6: Branch underwriting decline**
- **Rating 7: Pre-Approval loan**
- **Rating 8: Funded loan**

*Foreclosure: Must wait 3 years after a foreclosure to be eligible for a mortgage loan, however an exception may be granted if the foreclosure was due to extenuating circumstances beyond the borrower's control (such as the death of the principal wage earner; loss of employment due to factory closing, reductions-in-force, etc., or serious long-term illness) and the borrower has since established good credit. Extenuating circumstances do not include the inability to sell a house due to transferring from one area to another or Divorce.

**Bankruptcy must be discharged for 2 years to be eligible for a mortgage loan. (discharged 1 year if bankruptcy was due to loss of employment or for serious long-term medical reasons). If there is 1 or 2 derogatory items after an bankruptcy has been discharged, the member must have 1 year of clean credit to be eligible for a mortgage loan. If there are several, they must wait an additional 2 years.

WEST 1-800-851-9131

NORMA ext. 6214
JACQUE ext. 6218
KATHY ext. 6213
EDNA ext. 6217
CLEMENTE ext. 6208
PAM ext. 6216



**Norwest Mortgage
Homebuyers Club™**

PRE-QUALIFYER

Notes:

This form provides for a quick estimated calculation of the maximum loan amount a borrower may qualify for. A more detailed and accurate Pre-Qualification can be obtained by contacting your local mortgage loan representative.

CLIENT NAME: _____ Date: _____

INCOME / All incomes must be converted into a monthly dollar amount.

Mo / Income # 1	\$					
Mo / Income # 2	\$					
Mo / Income # 3	\$					
				A	\$	TOTAL Mo / Income

DEBTS / All debts must be converted into a monthly dollar amount.

Mo / Debt	\$	Mo / Debt	\$			
Mo / Debt	\$	Mo / Debt	\$			
Mo / Debt	\$	Mo / Debt	\$			
Mo / Debt	\$	Mo / Debt	\$			
Mo / Debt	\$	Mo / Debt	\$			
				C	\$	TOTAL of all Mo / Debts

A X **0.41** = **B**

B minus **C** = **D**

MAX. monthly allowed for mortgage pmt.

Calculating Max. Loan Amount from "D"

D Divided by = **MAX. Loan Amount**
 Factor from table

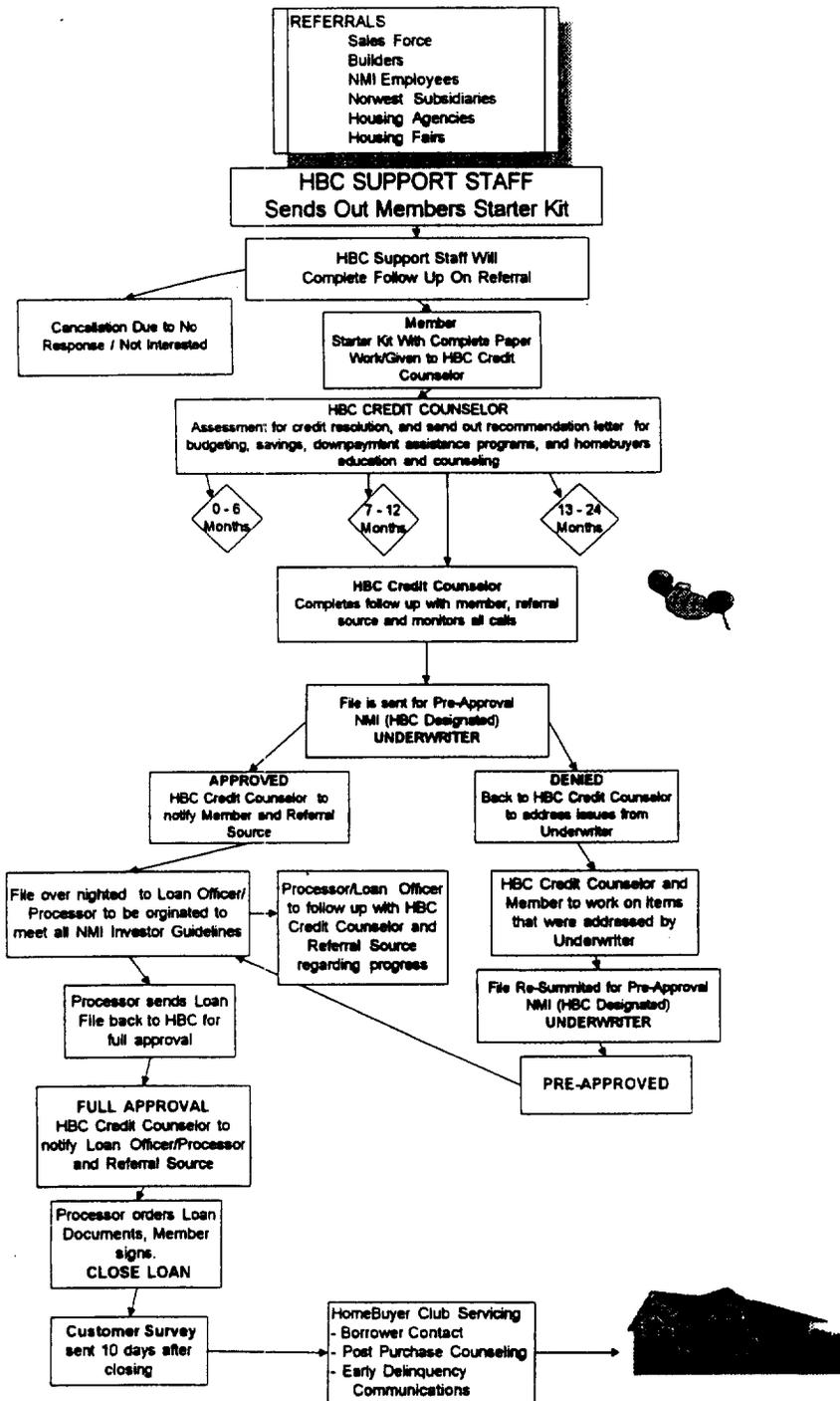
Rate Factor Table	Rate	Factor	Rate	Factor
	6.00	0.00600	8.00	0.00734
	6.50	0.00632	8.50	0.00769
	7.00	0.00665	9.00	0.00805
	7.50	0.00699	9.50	0.00841

Things to know about using this PQ form.

1. Income should be calculated using the standard mortgage loan method.
2. Debts should be calculated using all monthly installments and revolving debt should be reduced to their minimum monthly requirement.
3. "D" only calculates Principal and Interest pmt. and DOES NOT include any property Taxes or Insurance that may be required.

IMPORTANT NOTE: This form assumes Property Taxes and Hazard Insurance will NOT be included in the payment. Since this form makes that assumption - the calculation for determining the maximum mortgage amount that could be qualified for does not take into consideration Property Taxes or Hazard Insurance. If these items are to be included into the total mortgage payment, this form should not be used. You should contact your local loan representative to help you calculate maximum loan amount with taxes and insurance included.

HOMEBUYERS CLUB WORK FLOW PROCESS





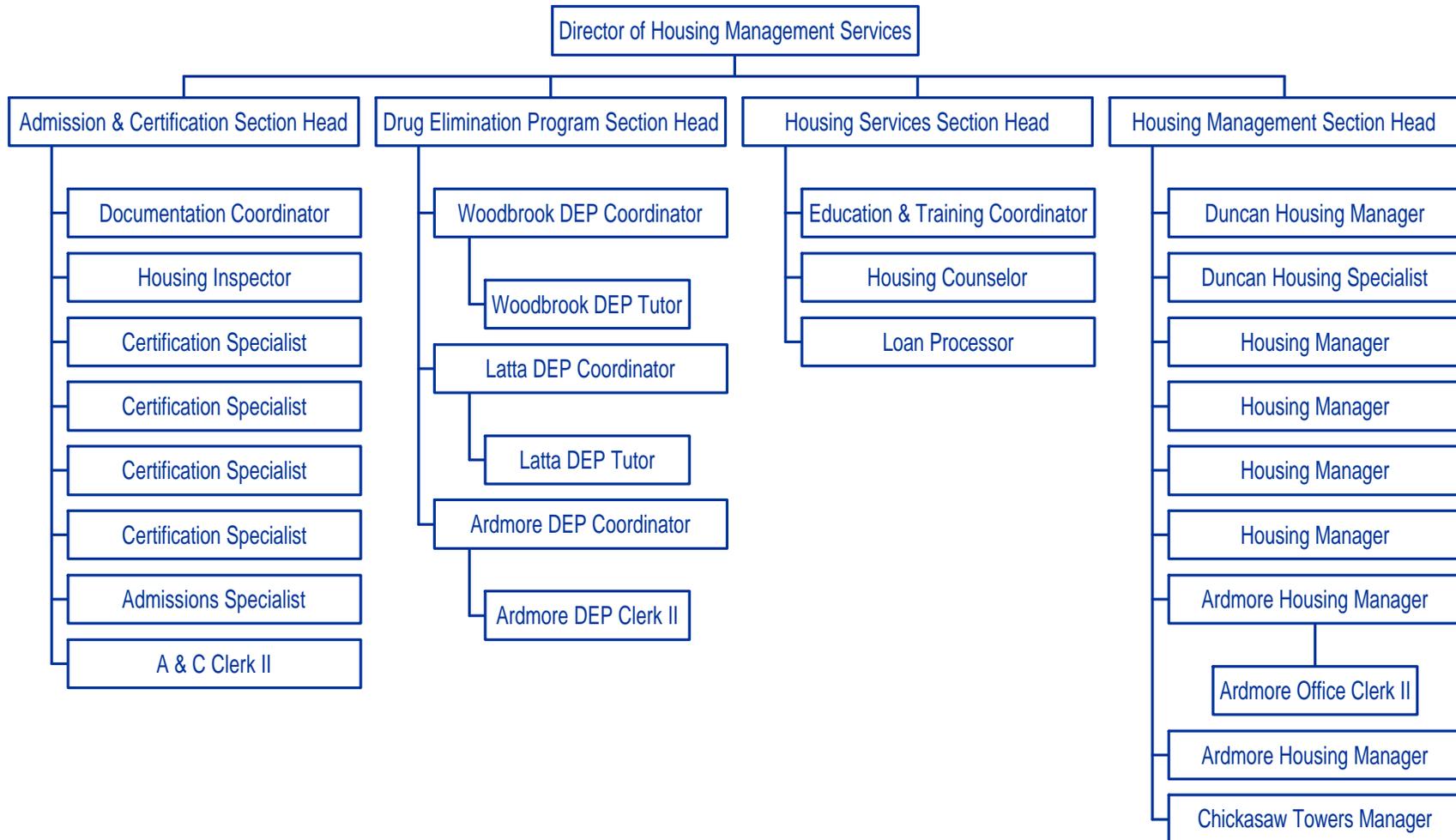
Chickasaw Nation Housing Programs

□ Current Programs

- "37" HOP "Homeownership Opportunity Program"
- "98" HOP "Homeownership Opportunity Program"
- "98" CHOP "Chickasaw Homeownership Opportunity Program"
- Chuka Chukmasi "Beautiful Home"
- LEAP "Lease Purchase Program"
- "37" RAP "Rental Assistance Program"
- Seniors
- "98" RAP "Rental Assistance Program"
- CHIP "Chickasaw Housing Improvement Program"
- HIP "Housing Improvement Program"



Chickasaw Nation Housing Management Staff





Chickasaw Nation Participant Training Requirements

☐ Homeownership Programs

- "37" HOP "Homeownership Opportunity Program"
 - ✓ Pre-purchase Counseling (required)
 - ✓ Post Purchase Counseling (optional)
 - ✓ Credit Counseling (optional)

- "98" HOP "Homeownership Opportunity Program"
 - ✓ Pre-purchase Counseling (required)
 - ✓ Post Purchase Counseling (required)
 - ✓ Credit Counseling (optional)



Chickasaw Nation Participant Training Requirements

- "98" CHOP "Chickasaw Homeownership Opportunity Program"
 - ✓ Pre-purchase Counseling (required)
 - ✓ Post Purchase Counseling (required)
 - ✓ Credit Counseling (optional)
- Chuka Chukmasi "Beautiful Home"
 - ✓ Pre-purchase Counseling (required)
 - ✓ Post Purchase Counseling (required)
 - ✓ Credit Counseling (optional)
 - ✓ Early Intervention Counseling (active)



Chickasaw Nation Participant Training Requirements

- LEAP “Lease Purchase Program”
 - ✓ Pre-purchase Counseling (required)
 - ✓ Post Purchase Counseling (required)
 - ✓ Credit Counseling (optional)
 - ✓ Early Intervention (active)

□ Rental Programs

- “37” RAP “Rental Assistance Program”
 - ✓ Pre-purchase Counseling (N/A)
 - ✓ Post Purchase Counseling (N/A)
 - ✓ Credit Counseling (optional)



Chickasaw Nation Participant Training Requirements

- SENIORS
 - ✓ Pre-purchase Counseling (N/A)
 - ✓ Post Purchase Counseling (N/A)
 - ✓ Credit Counseling (optional)

- "98" RAP "Rental Assistance Program"
 - ✓ Pre-purchase Counseling (N/A)
 - ✓ Post Purchase Counseling (N/A)
 - ✓ Credit Counseling (optional)

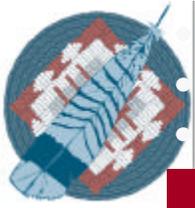


Chickasaw Nation Participant Training Requirements

☐ Rehabilitation Program

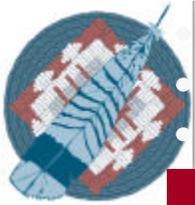
- CHIP “Chickasaw Housing Improvement Program”
 - ✓ Pre-purchase Counseling (N/A)
 - ✓ Post Purchase Counseling (N/A)
 - ✓ Credit Counseling (optional)

- HIP “Housing Improvement Program”
 - ✓ Pre-purchase Counseling (N/A)
 - ✓ Post Purchase Counseling (N/A)
 - ✓ Credit Counseling (optional)



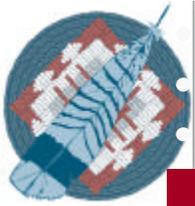
Chickasaw Nation Homebuyer Training

- ❑ Pre-purchase
 - Pros and Cons of Homeownership
 - Three Typical Roadblocks
 - Dollars and Sense
 - ✓ What is income: worksheet
 - ✓ What are debts: worksheet
 - ✓ Credit
 - most common credit questions
 - no credit
 - bad credit
 - in depth credit counseling



Chickasaw Nation Homebuyer Training

- Moving Forward: needs vs wants worksheet
- Summing it Up:
 - ✓ Refer to income and debt worksheet
 - ✓ Pre-qualification: worksheet
 - ✓ How much will my home cost: worksheet based on sq. ft. pricing of needs vs wants worksheet
 - ✓ What are my monthly payments
- Paper Tiger
 - ✓ Loan Application
 - ✓ Forms
 - ✓ Documentation



Chickasaw Nation Homebuyer Training

- Stages of a Completed Application and Time Frames
 - ✓ Verifications
 - ✓ Additional documents/forms
 - ✓ Unanswered questions
 - ✓ Underwriting
 - ✓ Submission
 - ✓ Approval, Referral, Options
- Test



Chickasaw Nation Homebuyer Training

- ❑ Post-purchase
 - Settling In
 - Love thy Neighbor
 - Maintenance
 - Keep Your Budget in Line
 - Home Safety Tips
 - Your House File



Chickasaw Nation Homebuyer Training

- ❑ Financial Responsibilities: Early Intervention and Delinquency Control
 - Repayment
 - Early Intervention
 - ✓ Borrower Contact
 - ✓ Our Monitoring
 - ✓ Extensive Credit Counseling
 - Change in Financial Status
 - ✓ e.g. Marriage/Divorce or Death, Medical
 - Delinquency
 - Default
 - Alternatives to Foreclosure
 - Effect of Default/Foreclosure on programs



Chickasaw Nation Credit Counseling

Credit

- Most Common Questions
- TRW, Equifax and Experion
- Credit Scoring

Short Term (6 months or less)

- Clear Incorrect Credit Entries
- Build Credit File
- Document Payments to Landlords, Utilities, Etc.



Chickasaw Nation Credit Counseling

- ❑ Medium Term (6-12 months)
 - For those who have 12 months or less until a bankruptcy, etc. is less than two years
 - For those who have collections or derogatory remarks paid/removed in 12 months or less

- ❑ Long Term (12+ months) Review for LEAP Program
 - For those who have a recent bankruptcy
 - For those who have a recent or on-going consumer credit counseling plan
 - For those who will have a majority of issues resolved within 2 to 3 years



Chickasaw Nation Credit Counseling

- Credit Repositories
- Budgeting and Money Management
- Sample Form Letters

*Shared Visions:
The Native American Homeownership, Legal
and Economic Development Summit I*

<i>Excellence Profile</i>

Responses are to be scored as follows:

- 0 = Not doing or no evidence showing this competency or skill
- 1 = Some evidence or demonstration of this competency or skill
- 2 = High level of competency or skill

Management and Organization Section

- | | | | |
|---|---|---|---|
| 0 | 1 | 2 | 1. Is there a formal strategic/business plan that clearly describes the Housing Authority's mission, business and how the Housing Authority's plans on operating? |
| 0 | 1 | 2 | 2. Does the plan address short and long range goals and objectives? |
| 0 | 1 | 2 | 3. Does the plan include identified strategies, tactics and measurements of success (metrics)? |
| 0 | 1 | 2 | 4. Is there a core management group involved in reviewing the business plan at least annually? |
| 0 | 1 | 2 | 5. Is there an organizational chart, and is it current and documented? |
| 0 | 1 | 2 | 6. Are all key functions adequately staffed? |
| 0 | 1 | 2 | 7. Is the Housing Authority structured to accomplish its mission? |
| 0 | 1 | 2 | 8. Are staff, management and/or board problem solving meetings held on a regular basis? |
| 0 | 1 | 2 | 9. Management and staff relationships are at a high level of interpersonal and operational effectiveness. |

Finance Section

- 0 1 2 10. Is there a financial measurement system in place?
- 0 1 2 11. Are there adequate internal fiscal monitoring controls and tools?
- 0 1 2 12. Does the Housing Authority's prepare annual financial plans?
- 0 1 2 13. Does the measurement system show trends?
- 0 1 2 14. Does the Housing Authority conduct periodic (at least quarterly) review of financial plans?
- 0 1 2 15. Are pro-forma analysis developed and utilized?
- 0 1 2 16. Does the Housing Authority (TDHE) and the authorizing body (Tribal Council or Government) have an oversight agreement that adequately protects the Housing Authority?
- 0 1 2 17. Is the financial strength of the Housing Authority's sound?

Human Resources

- 0 1 2 18. Is there a formal employee development plan?
- 0 1 2 19. Does management have an employee suggestion process?
- 0 1 2 20. Is the Housing Authority implementing continuous improvement strategies (TQM, Reengineering, Quality Systems)?
- 0 1 2 21. Is the Housing Authority's using team building techniques or training in the use of teams?
- 0 1 2 22. Does the human resources, or personnel department generate and maintain employee evaluation plans and individual classifications?
- 0 1 2 23. Has the Housing Authority completed a human resources assessment since 1994 (last 5 years)?
- 0 1 2 24. Does the Housing Authority conduct formal skills assessments of its employees?

- 0 1 2 25. Have employee salary (rewards) and benefits have been analyzed and compared with industry and regional standards?

Information Technology and MIS

- 0 1 2 26. Are adequate and appropriate information technology and management information systems and in place?

- 0 1 2 27. Have staff been trained in the use and management of these systems?

Quality

- 0 1 2 28. Does the Housing Authority have a formal, documented quality program?

- 0 1 2 29. Do any of the Housing Authority's subsidiaries, suppliers, or partners, have a formal, documented quality program?

- 0 1 2 30. Are quality reports regularly presented to and monitored by the Housing Authority's management and Board of Commissioners?

Board Development

- 0 1 2 31. Does the Board actively participate in long range planning strategies and make decisions regarding program development?

- 0 1 2 32. Does the Board receive adequate and periodic training.

- 0 1 2 33. Does the Board meet on a regular basis and is the board actively involved in the overall management ("big picture" - not micromanagement) of the organization.

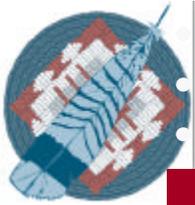
- 0 1 2 34. Does the Board annually review and approve a long range strategic or business plan?



Building an Effective Organization

THE BASICS! **Dick La Fever** **ICF Kaiser**

**Shared Visions: The Native American
Homeownership, Legal and Economic
Development Summit I
Chicago, IL**



Building an Effective Organization

THE BASICS:

- ❑ Your Housing Authority exists because you have people and communities that need housing and housing related projects.
- ❑ Values, Vision, Mission, Goals.
- ❑ Strategic Plan, Business Plan and the Indian Housing Plan.



Building an Effective Organization

“Basically the first half of the business plan is geared toward helping develop and support a solid business strategy.....the second half of the business plan is largely to execute your selected business strategy.”

“The Complete Business Plan”, Bob Adams (p. 3)



Building an Effective Organization

AGENDA

- ❑ Define an effective organization.
- ❑ Learn the 10 characteristics of an effective organization.
- ❑ Score your housing authority's Excellence Profile.
- ❑ Moving forward - Strategies for getting your housing authority moving!



Building an Effective Organization

- ❑ What is an effective organization?
- ❑ 10 characteristics of an effective organization.
- ❑ Relationship between your strategic plan, business plan and your IHP.
- ❑ Is your Housing Authority up to the challenge?



Building an Effective Organization

Overview

- ❑ What is an effective organization?

What do you think? (Small group discussion).

Be ready to give at least one characteristic from your small group. One person from your group will be the spokesperson



Building an Effective Organization

General Principles of Community Economic Development- Creating Your Strategic Plan.....

☐ Community Involvement

1. Individuals, organizations, institutions, all areas of community profile must be represented.
2. Must be inter-racial, intergenerational, and represent the diversity of the community.



Building an Effective Organization

Conditions for Change

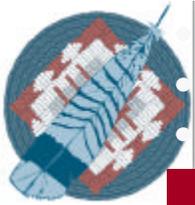
- Vision
- Felt need for change
- Skilled leadership needed
- Openness
- Willingness for both short and long range goals, risks, and "staying the course"
- Budget/money
- Recognition of success needed
- Failure is viewed as a step towards success



Building an Effective Organization

Future Trends

- ❑ Self Determination and Empowerment of People
- ❑ Total Quality Management (TQM) Processes
- ❑ Empowerment of Employees
- ❑ Greater Collaboration and Interdependence
- ❑ Changing Power Bases
- ❑ Further Polarization of Diverse Groups
- ❑ Rights of the Individual



Building an Effective Organization

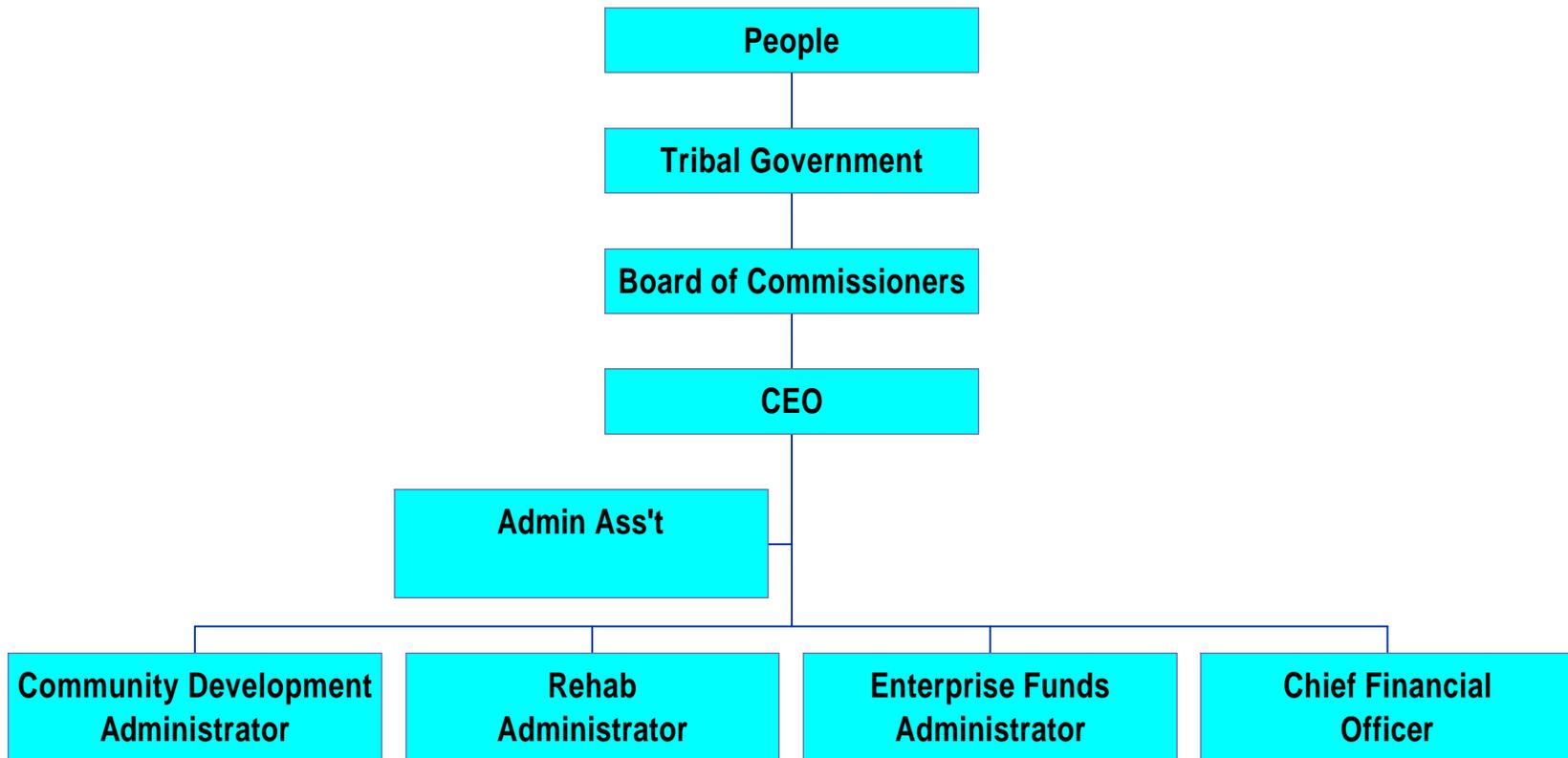
Changing Work Force

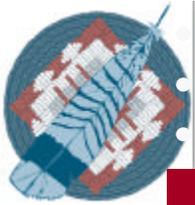
- ❑ Greater Complexities of Society
- ❑ Decreasing and or/ “Shifting” Federal Funds and Programs
- ❑ Decreasing State Funds and Programs
- ❑ Greater Economic and Political Clout of Native Americans
- ❑ Greater Community and Local Control



Building an Effective Organization

Traditional Organizational Chart





Building an Effective Organization

10 Characteristics of an Effective Org.

1. Built on values.....

Culturally relevant!

2. Is visionary.....

3. Has a definite mission....

4. Is goal oriented....

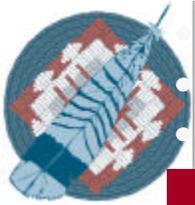
5. Has an implementation plan....



Building an Effective Organization

10 Characteristics (Cont.)

6. Empowers employees....
7. Has measurable outcomes....
8. Celebrates successes....
9. Communicates with all stakeholders constantly!....
10. Continuously improving....



Building an Effective Organization

Assessing Your Resources

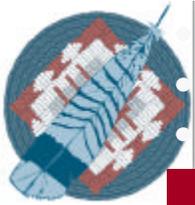
- ❑ People - Talent & expertise.
- ❑ Time - Devoted to building your organization, grant writing, community building.
- ❑ Available funding - Traditional and alternative sources.
- ❑ Creative capacity!



Building an Effective Organization

Assessing Your Resources

- ❑ Building effective partnerships, alliances and networks:
 - Who else can help you achieve your goals?
 - Create synergy within your community?
 - Mobilize a community Future Search Conference!
 - Think outside the “box”!



Building an Effective Organization

Excellence Profile

Scoring (Random scoring scale)

0 - 12	You're in need of immediate help!
13 - 25	You're treading water!
26 - 38	You're on your way!
39 - 51	Good going! You're on your way!
52 - 64	You're an excellence leader!
65 +	Major Pow Wow held in your honor!



Building an Effective Organization

The Next Steps: Follow Through

- ❑ The role of the Board of Directors.
- ❑ Developing a strategic/business plan.
- ❑ Commit to EXCELLENCE!
- ❑ Develop networks, alliances and partnerships..... **1 + 3 = 5**
- ❑ Become a life long learner.

Never quit!



Building an Effective Organization

Role of the Board of Commissioners

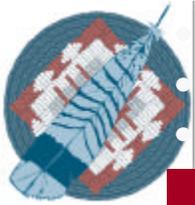
- Support long range planning.
- Represent all the people. Special interests have no place at the table!
- Are life long learners!
- Listen to the people!
- Provide direction and leadership!
- Moderate the "local politics"!
- Understand NHASADA!



Building an Effective Organization

Empowering Employees

- Involved in long range planning.
- Operate within uniform, fair and consistent personnel policies and procedures.
- Are fairly paid with good benefits.
- Training & development opportunities exist.
- Timely, two way performance feedback, and coaching.
- Holistic working environment!



Building an Effective Organization

Empowering Employees

- ❑ Link strategic plan/business plan with performance management system.
- ❑ Create buy-in and support through the use of self managed teams.
- ❑ Communicate, communicate, communicate!
- ❑ Create opportunities for advancement.
- ❑ Recognize, celebrate and reward employees.



Building an Effective Organization

Where to Get More Information

- ❑ Call Dick La Fever at 1-800-249-9061
or e-mail: consultcli@compuserve.com
P.O. Box 102279
Anchorage, Alaska 99510-2279

or contact

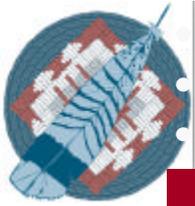
- ❑ ICF Kaiser Attention: Marsha Tonkovich
9300 Lee Highway
Fairfax, Virginia 22031
Phone: 703-218-2611 FAX: 934-3156
e-mail: mtonkovich@icfkaiser.com



Building an Effective Organization

“Only the stones remain
on earth forever, use
your best abilities”

John Stands In Timber
Northern Cheyenne Elder

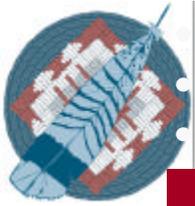


One-Stop Mortgage Centers

Joanna Donohoe

HUD Community Builder Fellow
Southwest Office
of Native American Programs

March 31, 1999

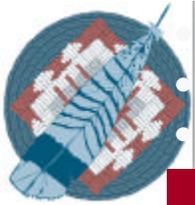


Overview of Presentation

1. Background on White House Initiative
2. Building a “One-Stop Mortgage Center”
3. Using ONAP Community Builders
4. Discussion of the REAL WORLD

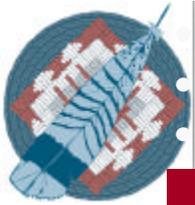


1. Background on White House Initiative



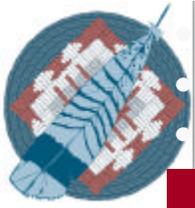
Clinton's Executive Memorandum

- ❑ Announced at White House Conference on "Building Economic Self-Determination in Indian Communities" on August 6, 1998.
- ❑ Directed Secretaries of HUD and Treasury to streamline mortgage lending process in Indian country.
 - One-Stop Mortgage Center Initiative



Federal Government Partners

- HUD
- Treasury
- Interior
- BIA
- USDA
- Veterans Affairs
- DOJ -- Office of Tribal Justice
- Federal Bank Regulators -- Fed/OCC/FDIC/OTS
- Federal Housing Finance Board
- Neighborhood Reinvestment Corp.



Tribal Partners

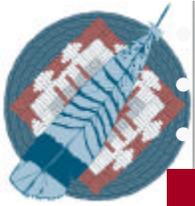
- ☐ Navajo Nation
(Arizona, New Mexico, Utah)

- ☐ Pine Ridge Reservation
(South Dakota)



Private Partners

- Lenders
- Appraisers
- Developers
- Contractors
- Utilities Providers
- Fannie Mae
- Freddie Mac
- Amerind
- National American Indian Housing Council
- North American Native Bankers Association
- Inter Tribal Council of Arizona



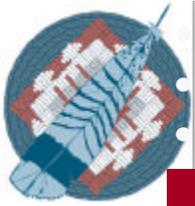
Objectives of Initiative

- ❑ Simplify mortgage lending process
- ❑ Shorten time period to obtain mortgage loan
- ❑ Increase access to government guaranteed AND conventional mortgage loans



Principles of Initiative

- ❑ Not “top-down”
- ❑ Embraces tribal sovereignty
- ❑ Reinforces federal trust responsibility
- ❑ Promotes partnerships
 - Public/Private
 - Federal/Local
- ❑ Reinvents federal and tribal government



Initiative Work Groups

- Variances in Federal Programs
- Land and Legal Issues
- Education and Creditworthiness Issues
- Private Providers
- Local Working Groups



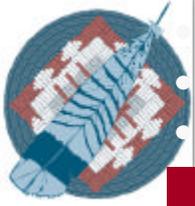
Products of Initiative

- ❑ Recommendations Report -- May 1999
- ❑ Federal legislative proposals
- ❑ Series of interagency implementation projects
- ❑ Administrative and policy changes
- ❑ Suggestions for tribal reforms
- ❑ Final report to President -- May 2000



Report Recommendations

- ❑ Streamline federal and tribal processes
- ❑ Catalyze private market
- ❑ Improve institutional development to build local capacity
- ❑ Develop and distribute educational materials for homebuyers, lenders, private providers and fed/tribal gov't



2. Building a “One-Stop Mortgage Center”



Building Local Capacity

□ Benefits of local intermediaries

- Bridge between lenders, tribal government, and homebuyers
- Advocate for reforms at local level
- Education, education, and education
- Link to builders and real estate market
- Sensitive to local, cultural issues
- Focal point for homeownership



Multiple Points of Entry

OFF-RESERVATION

- Real estate agent
- Lender
- Builder

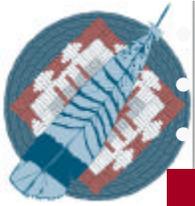
ON-RESERVATION

- Lender
- Builder
- Tribal government
 - Local chapter
 - Land department
 - TDHE
- Non-profit entity
- BIA



Who can be a One-Stop Mortgage Center?

- Indian community-based non-profits
- Tribally designated housing entities (TDHEs)
- Regional or local housing authorities
- Other tribal government organizations
- Tribal colleges
- Community development corporations



What functions do they perform?



- Homebuyer/lender education
- Loan packaging
- Gap financing
- Downpayment assistance
- Process navigation
- Housing stock
- Leveraging funds



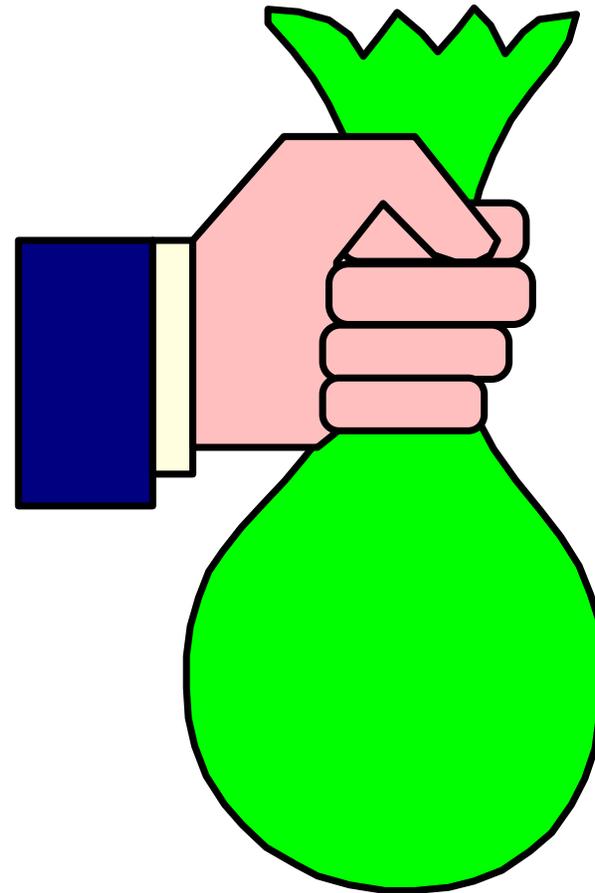
Homebuyer Education

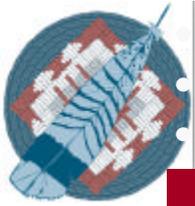
- Pre- and post-homeownership counseling
- Long-term and short-term credit counseling
- Financial literacy
- Early intervention



Lender Education

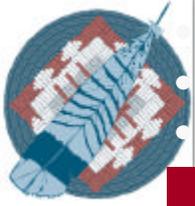
- Tribal laws and ordinances
- Cultural issues
- Land classifications
- BIA and tribal approval processes
- Title Status Reports
- Loan products



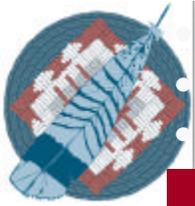


Education of Private Providers

- Contractors
- Architects
- Appraisers
- Insurance agents
- Utilities providers

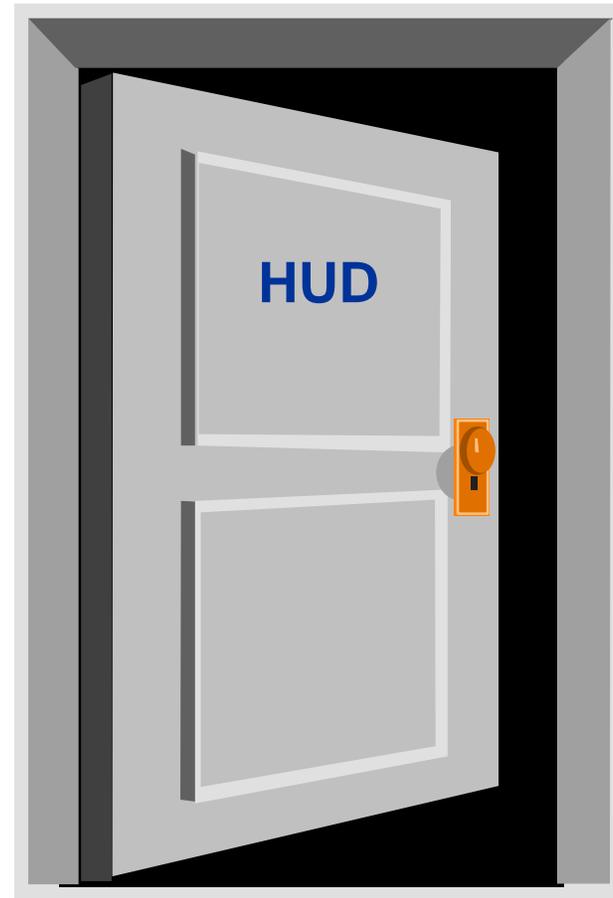


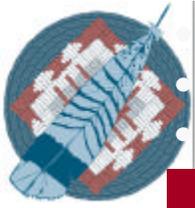
3. Using ONAP Community Builders



Role of Community Builders

- Serve as front door to HUD
- Outreach to tribal govts/TDHEs
- Build partnerships
- Promote innovation through NAHASDA





4. Discussion of the REAL WORLD



**One-Stop Mortgage Centers:
Building Local Capacity to Promote Homeownership in Indian Communities
(3/29/99 DRAFT)**

EXECUTIVE SUMMARY

This report summarizes the recommendations of the One-Stop Mortgage Center Initiative task force, which was created in response to an Executive Memorandum from President Clinton directing the Secretaries of Housing and Urban Development and the Treasury to promote homeownership in Indian country. The task force will organize implementation work groups to execute these recommendations over the next year. It will issue its final report to the President by May 2000.

The One-Stop Mortgage Center Initiative task force developed these recommendations through four work groups and local pilot sites at the Navajo Nation and the Oglala Sioux Nation. The task force researched barriers to mortgage lending in four areas: variances in federal programs, land issues, creditworthiness and education issues, and the need for private providers. The work groups included representatives from the federal government, tribal governments and the private sector.

The intent of this White House initiative is to increase local capacity to improve Indian communities' abilities to support private mortgage markets through tribal self-determination. The task force seeks to achieve this goal by recommending that the federal government fund a national Native American housing intermediary. Other specific recommendations include:

A. *REINVENT MORTGAGE LENDING PROCESS IN INDIAN COUNTRY*

1. Develop and distribute mortgage process flow chart.
2. Standardize documents for federal loan programs.
3. Streamline the approval process for tribes to provide their tribal members access to loan programs.
4. Develop streamlined realty review standard for mortgage loans in Indian country.
5. Develop streamlined credit review standard for mortgages secured by allotted land (individual trust).
6. Standardize "median income" definition.
7. Streamline environmental review requirements.
8. Expedite the process to obtain homesite leases of trust land.

9. Protect trust status of individual trust land used as collateral for mortgage loans.
10. Minimize barriers to homeownership caused by “*fractionalization.*”
11. Expedite the Title Status Report process.
12. Explore improvements to the federal housing loan guarantee products.

Tribal Reinvention Issues

1. Streamline tribal process to obtain homesite lease on tribal trust land.
2. Promote Land-Use Planning
3. Develop legal infrastructure.

B. CATALYZE THE PRIVATE MORTGAGE MARKET

1. Improve training and outreach to lenders and tribes regarding mortgage lending programs.
2. Improve the appraisal process for housing in Indian Country.
3. Promote the development of private real estate markets in Indian country.
4. Increase the availability of title insurance and homeowners insurance on Indian land.
5. Provide all benefits of homeownership to homeowners on Indian land.
6. Promote the involvement of the secondary market participants in Indian country.
7. Promote the involvement of lenders in Indian country.
8. Determine the feasibility of an IDA program for Indian country.

C. INSTITUTIONAL DEVELOPMENT FOR INDIAN COUNTRY

1. Build capacity at the local level.
2. Fund national Native American housing intermediary.

D. EDUCATION AND INFORMATION DISTRIBUTION

1. Develop curricula for homeownership and financial literacy education in Indian country.
2. Establish mechanism for marketing and disseminating educational products and programs.
3. Establish a national resource center at an Indian-based organization to serve as a clearinghouse for information.

PART I -- INTRODUCTION

For many years, American Indians and Alaska Native communities have encountered barriers to financing for homeownership in Indian country. Residents of Indian reservations seeking to acquire mortgage loans are required to obtain approval from federal, tribal, and local agencies as well as private providers¹ in disparate locations. Those entities have been operating with little, if any, coordination making it significantly more difficult for residents to obtain financing for homes on an Indian reservation. In addition, private lenders must learn to work with issues stemming from trust land status, such as using a leasehold interest as collateral for a mortgage, and they must become familiar with tribal governments and laws.

A. *Executive Memorandum*

To address these problems, President Clinton issued an Executive Memorandum on August 6, 1998, directing the Secretaries of Housing and Urban Development (HUD) and Treasury to work together with local tribal governments and other federal agencies to streamline the mortgage lending process on Indian reservations. In response to the President's Executive Memorandum, HUD and Treasury, in consultation with the Department of Interior, created the One-Stop Mortgage Center Initiative interagency task force.²

This interagency task force, in partnership with local tribal governments, is providing the umbrella leadership necessary to coordinate the activities of numerous federal and tribal agencies to help make the mortgage process more user-friendly to consumers and more attractive to private lenders. The specific objectives of the initiative are to:

- Simplify the mortgage lending process in Indian country;
- Shorten the time periods for residents of Indian country to obtain a mortgage loan; and
- Increase access to government guaranteed and conventional mortgages in Indian country.

This report identifies barriers that limit homeownership opportunities in Indian country, makes recommendations for actions to address the barriers, and presents an action plan to implement the recommendations. Through a pilot program on the Navajo Nation and another on the Pine Ridge Reservation, the One-Stop Mortgage Center Initiative will begin a series of projects to help bolster the local capacity of Indian communities across the country to promote a mortgage lending market. Specifically, the initiative recommends identifying a source of funding for the creation of a "Native American National Homeownership Intermediary" that would serve as a national resource center to support a national network of Indian community-based organizations. Though this initiative cannot mandate that lenders do business in Indian country or that tribal members accept mainstream credit culture, it can facilitate improvements to the process

¹ "Private providers" could include lenders, contractors, appraisers, inspectors, insurance agents, surveyors, architects, etc.

² Jackie Johnson, HUD Deputy Assistant Secretary for the Office of Native American Programs, and Michael Barr, Treasury Deputy Assistant Secretary for Community Development Policy, co-chair the initiative.

by helping to educate all of the parties and by getting the federal government appropriately involved or out of the way.

B. Background

Last year, in the Executive Order on Consultation and Coordination with Indian Tribal Governments, President Clinton explained:

Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation has guaranteed the right of Indian tribes to self-government. . . . Indian tribes exercise inherent sovereign powers over their members and territory. . . .

Exec. Order 13084 (1998). In 1790, Congress enacted the Indian Non-Intercourse Act prohibiting anyone from acquiring land from Indian tribes without federal government approval. In the early years of the Republic, to protect Indian tribes and avoid disputes, the President appointed commissioners to negotiate with tribes to acquire land through treaties, which were ratified by the Senate. The treaties also demarcated Indian reservation boundaries, and under Federal law, the United States typically held legal title to reservation lands in trust for the benefit of the tribe. These lands are referred to as "*tribal trust lands*" and even today, they may not be alienated without congressional consent.

In the 1880s, Congress enacted the General Allotment Act to promote farming among Indians by dividing some reservation lands among individual tribal members in 160 or 320 acre parcels, with other lands sold as surplus. The resulting individual allotments that were made to tribal members are now commonly referred to as "*individual Indian trust lands*" or "*individual allotted lands*." These lands may only be sold with the approval of the Secretary of the Interior, and trust lands are not subject to state real estate taxes. 25 U.S.C. §§ 348, 462. In theory, the restrictions on alienation of the individual Indian trust lands were intended to preserve Indian lands from passing out of Indian ownership.

Yet, many Indian reservations were dramatically reduced through "sales" of surplus lands over Indian objections, fraudulent transactions involving individual allotments, or forced transfer of the trust land into fee simple status, with subsequent loss through state tax sales. During the Allotment period from 1887 to 1934, American Indian landholdings in the lower 48 states dropped from 138 million acres to 48 million acres, leaving most reservation Indians in poverty. In 1934, the Indian Reorganization Act halted further allotment of tribal lands.

Today, under that Act, the Indian Land Consolidation Act, and other legislation, tribal governments are working to consolidate or rebuild the tribal land base to preserve reservations as "permanent homes," in accordance with treaty pledges. 25 U.S.C. § 465; *see e.g.*, Treaty with the Sioux, Art. 15; 15 Stat. 635 (1868). As the President explained at the White House "Building Economic Self-Determination in Indian Communities" Conference on August 6, 1998, the treaties are "solemn" pacts. While our Nation "did not live up to its side of the bargain in the past, we can and we must honor [those pacts] today and into that new millennium."

Outside of Indian country, private landholders throughout the United States hold title to their land in fee simple status³, which simply means that the landowner holds both the legal and equitable title to the land. Accordingly, private landowners may mortgage or sell their land on their own initiative. The real estate market has grown up around such transactions, and is thriving in today's climate of low-interest mortgage financing.

To accommodate the policy of preserving Indian lands while also promoting homeownership, Congress authorized the Secretary of the Interior to approve mortgages of individual Indian trust lands. "For the purposes of any foreclosure or sale proceeding" under such a mortgage, the land is treated as unrestricted fee simple land and may be foreclosed under applicable state or tribal law. 25 U.S.C. § 483a. And, Congress recently authorized Indian tribes, with the approval of the Secretary, to lease tribal trust lands for housing purposes for 50 year periods. This enables individual residential leasees to obtain leasehold mortgages. Some tribes are now planning master leases for residential sub-divisions in Indian reservation towns to reduce transaction costs for individual Indian homebuyers.

Yet, few reservation Indians are able to obtain mortgage loans on the private market. Because governmental approvals are required for mortgages of individual Indian lands and leases of tribal trust lands, reservation Indians incur higher transaction costs to get a mortgage, and most realtors and real estate financing agencies are not used to transacting business on Indian trust lands. Accordingly, federal mortgage and lending agencies must work together to make the most of guaranteed mortgage programs, and seek to promote more private participation in the conventional home mortgage market on Indian lands.

C. Homeownership in Indian Country

The U.S. Department of Housing and Urban Development is the lead federal agency responsible for the provision of housing and community development assistance to Indian tribes, and tribal members. Although the Public Housing program was established in 1937 with the enactment of the United States Housing Act, Indian tribes were not eligible for funding until 1961, when the Public Housing Administration (HUD's predecessor agency) administratively determined that Indian tribes had the legal authority to establish, pursuant to tribal law, Indian housing authorities (IHAs) to develop and operate low-income housing projects on reservations and other areas subject to tribal jurisdiction. With PHA/HUD financial assistance, from 1961 until 1996 tribally and state created IHAs provided housing assistance for thousands of Native American families through the Mutual Help Homeownership program, Turnkey III program, and the Low Rent program. The enactment of the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) (Pub.L.104-330) transformed the way in which HUD provides housing assistance to Indian tribes and Native American families. Unlike the U.S. Housing Act programs which were competitive grants going to IHAs, NAHASDA is an annual formula based grant that goes directly to the tribes (or their tribally designated housing entity) for a wide range of affordable housing activities.

³ In the state of Hawaii, however, Native Hawaiian lands are also often held in trust, with long-term leases executed for development purposes.

While federal and tribal public housing programs continue to play a vital role in providing housing to very low-income residents in Indian country, the demand for homeownership through private mortgage financing is growing. Indian families that have found consistent, gainful employment are exploring the possibility of homeownership because they can afford a better quality home or because they have exceeded the eligibility requirements for federal or tribal housing assistance. These potential homebuyers also recognize the benefits of homeownership such as the ability to accumulate equity in property that will appreciate over time. In addition, they are attracted by the opportunity to stabilize their housing costs and to benefit from tax deductions that are not available to rental or mutual help participants. This new demand for conventional homeownership will continue to grow as tribal members increase their knowledge of the benefits of homeownership, and tribal governments become more active in addressing homeownership issues in their communities.

This development represents a shift in the concept of homeownership in Indian country. In the past, Indian individuals generally obtained a home through federal or tribal housing programs or by building the home themselves. This type of homeownership provided shelter and a place to live, but did not create any equity or value to the occupant. Because this traditional concept of homeownership continues to exist in Indian country, public housing programs must continue to perform their functions.

The demand for homeownership through mortgage financing, on the other hand, is becoming an important alternative. As tribal economies grow, access to credit and financial services will improve. A private mortgage lending market is a natural progression and has the potential to help fuel economic stability on Indian reservations. At this point, however, the process a potential homebuyer must go through to obtain mortgage financing has thus far stifled the market. According to a recent Government Accounting Office study, lenders made only 91 conventional home purchase loans to Native Americans on trust land between 1992 through 1996. Also, the 1997 Home Mortgage Disclosure Act data showed a one percent decline in home purchase loans to Native Americans while the rate among all other ethnic groups increased.

The One-Stop task force partly attributes these low homeownership statistics to the complex tribal and federal approval processes that are targeted for reform by this effort. However, without job growth and income-producing entrepreneurial activities on Indian reservations, homeownership will remain out of reach for many – regardless of the success of the One-Stop Mortgage Center Initiative.

To help address this need for economic opportunities on Indian reservations, the Departments of Commerce and Interior and the Small Business Administration have developed a strategic plan for coordinating existing Federal economic development initiatives for American Indians and Alaska Natives.

In addition, the Department of Treasury's Community Development Financial Institutions (CDFI) Fund is conducting a Native American study on lending and investment practices on reservations and throughout the United States. The study will identify barriers to private financing, the impact of such barriers on access to capital and credit, and create strategies to address these barriers for Native American populations on reservations. The study will include

capital and credit needs for small and large businesses, consumer, and home mortgage lending. Treasury will submit a final report to the President and Congress in the fall of 2000.

Another issue which may affect the success of homeownership initiatives in Indian country is the lack of physical infrastructure in some communities. Because this issue falls outside of the scope of the One-Stop Mortgage Center Initiative, the task force did not make specific recommendations on how to address the need for infrastructure development. Instead, the report underscores the need for tribal governments to work with the appropriate federal agencies and utilities providers to incorporate infrastructure development into their comprehensive land-use planning efforts.

D. New Approach for Federal and Tribal Governments and the Private Sector

1. Federal Government Initiatives

The One-Stop Mortgage Center Initiative task force has reviewed federal and tribal processes and programs in order to compile the following recommendations that “reinvent” government consistent with the principles of Vice President Gore’s National Performance Review initiative. In an attempt to create a federal government that works better and costs less, the recommendations seek to avoid duplication of efforts and remove unnecessary requirements to streamline the federal approval processes, including Department of Interior review processes. The task force also recommends identifying incentives and outreach efforts to encourage the private sector to fill gaps in the mortgage market in Indian country. In addition, the task force is seeking to provide information to tribal governments about how to leverage federal resources.

2. Tribal Governments’ Responsibilities

As the federal agencies take on challenging reforms and new initiatives to help streamline mortgage lending in Indian country to improve the prospects of homeownership, tribal governments must also take steps to better the process. Their ability to do so may vary depending on their level of economic development. However, all tribes now have more flexibility and resources to address homeownership issues with the block grants through the Native American Housing and Self-Determination Act of 1996.

As tribes build their capacity to support mortgage lending, they should consider addressing the following areas. First, tribal governments must help to educate their members that, along with the many benefits of homeownership, come the responsibilities of being a loan customer. By facilitating the development of intermediaries that provide homeownership counseling and important resources about how to enter the mortgage market, tribal governments can help their tribal members meet those responsibilities. Second, tribal governments should seek to create a business environment in which private providers are able to furnish the services necessary to support a private mortgage market. In some cases, this may involve a financial commitment to establish a downpayment assistance program or a reserve fund to repurchase property in the event of a default.

Third, tribal governments should develop and enhance their legal infrastructure to ensure that the appropriate laws and ordinances are in place to support the market. Finally, tribal governments should ensure that their communities have the adequate physical infrastructure necessary to support housing development, including roads, power, water, and sewer systems. Though tribal governments may not fund these infrastructure projects, their tribal members will benefit from tribal leadership to coordinate their development.

Each of these initiatives must originate from within tribal governments. While the task force seeks to provide assistance to tribal governments in developing these systems to support a mortgage market, as sovereign nations, tribes must determine what would best serve their members and communities.

3. Private and Nonprofit Sector Involvement

Along with federal agencies and tribal governments, private sector lenders and nonprofit organizations have a role to play in the development of an environment conducive to stimulating private financing. First, they can assist tribes in the development and distribution of homeownership counseling materials for their members through the creation of intermediaries. Second, lenders and nonprofit organizations can reach out to tribes and tribal members with whom they do business to educate themselves about the tribal market. This relationship building process will help to create a cooperative environment in which partnerships can lead to successful lending strategies in Indian country. Some perceived lending barriers may even dissipate once private sector members learn more about the reservation market.

Private lenders also have a third responsibility to articulate clearly to tribal officials their legal requirements for a business environment. They should be flexible in the negotiations to determine if existing tribal legal infrastructures meet those requirements without mandating sovereign immunity waivers. For example, if a tribal alternative to a standardized legal requirement exists and provides the tribe adequate enforcement over defaults and foreclosures, private sector lenders should consider accepting it. By engaging in these proactive steps to facilitate mortgage lending in Indian country, private sector participants can develop productive business relationships with tribal governments and their members.

E. One-Stop Mortgage Center Initiative Process

1. Task Force Partners

Since the issuance of the Presidential Memorandum, federal agencies, tribal officials and private sector representatives have been meeting to identify barriers in the mortgage lending process in Indian country. The federal partners include the Department of Agriculture, Department of Housing and Urban Development, Department of Interior, Department of Justice (Office of Tribal Justice), Department of the Treasury, Department of Veterans Affairs, Federal Deposit Insurance Corporation, Federal Housing Finance Board, Federal Reserve System and Neighborhood Reinvestment Corporation. Private partners included Fannie Mae, Freddie Mac, National American Indian Housing Council, Amerind Financial Services Inc. and a variety of

lenders. Tribal partners included various tribal departments of the Navajo Nation and the Oglala Sioux Nation. A complete list of the task force partners is contained in Appendix A.

2. *Task Force Work Groups*

The task force divided into four national work groups in order to identify specific barriers and propose recommendations. *Work Group I – Federal Agency Cooperation and Coordination* addressed how to eliminate inconsistencies between federal mortgage programs. *Work Group II – Land Issues* explored how to remove barriers associated with using trust land as collateral for mortgage loans. *Work Group III – Creditworthiness Issues* researched and made recommendations on the need for education to promote mortgage lending in Indian country. *Work Group IV – Need for Private Partners* explored how to help develop a private mortgage industry on Indian reservations.

3. *Tribal Consultations*

In accordance with President Clinton's April 29, 1994 Presidential Memorandum on "Government-to-Government Relations with Native American Tribal Governments," HUD and Treasury hosted a series of consultation meetings with tribal leaders to solicit feedback on preliminary recommendations. These meetings occurred in Arlington, Virginia; Washington, DC; Portland, Oregon; Minneapolis, Minnesota; Phoenix, Arizona and Denver, Colorado. At these meetings, tribal officials emphasized the need for federal agencies to coordinate their roles in the mortgage lending process. They also encourage flexibility in federal programs to allow for the development of innovative demonstration projects on the local level. While tribal officials appreciated federal efforts to identify additional resources and technical assistance programs, they stressed the need for decision-making to remain at the tribal government level. Specific information discussed at these tribal consultation meetings will be forwarded to the implementation groups formed as a result of the recommendations.

4. *Local Pilots*

In addition to the work groups at the federal level, local work groups at the Navajo Nation and Pine Ridge reservations contributed to the report's recommendations. These pilot programs are seeking to integrate reforms in the federal processes with private markets on the local level. They served as the basis for determining the practicality of recommendations. In its final report, this initiative will summarize the results of the pilots so that other tribal governments can benefit from their efforts and replicate their successes. Appendix B presents the recommendations of the Navajo Nation Local Work Group which are specific to the mortgage lending process on the Navajo reservation.

Appendix C summarizes the activities of the Oglala Sioux Nation at Pine Ridge.

PART II – RECOMMENDATIONS

Since August 1998, the One-Stop Mortgage Center Initiative task force studied the current status of mortgage lending in Indian country and consulted with tribal officials to develop

the following recommendations for increasing homeownership through mortgage financing in Indian country. These recommendations fall into four areas. First, they suggest ways to “reinvent” the mortgage lending process in Indian country. Second, they present ideas about how to catalyze the private real estate market on the national and local levels. Third, they recommend institutional development through the creation of a national intermediary that could support a network of local capacity building entities. Finally, the recommendations address the need for the education of potential homebuyers, tribal governments, private providers, and federal agencies.

A. REINVENT MORTGAGE LENDING PROCESS IN INDIAN COUNTRY

The task force examined the federal and tribal processes that make up the mortgage lending process in Indian country with an eye towards eliminating unnecessary or duplicative steps. The recommendations regarding federal issues include plans for implementation with the targeted completion dates indicated in parentheses. Recommendations regarding the tribal processes, on the other hand, are presented for the consideration of tribal governments. Tribes may chose to implement all or part of the proposals. The suggestions are provided only to help promote the private mortgage market in a tribe’s community – they are not mandatory.

Federal Reinvention Issues

1. Develop and distribute mortgage process flow chart.

Barrier: On many reservations, potential homebuyers are unsure about the steps of the mortgage lending process. Private providers often encounter the same confusion. The specific roles and responsibilities of federal agencies in the mortgage lending process are unclear and inconsistent.

Recommendation

- The task force should appoint a subgroup to develop a process flow chart that would delineate the roles and responsibilities of the agencies, tribes, and lenders and distribute the flow chart to all federal staff in both national and field offices. This flow chart should cover conventional lending as well as federal direct, guaranteed, and insured loan programs.
- The Secretaries of all the relevant federal agencies should distribute the flow chart and provide the training necessary to ensure that the process is followed. Further training and outreach could be performed with the tribes and private sector participants to expand their awareness of the delineated process.

Implementation

Rural Housing Services will establish a subgroup with representatives from the BIA, HUD (ONAP), a tribal representative and a lender. This group will develop the flow chart of the mortgage lending and approval process along with a plan to distribute it. (May 1999.)

2. Standardize documents for federal loan programs.

Barrier: Lending programs have varying requirements for leases. This inconsistency may result in tribal members using different documents for each federal housing loan or conventional lending program. It may also serve as a deterrent to private lenders participating in these programs.

Recommendations

- The federal agencies and secondary market providers should develop a uniform minimum lease document that would be acceptable to all agencies for use with tribal trust land and trust allotments within reservations. Tribes could customize the lease as long as they maintained the principles and protections contained in the lease. This would enable tribal governments to accept or amend one lease for participation in any of the federal or conventional homeownership programs. Also, the agencies should also develop a uniform, interagency policy for addressing local modifications to leases to accommodate tribal law and procedures.

Implementation

Rural Housing Service, in conjunction with VA, HUD, Interior, NRC, and Ginnie Mae, is already reviewing lease documents to develop the standard lease. The agencies will also consult with Fannie Mae and Freddie Mac to determine if their concurrence is possible. The agencies will develop training material on the documents to help tribes understand why certain provisions are necessary. (May 1999)

3. Streamline the approval process for tribes to provide their tribal members access to loan programs.

Barrier: Federal agencies may have different requirements for tribal governments to meet to allow their tribal members to use each federal program. These inconsistencies may result in tribes duplicating efforts by adopting different ordinances, eviction procedures, and legal agreements.

Recommendation:

- The federal agencies should develop a document outlining the parameters of a memorandum of understanding that would be acceptable to all federal agencies and develop a process for an expedited joint review of any exceptions. This would enable tribal governments to develop their MOU one time and know that once a single federal agency had accepted them, they would be acceptable to all agencies.

- The federal agencies should also develop a model tribal ordinance(s) providing options and/or parameters for tribal ordinances to address eviction and foreclosure procedures that would be acceptable to all federal agencies.
- HUD, RHS and VA should establish an interagency agreement that allows tribes that meet the requirements of one agency to use the housing loan guarantee programs of all three agencies. HUD (ONAP) should maintain the list of approved tribes on the “Codetalk” website.
- The Department of Veterans Affairs will seek to introduce and enact a legislative amendment that removes the existing statutory requirement that VA execute a memorandum of understanding with an Indian tribe prior to members of that tribe obtaining a VA Indian loan product.

Implementation:

HUD will take the lead in drafting model legal documents for tribal governments to execute to allow for tribal members’ participation in HUD, RHS and VA programs. The agencies will also consult with Fannie Mae, Freddie Mac, and Ginnie Mae to determine if their concurrence is possible. The Department of VA will draft the appropriate legislative amendment. (May 1999)

4. Develop streamlined realty review standard for mortgage loans in Indian country.

Barrier: Mortgage loans secured by an interest in trust or restricted land may be subject to three or more levels of review which may result in confusion and lengthy delays. Direct mortgage loans from federal agencies must be approved by the federal agency making the loan and the Department of Interior. Guaranteed or insured mortgage loans must be approved by the federal agency issuing the guarantee or insurance, the private lender making the loan, and Interior. Conventional mortgage loans (i.e., loans without government guarantees or insurance) are approved by private lenders and reviewed by Interior. Tribal governments may also require their approval of each of these loans.

Recommendations

- The federal agencies should work with the Department of Interior to develop one national review standard that meets BIA requirements for the protection of the federal trust responsibility to tribes and tribal members.
 - ⇒ For government direct, guaranteed or insured mortgage loans, the appropriate federal agency would certify to Interior that the review standard had been met. During its realty review of the loan package, BIA would review the agency’s certification.
 - ⇒ For conventional mortgage loans, the BIA would certify within 30 days that the review standard had been met.
- The Department of Interior should develop a consumer guide that outlines its review process for mortgage loan packages.

Implementation

HUD, Interior, and the Department of Justice will develop a national review standard and procedures to expedite and streamline all mortgage loan approvals. (May 1999)

5. Develop streamlined credit review standard for mortgages secured by allotted land (individual trust).

Barrier: BIA has a trust responsibility to approve loan applications that use allotted land as collateral for a mortgage. However, BIA field offices have no consistent criteria with which to evaluate the appropriateness of the loan.

This trust responsibility to approve trust mortgages on allotted land should be distinguished from Interior's responsibility to review mortgage loan applications involving tribal trust and fee land, described above. The review of trust mortgages is similar to loan underwriting because Interior has a trust responsibility to ensure that the trust status of allotted land is not unreasonably put at risk.

Recommendations:

The BIA Central Office should provide guidance to BIA field offices regarding criteria for reviewing credit applications on allotted trust land in order to ensure that the trust status of the land is not unreasonably put at risk.

Implementation

The BIA, with assistance from the other federal agencies, should develop and distribute guidance to Area Offices for reviewing credit packages for mortgages on allotted land. (July 1999)

6. Standardize "median income" definition.

Barrier: Federal housing loan programs available to American Indian and Alaska Natives have inconsistent requirements for median income for participation. In some cases, this does not give tribes the flexibility to use a median level that is appropriate for their particular tribal service areas.

Recommendation

Since the federal programs' "median income" definition is determined by HUD's statute, HUD should amend the appropriate definition to allow the option for tribes to use local or national median, as defined by NAHASDA Section 4 (14), 25 U.S.C. 4103(14).

Implementation

HUD will coordinate with RHS to draft the appropriate legislative amendment. (May 1999)

7. Streamline environmental review requirements.

Barrier: If borrowers choose to use federal loan guarantee programs, they may be required to meet certain environmental review requirements. It is often time-consuming and confusing as to which types of clearances are necessary, and costs may be significant.

In addition, depending on demand, the federal agencies may need additional resources to perform the statutorily mandated environmental reviews. If a tribal government elects to perform its own environmental review under HUD's Part 58, for example, the tribe may also require additional resources.

Recommendations

Adopt uniform, streamlined environmental requirements for all Federal Indian housing loan programs.

Implementation

HUD's Office of General Counsel will organize a working group with the appropriate attorneys from the BIA, HUD, RHS, VA, and the Council on Environmental Quality to review environmental requirements for Indian housing loan programs. The working group will present a summary of the process and recommendations for improvements, including legislative amendments and budget requests. To assist tribes that opt to conduct their own environmental reviews, the working group should identify possible sources of funding and technical assistance. (July 1999)

8. Expedite the process to obtain homesite leases of trust land.

Barrier: Generally, title to land on Indian reservations falls into three general categories: tribal trust, individual trust (allotted) or fee simple land. Each type of land presents a unique set of challenges for residents and lenders to address. Tribal and individual trust land can generally be encumbered by mortgage loans through a homesite lease. However, borrowers often encounter lengthy delays in obtaining required approvals for homesite leases of trust land.

Recommendations

- The Department of Interior has recently implemented a policy that requires giving homesite leases top priority for expedited review and approval not to exceed 30 days. Interior has also recommended that all Area Offices adopt the Aberdeen pilot for processing mortgage-related requests.

- Through its Tribal Asset and Accounting Management System (TAAMS) reform, Interior should explore the feasibility of developing a tracking mechanism that would allow the ability to provide reports on the time periods for processing mortgage-related requests (including homesite lease applications, mortgage loan approvals and Title Status Report (TSR) requests) to track improvements in processing times.
- The BIA's Central Office should develop a standard flowchart outlining the steps and requirements of the homesite lease application process, including procedures to be used when existing homesite leaseholders transfers property to a new homesite leaseholder. (This flowchart could be part of the previously recommended consumer guide to Interior's approval process of mortgage loan packages.)

Implementation

The Department of Interior is currently undergoing a comprehensive reform of its trust management policies and procedures. In the context of this review, the Department is implementing the above recommendations. (July 1999)

9. Protect trust status of individual trust land used as collateral for mortgage loans.

Barrier: Individual trust land may be mortgaged and may be subject to lien and foreclosure (unlike mortgages on tribal trust land which must be secured by a *leasehold* interest in the land – not the land itself). However, Indian borrowers with individual trust land may be reluctant to mortgage their land because, in the event of foreclosure, the land leaves trust status and could leave Indian ownership.

Recommendation

- The federal agencies should review each of their statutes to determine if when a mortgage secured by an interest in individual trust land is foreclosed, and an Indian tribe or an individual Indian purchases the property from the lender or federal agency, the land is deemed to have continued in trust status.
- The Department of Interior should provide clarification of the process for foreclosure on individual trust land contained in the federal statute (25 USC 483a) to ensure that Indian land remains in trust or is automatically returned to trust status if an eligible Indian tribe or Indian acquires the land upon default and foreclosure.
- The Departments of Justice and Interior should explore the necessity of legislation to provide that when an Indian tribe or an individual Indian acquires land within an Indian reservation or existing trust lands for residential purposes, the tribe or the individual Indian has the option of converting the land into trust.

Implementation

The Department of Justice will work with HUD and Interior to review these issues to determine if a legislative amendment is necessary. (May 1999)

10. Minimize barriers to homeownership caused by “fractionalization.”

Barrier: Because individual trust land is often conveyed to the descendants of allottees, the number of undivided interests in the resulting tenancy in common may make it difficult for allottees to obtain the necessary clearance from the multiple owners of the land to use it for a mortgage loan. This issue may also affect a private lender’s opportunity to sell its interest in the land in the event of foreclosure, adding to the lender’s reluctance to make mortgage loans in Indian country.

Recommendations:

- Problems caused by “fractionalization” reach far beyond the mortgage lending market. As a result, Congress and the Department of Interior are seeking to address this issue through comprehensive legislation.
- In order to minimize “fractionalization” barriers, the BIA should clarify its procedures for allottees to partition a portion of their allotted land to be used as collateral for mortgage loans.

Implementation

The Department of Interior, with the support of the federal agencies, will consult with the appropriate Congressional staff to provide information about the necessity of legislation to address “fractionalization” and its impact in the mortgage lending process. (May 1999)

11. Expedite the Title Status Report process.

Barrier: The Bureau of Indian Affairs maintains all title records of Indian land. Therefore, when borrowers or lenders want to record their interests in the land or obtain certification of clear title, they must record documents or request Title Status Reports (TSRs) at the appropriate BIA Land Records and Title Office. Due to a backlog of requests and shortage of resources, borrowers and lenders often encounter lengthy delays in obtaining TSRs.

Recommendations

- The federal agencies should support the Department of Interior’s Trust Asset and Accounting Management System (TAAMS) to implement a data clean-up and automation initiative that will allow Area Offices to conduct their own title work and will generally provide better access to title records.
- The BIA has recently adopted a policy to expedite requests for TSR’s for mortgages. BIA field offices should indicate in their requests to the title plants that the TSR is for a mortgage so that it can be processed within the 30-day time period.
- Interior should clarify through a legal opinion its position on contracting out the title function to tribal governments via Public Law 93-638.

Implementation

The Department of Interior plans to complete its TAAMs reform in all Area Offices by June 2000. The reform will be implemented at the agency level by January 2001. As discussed earlier, the Department of Interior recently implemented a policy that requires giving TSR requests top priority for expedited review within 30 days.

12. Explore improvements to the federal housing loan guarantee products.

Barrier: Existing federal loan products available to Indian country may benefit from increased flexibility and other enhancements.

Recommendation

- HUD should evaluate its homeownership loan programs for Indian country to ensure that the programs are available on all land in Indian country including tribal trust, allotted and fee land. HUD should clarify and provide any enhancements necessary to make its loan products more successful, e.g., flexibility on the local level for the development of demonstration projects for affordable homeownership.. This evaluation will include the possibility of merging HUD's Section 184 and Section 248 programs.

Implementation

HUD, in consultation with USDA and VA, will oversee this reevaluation of the federal housing loan guarantee programs. (May 1999)

Tribal Reinvention Issues

The task force surveyed the existing mortgage lending process in Indian country and found several barriers that prevented or slowed the process for tribal members trying to obtain mortgages. While most of these barriers existed in federal processes, some were as a result of tribal processes. To assist tribal governments in preparing their communities for mortgage lending, the task force recommendations include suggestions that may be helpful to create a reservation environment more conducive to mortgage lending.

Tribal governmental processes in need of streamlining may differ depending on the circumstances of each tribe's mortgage lending market. The following key issues are presented for illustrative purposes. More specific examples of reforms that may be necessary at the local tribal level are contained in the recommendations of the Local Working Groups at the Navajo Nation and Pine Ridge pilot sites contained in Appendices B and C.

1. Streamline tribal process to obtain homesite lease on tribal trust land.

Barrier: The process for obtaining a homesite lease from tribal governments can be lengthy and burdensome, and often the process is unclear.

Recommendations

- Tribal governments should identify the steps in their review processes for mortgage loans and eliminate unnecessary and duplicative steps. They should also develop written manuals and training for their land department offices to eliminate inconsistencies.
- Tribal governments should develop basic consumer guidelines for tribal members outlining the steps and requirements of the homesite lease application process.
- The federal agencies should provide technical assistance to tribal governments to help them review their internal land lease policies and procedures, and develop expedited processes for residential leases and subleases.

2. Promote Land-Use Planning

Barrier: It is time consuming and expensive for individual residents of Indian reservations to get the necessary surveys, and environmental and archeological clearances necessary to obtain a mortgage loan. Also, some residential Indian communities lack neighborhood support services such as schools, parks, retail stores, day care facilities, employment opportunities and transportation systems.

Recommendations

- Tribal governments should develop expertise in land-use planning. Through land-use planning, tribal governments could designate areas for residential purposes, obtain the necessary surveys and clearances in advance, and develop infrastructure necessary for housing communities. Therefore, when a tribal member decided to build a home, the homesite lease approval process would not be as cumbersome or expensive.
- The federal agencies should develop and distribute a compendium of federal resources available for the purposes of land-use planning and developing zoning ordinances to promote the creation of support services that help to foster permanent and sustained community and economic development.

Implementation

The federal agencies should identify a Native American organization to take a leadership role in organizing a committee of tribal representatives to develop further recommendations for tribal reforms to promote land-use planning and zoning in Indian communities.

3. Develop legal infrastructures.

Barrier: Some tribes may need to enhance their legal infrastructure to support a private mortgage

lending market on their reservations. For example, they may need to update housing codes that address building, inspections or foreclosure, or they may need to expand tribal court systems.

Recommendations

- The federal agencies should compile their model codes (housing, building, foreclosure, probate, etc.) and condense them into one consistent model document with options for tribes to develop local laws and procedures.
- HUD should draft legislative amendment to allow NAHASDA or CDBG funds to be used by tribes to develop housing and community development related codes and code enforcement programs.
- HUD will conduct national survey of tribal governments about their housing-related codes. As an information clearinghouse, HUD will compile the codes and distribute them to all tribes.
- HUD will partner with the National American Indian Court Judges Association to provide regional training for tribal court judges and court personnel on Indian housing law.
- The Department of Justice's Office of Tribal Justice will provide technical assistance and grants to assist tribes in their efforts to develop tribal courts and to adopt laws to promote homeownership.

Implementation

HUD (ONAP) will coordinate the implementation of the above recommendations. (July 1999)

B. CATALYZE THE PRIVATE MORTGAGE MARKET

The task force researched barriers caused by the lack of private industry housing partners such as real estate agents, financial institutions, appraisers, builders, contractors and services such as title insurance and home owners insurance. Task force members agreed that once a market for home sales began to grow, a natural outcome would be activity on reservations by real estate agents. In the meantime, intermediaries that service Indian country may provide realtor-type services.

1. Improve training and outreach to lenders and tribes regarding mortgage lending programs.

Barrier: Lenders, tribes and partner organizations have difficulty learning about federal programs, and federal agency representatives are unable to provide information on other federal programs.

Government loan programs are available for the origination of home loans on tribal trust, individual or allotted trust, and fee simple land in Indian country. HUD offers two programs, the HUD Office of Native American Programs' Section 184 program and the HUD/Federal Housing Administrations' (FHA) Section 248 program. Section 184 of the Housing and Community Development Act of 1992 is a loan guarantee program for single-family Indian housing in an area

where an Indian housing authority or tribe is authorized to provide housing. Section 248 of the National Housing Act is an insurance program for single-family homes for Indian housing on trust or otherwise restricted land. The Department of Agriculture Rural Housing Service also administers a loan product for Indian applicants titled Section 502. In addition, the Department of Veterans Affairs has a loan product for Indian veterans.

Additional loan programs and conventional loan products are available through secondary market providers and private lenders. Some private lenders have also developed special purpose credit programs to help meet the mortgage credit needs in Indian country.

Recommendations

With HUD's Office of Native American Programs as the lead, each federal agency with any responsibility in the mortgage lending arena should designate an information coordinator who will be responsible for ensuring the communication flow on programs and activities and will serve on an *Information Committee*. The committee would also invite Fannie Mae, Freddie Mac, Ginnie Mae, and other associations and interest groups to participate.

The committee would be charged with the development of a plan to expand lender and tribal access to relevant information about the federal loan programs. The committee should explore using "Code Talk" as the central Internet link and ensure that an updated list of tribes and designated housing entities are available for everyone's information.

The committee should also develop at least two videos. The first should be developed for tribes and tribal housing organizations that would provide information on all federal programs and clarify which programs work best in which markets and situations. This video could be distributed directly to the tribes and housing organizations. In addition, federal staff could use it to help describe other federal programs when they are making outreach or technical assistance visits. The second video would be targeted to lenders to explain the process of lending in Indian country and the differences in the federal programs. The task force urges the committee to maximize use of technology, including CD ROMs, and the Internet to ensure that the information available is as up to date as possible.

In addition to providing training to lenders about loan programs, the committee should develop a strategy to educate lenders about tribal legal systems and trust land classifications.

Implementation

HUD (ONAP) will convene this *Information Committee* to design a lender and tribal outreach program, which will provide information to all agencies that offer mortgage loan products in Indian country and to financial institutions through industry contacts and mailing lists. (December 1999)

2. Improve the appraisal process for housing in Indian Country.

Barrier: It is difficult and expensive to obtain an accurate appraisal on housing located on an Indian reservation due to travel costs to remote areas and lack of accurate comparable sales data.

Recommendations

- The federal agencies should establish an interagency Appraisal Working Group with representatives from the appraisal industry to develop guidelines and technical assistance for conducting appraisals in Indian country.

Implementation

HUD will organize an interagency One-Stop Appraisal Working Group. Because FHA is currently revising its Appraisal Handbook, which, for the first time, will include an “Indian Lands” chapter addressing how to conduct appraisals for FHA loan programs on tribal trust and allotted land, the working group should use FHA’s new chapter as a basis for an interagency discussion. (July 1999)

3. Promote the development of private real estate markets in Indian country.

Barrier: There is a shortage of housing professionals such as appraisers, inspectors, general contractors, and mortgage brokers in Indian country.

Recommendations

- The federal agencies should provide funding for the development of a continuing education curriculum for licensed appraisers (both government agency and private sector) to address how to determine the value of property on tribal trust and individual allotted land. This training curriculum could be based on the guidelines developed by the Appraisal Working Group discussed above.
- The agencies should work with the American Indian Higher Education Consortium to develop curricula to educate new private providers – appraisers, inspectors, contractors, mortgage brokers – from within Indian country.
- The federal agencies should facilitate training for existing private providers interested in doing business on Indian reservations.
- The federal agencies should explore partnerships with national trade associations to develop technical assistance programs to train tribal entities interested in becoming mortgage brokers. The training should include information about how tribal entities could get approved by the FHA or other state or federal agencies as mortgage brokers.

Implementation

HUD and the USDA will seek funding for the development and implementation of: 1) a continuing education curriculum for appraisers, 2) curricula to educate new private providers

from within Indian country at tribal colleges and vocational schools, 3) training for existing private providers, and 4) technical assistance programs for tribal entities interested in serving as mortgage brokers. (December 1999)

4. Increase the availability of title insurance and homeowners insurance on Indian land.

Barrier: While federal guarantee/insurance programs do not generally require title insurance, some lenders and the secondary market prefer homebuyers in Indian country to obtain title insurance policies, as is the practice off-reservation. However, few title companies will issue a title policy on reservation land. In addition, it is difficult to obtain homeowners insurance on reservations.

Recommendations

- Federal agencies should work with a Native American-owned insurance pool, such as Amerind Financial Services Inc., to explore the development of title insurance and homeownership insurance products specifically for Indian land.
- Interior and HUD should work with the American Land Title Association to educate title insurance companies about doing business in Indian country and identify companies willing to provide title insurance on Indian land.
- Interior should clarify its regulations that govern public access to title plant records to facilitate private sector title searches. Interior should also clarify tribal governments' ability to access title plants.
- Interior will explore the legality of the BIA providing the equivalent of title insurance through a self-insurance program.

Implementation

The Federal Housing Finance Board will convene a working group with representatives from Interior, HUD, American Land Title Association, the secondary market providers and Amerind to develop a strategy to implement the above recommendations. (July 1999)

5. Provide all benefits of homeownership to homeowners on Indian land.

Barrier: Homeowners in Indian country may not be able to obtain home equity loans, reverse mortgages or mortgage refinances.

Recommendation

The federal agencies should draft amendments to remove restrictions against these products so that as the mortgage lending market in Indian country grows, this type of lending can develop.

Implementation

HUD (ONAP) will draft the appropriate legislative or regulatory amendments. (May 1999)

6. Promote the involvement of the secondary market participants in Indian country.

Barrier: Mortgage lending in Indian country should be linked to mainstream sources of capital through the secondary markets.

Recommendation

- Ginnie Mae, which securitizes government-insured loans, as well as Fannie Mae and Freddie Mac, which securitize conventional and guaranteed/insured home mortgage loans, should establish clear guidelines for acceptable origination, in consultation with tribal leaders and local originators of such loans.

Implementation

The secondary market participants should make commitments to purchase reasonable home mortgage loans in Indian country. In addition, they should explore ways to make their programs more attractive to lenders through higher servicing premiums and local support staff. (July 1999)

7. Promote the involvement of lenders in Indian country.

Barrier: In some areas, financial institutions make few mortgage loans in Indian country either because of lack of knowledge about the opportunities to lend in Indian country or because of impediments in the lending process.

Recommendation:

- The federal financial regulatory agencies should continue to provide information to financial institutions about the range of opportunities for sound and profitable community and economic development lending and investments in Indian country, including making home mortgage and affordable housing loans, and provide information about how to overcome the obstacles in the lending process.
- The federal financial regulatory agencies should provide information to tribal governments about the opportunities for public involvement when a financial institution develops a strategic plan under the Community Reinvestment Act (CRA) regulations. They should also help to educate tribal governments about the CRA examination process and the regulators' practice of contacting members of the community for input during exams.

Implementation:

The federal financial regulatory agencies should provide information to bankers about successful models of mortgage lending on Indian reservations. These agencies should also support, through the provision of relevant educational materials and, if possible, speakers, the initiatives launched by First Nations Development Institute, the National Association of Affordable Lenders, the National Community Reinvestment Coalition, and the National American Indian Housing Council to train Indian housing officials about working with financial institutions to develop opportunities for sound and profitable community and economic development lending and investments in Indian country. (July 1999)

8. Determine the feasibility of an IDA program for Indian country.

Barrier: The accumulation of assets and wealth is an essential element in helping individuals achieve economic security. Many potential borrowers in Indian country own insufficient assets to enable them to qualify for homeownership or manage a mortgage. However, they may have difficulty saving enough for a downpayment for a mortgage.

Recommendation

The accumulation of assets and wealth are essential elements in helping individuals achieve economic security. In addition to promoting general economic development in Indian country, Individual Development Accounts have been developed as a tool to address the challenge of asset creation. IDAs are dedicated savings accounts that combine individual deposits with matched funds provided by public and private sources. IDAs offer potential borrowers a means to save for expenses associated with purchasing and maintaining a home. IDAs are held in local financial institutions and managed by community-based organizations, and have been used to assist individuals in establishing creditworthiness and qualifying for homeownership.

Implementation

The Department of Treasury will determine the feasibility of developing an IDA program adapted for Indian borrowers and employed as a part of an overall strategy to build individual assets in Indian country. The program should be designed to assist in facilitating homeownership opportunities for Indians who have income capacity to afford a reasonable mortgage payment, but who do not have adequate funds for downpayments or closing costs. (December 1999)

C. INSTITUTIONAL DEVELOPMENT FOR INDIAN COUNTRY

Barrier: Successful efforts to expand homeownership opportunities for low- and moderate-income households depend on local organizations that can provide homebuyer education, assist in securing mortgages, and develop and financing housing. The success of these local organizations depends on national or regional organizations providing technical assistance, financial support and access to capital. Such institutional capacity focused on serving Indian country, at the local, regional and national level is currently limited and is a major impediment to

expanding homeownership in Indian country. Significant growth of homeownership in Indian country will depend on substantial, long-term investments in local, national or regional organizations.

1. Build local capacity.

Expanding home-ownership opportunities begins with local organizations that can serve as advocates for potential buyers seeking to own their own homes. Locally based, and familiar with the unique cultural and economic characteristics of the communities they serve, these organizations offer an array of critical services. They prepare families for homeownership, serve as intermediaries with lenders, insurers, tribal governments, builders, and advocate for reforms at the local level. In addition, some act as local housing developers, assembling financing and developing housing in circumstances that at present can not attract sufficient private developers to meet local housing needs. The success of these housing activities at times also requires involvement in community and economic development. While local capacity to support homeownership is far too limited, there are some effective non-profit and governmental organizations which can serve as useful models, including nonprofit entities, tribally designated housing entities, community development corporations or Indian housing authorities.

Lenders may be more willing to participate in lending in Indian country with an intermediary that was familiar with a tribe's codes, ordinances and customs. This might include someone who can speak the language and assist in translating. The intermediary could also assist the lender in providing homeownership counseling and to alleviate the fears of tribal families who are unfamiliar with the requirements of lenders.

2. Fund a national Native American housing intermediary.

While the impetus and leadership for expanding capacity at the local level must come from within tribal communities, these efforts can be facilitated by national or regional organizations that provide training and technical assistance to build the capacity of local institutions, facilitate access to financial support, and assemble capital pools for gap financing and risk management.

Significant and substantial benefits will arise from the development of a national nonprofit intermediary in Indian country. First, with low- and moderate-income tribal households buying their own homes, tribal housing stock increases for very low-income tribal families. Second, the national intermediary will assist tribes in developing the regulatory jurisdiction over financial and commercial transactions that will provide predictability to both borrowers and lenders, thereby stimulating both homeownership and economic development opportunities. Third, tribal governments may be able to access capital from the intermediary to purchase property that is the subject of foreclosure to ensure that the land stays in their control and to mitigate lenders' reluctance to lend.

Recommendation

- HUD should seek funding for a national nonprofit intermediary to serve as a catalyst to create a homeownership market economy on Indian lands and to support a network of local capacity-building organizations.
- HUD (FHA) should determine whether Section 106 of the Housing and Urban Development Act of 1968 provides authority to make homeownership counseling funds available to nonprofits serving Indian communities.
- HUD (FHA) should draft legislation to provide a three percent set-aside from funds appropriated for housing counseling under Section 106 of the HUD Act of 1968.
- The federal agencies should draft legislative amendments to their authorizing statutes to allow them to provide technical assistance and capacity-building funds for the formation of intermediary organizations that provide homeownership counseling and financial assistance to homebuyers on Indian reservations.
- The Department of Treasury's CDFI Fund should assist Indian communities who are attempting to create CDFI's with targeted outreach efforts to include workshops and direct technical assistance.

Implementation

HUD and Treasury will take the lead in drafting the appropriate legislative amendments. (May 1999).

0 EDUCATION AND INFORMATION DISTRIBUTION

Financial literacy and homebuyer preparation are essential to ensuring access to mortgage lending in Indian country. The task force found a need for increased understanding between lenders and tribal members. While tribal members need to understand finance, banking, and credit, lenders need to learn about tribal cultural issues, values, and diversity. The most effective means of addressing creditworthiness issues are those that include both tribal officials and financial institution representatives working together to develop lending programs and educational curricula responsive to particular tribal needs.

1. Develop curricula for homeownership and financial literacy education in Indian country.

Barrier: Many potential homeowners in Indian country are in need of homeownership and personal finance counseling. They often have an incomplete understanding of finance, banking, and the credit process among borrowers. Homeownership and financial services education are needed to prepare borrowers and make homeownership achievable in Indian communities.

Recommendation

The federal agencies should establish an *Education Steering Committee* to identify a wide range of homeownership and financial literacy educational materials and curricula. This committee would work in consultation with other organizations that are experts in this field. The committee should assess available educational materials, programs, workshops, and activities that promote financial literacy and homeownership readiness and are appropriate for Indian country and develop additional materials as needed. Educational materials should be distributed to tribal members and officials, lenders, other government agencies, financial intermediaries and program facilitators in the public and private sector in regions throughout the country.

It is vital that interested and effective organizations as well as tribal leaders and members are involved in the committee organized to assess and develop educational materials. The task force recommends that the steering committee be comprised of a representative from the Department of Housing and Urban Development, a representative from the Neighborhood Reinvestment Corporation, a financial industry representative, and a national Indian-based organization representative. The education materials would be directed to several target audiences including tribal members and officials, lenders and other private sector organizations, and public sector organizations at the national, state, and local level. The national partnership consortium would be charged with the responsibility of identifying and coordinating the expertise and resources necessary to develop and evaluate educational materials and curricula.

Several organizations that have traditionally been working in Indian country find the idea of increasing the availability of general financial education products a good one. However, they emphasized that respected and credible organizations and tribal members with knowledge and experience in finance and education must be involved in the process. Further, people with expertise in curriculum development and evaluation should also be included, perhaps on a consulting basis.

Implementation

HUD will convene the *Education Steering Committee* which will design a work plan to develop curricula for homeownership counseling and financial literacy education. (December 1999)

2. Establish a mechanism for marketing and disseminating educational products and programs.

Recommendation

The taskforce recommends that a plan for marketing and disseminating the educational products be developed under direction of the steering committee. A broad publicity campaign should be undertaken to advertise the financial literacy and homeownership programs using the news media and local organizations to assist in informing key local groups and organizations.

Utilizing materials identified and/or developed by the partnership consortium, a train-the-trainer curriculum should be developed to create a resource base of knowledgeable individuals in each tribe who can further disseminate homebuyer education. HUD (ONAP), could work with

the Tribal Designated Housing Entities (TDHE) to send their staff members to train-the-trainer courses. Neighborhood Reinvestment Corporation (or another contractor) could provide the training for the TDHE's.

Funding for the train-the-trainer program could possibly come from the budget of HUD's Native American Housing Assistance and Self-Determination Act. Once instructors are trained, private partners could provide funding for the training handbooks and materials. This could also include funding for the production costs of translating the handbook into various Indian languages, if necessary.

A suggestion to provide an incentive for homeownership counseling is for the federal agencies to draft legislation for federally insured and guaranteed programs at USDA, HUD, and VA to allow for a reduction in their mortgage insurance premiums, guarantee fee or funding fees for those homebuyers that complete an agency-approved homeownership counseling course.

Implementation

As it designs the curricula, the Education Steering Committee will develop a plan to disseminate the educational materials. (March 2000)

3. Establish a national resource center at an Indian-based organization to serve as a clearinghouse for information.

Barrier: Education about homeownership programs for lenders, other agencies, financial intermediaries, and public and private lending program officials is unavailable or insufficient to meet needs. Effective channels have not been developed to enable lenders, financial intermediaries and public and private lending program officials to learn about available loan products, grants, insurance, loan guarantee, and subsidy programs.

Recommendation

The federal agencies should establish, in conjunction with a national intermediary, a *National Indian Housing Resource Center* to collect, maintain, and make available materials pertaining to financial education and the homeownership process. It could serve as a clearinghouse of information on "best practices" for housing and economic and community development efforts in Indian country. The resource center would use a variety of means to make information available, such as, telephone, fax, and the Internet and would be housed at a facility available to the public. The resource center should have at least one dedicated staff member to ensure that materials remain current.

The national resource center could be established through an Indian-based organization with the capacity and stability to house an office for this initiative as well as the credibility and respect that would ensure its use. The ability to provide space and office resources for staff and to act as a funding vehicle are essential.

Implementation

The Federal Reserve System will convene a meeting of potential partners in the development of a *National Indian Housing Resource Center* to explore alternatives and initiate steps towards establishing such a center.

IV. TRACKING PERFORMANCE: BENCHMARKS AND GOALS

In order to meet the expectations of all partners involved in the One-Stop Mortgage Center Initiative, the task force should develop a system to allow the parties to determine systematically that activities result in the removal of barriers to Indian homeownership. Data should be collected on the status of Indian and non-Indian homeownership (by standard census characteristics) and benchmarks and goals should be established. (e.g., parity in homeownership rates). The benchmarks should then become the public standard for regular appraisal of the One-Stop Mortgage Center Initiative.

The performance tracking system should also focus on federal and non-federal processes, especially on procedures that affect cycle time. When data indicate that procedures generate an unreasonable variation in process cycle time or product quality, the partners should focus on improving the processes that deliver the product or service.

In order to assure that all mortgage processes are continuously improved, data should be collected and analyzed on a regular basis. Particular attention should be given to variations in process, products, and time requirements. This will help determine if variations result from special circumstances or from common problems that require coordinated strategies and procedures.

Recommendation and Implementation

HUD will assemble a measures committee to develop the system described above. (May 1999)

V. IMPLEMENTATION TIMELINE

The members of the One-Stop Mortgage Center Initiative task force will divide into implementation work groups to execute its recommendations. These work groups, chaired by the responsible agency listed below, will complete their mandates over the course of the next year. The task force will delivery its final report to the President by May 2000.

RECOMMENDATION	RESPONSIBLE AGENCY	TARGET COMPLETION
A. REINVENTION ISSUES -- Federal Issues		
1. Develop and distribute mortgage process flow chart.	RHS	May 1999
2. Standardize documents for loan program.	RHS	May 1999
3. Streamline approval process for tribal participation.	HUD	May 1999
4. Develop streamlined realty review standard.	HUD, Interior, DOJ	May 1999
5. Develop streamlined credit review standard.	BIA	July 1999
6. Standardize "median income" definition.	HUD/RHS	May 1999
7. Streamline environmental review requirements.	HUD	July 1999
8. Expedite homesite lease process.	Interior	July 1999
9. Protect trust status of Indian land.	DOJ	May 1999
10. Minimize "fractionalization."	Interior	May 1999
11. Expedite TSR process.	Interior	June 2000
12. Review loan products.	HUD	May 1999
Tribal Reinvention Issues		
1. Streamline homesite lease process.	Interior to provide technical assistance to tribal governments.	Varies by tribe.
2. Promote land-use planning.	HUD to provide technical assistance to tribal governments.	Varies by tribe.
3. Develop legal infrastructure.	HUD/DOJ to provide technical assistance to tribal governments.	Varies by tribe.
0 CATALYZE PRIVATE MARKET		
1. Create <i>Information Committee</i> .	HUD	December 1999
2. Improve appraisal process.	HUD	July 1999
3. Promote real estate market.	HUD/USDA	December 1999

4. Increase title insurance and mortgage insurance	FHFB	July 1999
5. Home equity, refinances, reverse mortgages	HUD	May 1999
6. Promote secondary market participants.	Treasury/HUD	July 1999
7. Promote lender involvement.	Federal bank regulators	July 1999
8. Determine feasibility of IDA program for Indian country.	Treasury	December 1999
C. INSTITUTIONAL DEVELOPMENT FOR INDIAN COUNTRY		
Fund a national Native American housing intermediary .	HUD (ONAP)	May 1999
D. EDUCATION AND INFORMATION DISTRIBUTION		
1. Develop curricula for homeownership and financial literacy counseling.	<i>Education Steering Committee</i>	December 1999
2. Develop dissemination plan.	<i>Education Steering Committee</i>	March 2000
3. Establish <i>National Indian Housing Resource Center</i> .	Federal Reserve	December 1999
IV. TRACKING PERFORMANCE: BENCHMARKS AND GOALS		
Determine benchmarks and establish goals.	HUD	May 1999

VI. CONCLUSION

The One-Stop Mortgage Center Initiative addresses the shift in the provision of housing in Indian country from predominantly public housing to a mix of rental public housing and affordable homeownership. As tribes and their members increase their capacity for mortgage financing, a private real estate market in Indian country will develop. To stimulate this growth, the One-Stop Mortgage Center initiative seeks to streamline tribal and federal review processes, catalyze the private sector, fund a national Native American housing intermediary and promote homebuyer education. Through a partnership between the federal government, tribal governments and the private sector, this White House initiative will help to make homeownership in Indian country an attainable goal.

VII. APPENDICES

3/29/99 DRAFT

- A. Partners of the One-Stop Mortgage Center Initiative
- B. Recommendations of the Navajo Pilot Project
- C. Summary of the Pine Ridge Pilot Project
- D. Resource List

APPENDIX A

One-Stop Mortgage Center Initiative Task Force Members

Native American Partners

Amerind Risk Management Corporation
Chickasaw Nation
Inter Tribal Council of Arizona
Lakota Fund
National American Indian Housing Council
National Congress of American Indians
Navajo Housing Authority
Navajo Nation
 Community Development Division
 Department of Justice
 Economic Development Division
 Historic Preservation Department
 Housing Services
 Land Department
Navajo Townsite Community Development Corporation
Navajo Tribal Utilities Authority
Navajo Partnership for Housing
North American Native Bankers Association
Oglala Sioux Nation
 Oglala Lakota Tribal College
 Oglala Sioux Housing Authority

Federal Partners

U.S. Department of Agriculture
 Rural Development
 Rural Housing Services
U.S. Department of Housing and Urban Development
 Office of Native American Programs
 Federal Housing Administration
 Ginnie Mae
U.S. Department of the Interior
 Bureau of Indian Affairs
U.S. Department of Justice
 Office of Tribal Justice
U.S. Department of the Treasury
 Community Development Financial Institution Fund
 Office of the Comptroller of the Currency

Office of Thrift Supervision
U.S. Department of Veterans Affairs
Federal Deposit Insurance Corporation
Federal Home Loan Bank System
Federal Housing Finance Board
Federal Reserve Board
Federal Reserve Bank of Kansas City
Federal Reserve Bank of Minneapolis
Federal Reserve Bank of San Francisco, Los Angeles Branch
Federal Reserve Bank of San Francisco, Seattle Branch
Indian Health Services
Neighborhood Reinvestment Corporation
The White House

Private Partners

American Land Title Association
Arizona Bank, Tucson, AZ
Banc One Mortgage Corporation, Indianapolis, IN
Bank of America, San Francisco, CA, Phoenix, AZ
BankAmerica Mortgage, Phoenix, AZ
Bank of the Southwest, Farmington, NM
Charter Bank for Savings, Albuquerque, NM
Citizens Bank, Farmington, NM
Countrywide Home Loans
Fannie Mae
Federal Home Loan Bank of San Francisco
Federal Housing Finance Board
First Americans Mortgage, Phoenix, AZ
First Heritage Bank, Marysville, WA
First National Bank of Farmington, Farmington, NM
First Security Bank, Salt Lake City, UT
First Security Bank of NM, Albuquerque, NM
First Western Bank, Monticello, UT
First Western National Bank, Blanding, UT
Freddie Mac
Gallup Federal Savings Bank, Gallup, NM
McLain County National Bank, Purcell, OK
National Bank of Arizona
New Mexico Housing Finance Authority
New Mexico Office of Indian Affairs
Norwest Bank
Norwest Mortgage
Suburban Mortgage, Albuquerque, NM
Vectra Bank, Farmington, NM

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Washington Mutual Bank, Seattle, WA
Wells Fargo Bank, Houston, TX, San Francisco, CA
Zions Bank, St. George, UT
Zions First National Bank, Salt Lake City, UT
Zions Mortgage, Salt Lake City, UT

APPENDIX B

Draft Recommendations of the Local Working Group -- Navajo Nation One-Stop Mortgage Center Initiative

Background – Obtaining a Mortgage Loan on the Navajo Nation

Residents of the Navajo Nation face many hurdles in their pursuit of homeownership on the reservation. Before an individual can apply to a lender for a mortgage loan, he or she must obtain a homesite lease from the tribe to use as collateral for the loan (if the intended location of the home is on tribal trust land). The homesite lease application process involves surveying the land, obtaining permission from the appropriate grazing permittees who have a right to use the land, and getting an archeological clearance. After having completed these steps, the Navajo Land Department (NLD) and the Bureau of Indian Affairs (BIA) must approve the applicant's package. Upon approval, the BIA title plant must record the homesite lease. The individual must then request a BIA Title Status Report (TSR) and a BIA Categorical Exclusion from environmental assessment requirements, if appropriate. At this point, the individual is ready to file an application with a lender to begin the mortgage loan process. If the home will be located on allotted land, the individual must obtain clearances from the other allottees and/or partition a homesite before he or she can begin the loan process.

Objectives of the Local Working Group

The One-Stop Mortgage Center Initiative task force created the Local Working Group after the November 18, 1998, meeting in Window Rock, Arizona. Richard Kontz, Executive Director of the Navajo Partnership for Housing, and Chester Carl, Executive Director of the Navajo Housing Authority chair the group, which is composed of tribal officials, local federal government representatives, and private providers. Its objective is to review the homesite lease and mortgage loan application process and recommend possible reforms that will improve homeownership opportunities on the Navajo reservation.

Local Working Group Recommendations

The recommendations of the Local Working Group fall into the following areas: 1) promote land-use planning and infrastructure development; 2) streamline tribal and federal government approval processes; 3) develop a comprehensive consumer guide about the mortgage lending processes; 4) clarify federal and tribal requirements for environmental and archeological clearances; 5) explore ways to expedite the process of obtaining clear title; and 6) support the growth of a private market on the reservations.

In some areas, the local working group has already succeeded in improving steps in the mortgage lending process. The report notes these accomplishments.

I. PROMOTE LAND-USE PLANNING AND INFRASTRUCTURE DEVELOPMENT

Barrier: It is time consuming and expensive for individual Navajo residents to get the necessary surveys, and environmental and archeological clearances necessary to obtain a homesite. Also, many Navajo communities lack adequate infrastructure and neighborhood support services.

Navajo residents must go through a lengthy application process to obtain a homesite lease from the Navajo Land Department. The location of the homesite is based mostly on the applicant's preference. However, if the local Chapters of the Navajo government were able to zone land in their jurisdictions, they could designate areas for residential purposes, obtain the necessary surveys and clearances in advance, and develop infrastructure and other community support services. Through land-use planning, Chapters would be able to minimize potential conflicts with grazing permittees. Therefore, when a resident decided to build a home, the homesite lease approval process would not be as cumbersome or expensive.

Recommendations

- The Navajo Nation government should designate one division to serve as a regulatory office and technical assistance provider. This division would provide support to local Chapters so that they could designate areas for homesites, obtain all necessary clearances for their members in advance of the homesite lease application process, and develop infrastructure and community support services. This recommendation should be implemented consistent with the Local Governance Act – a new tribal law that shifts governmental functions to the local Chapter level.
- The Local Working Group should explore the possibility of using NAHASDA funds to help develop a land-use planning program on the reservation.
- The Local Working Group should explore the possible sources of grants and loans, including NAHASDA funds, to cover the costs of surveys, and environmental and archeological clearances for subdivision development.

Accomplishments

- In accordance with the Local Governance Act, 30 Chapters will receive land-use planning resources and technical assistance through \$1.2 million of funding from the Navajo Nation's FY '99 NAHASDA funds.
- The Navajo Housing Authority will provide pre-engineering services to all customers of NAHASDA-funded housing providers.

Barrier: It is difficult for residents on single sites to obtain access to utilities.

Recommendations

- The Local Working Group should organize coordination meetings between Indian Health Services, Navajo Tribal Utilities Authority (NTUA), housing developers and the Navajo Nation government to develop recommendations for an overall infrastructure plan.
- As part of their land-use plans, Chapters should work with utilities providers and the Indian Health Services to develop a strategy to improve services to remote sites.
- Utilities providers should explore alternative energy and water sources.
- The Local Working Group should explore sources of financing such as NAHASDA, Community Development Block Grants (CDBG) and NTUA funds to help defray infrastructure costs.

II. STREAMLINE TRIBAL AND FEDERAL PROCESSES

Barrier: Homesite lease applicants face considerable delays in obtaining surveys and archeological clearances from the tribe. By seeking private providers of these services, the process could be shortened.

Recommendations

- The Navajo Land Department should promote the use of private surveyors for homesite leases by providing applicants with a list of licensed surveyors in their areas. Also, in some cases, Navajo Housing Authority surveyors may be available to homebuyers.
- To expedite the process for archeological surveys, the tribal government should assign archeologists to each NLD agency office.

Barrier: The homesite lease application process is confusing and burdensome for Navajo residents, and the process differs by agency office.

Implementation

- The NLD and BIA should eliminate unnecessary and duplicative steps in their review process and should develop written manuals and training for their agency offices to eliminate inconsistencies.
- The NLD and the BIA should develop very basic guidelines outlining the steps and requirements of the homesite lease application process.
- The NLD and BIA should develop expedited homesite lease application procedures to be used when an existing homesite leaseholder transfer property to a new homesite leaseholder.
- The Navajo Nation recently approved a new masterlease with provisions for a 50-year lease term, community-planned subdivisions, and encumbrances. The tribal government and the BIA should develop a model subdivision masterlease for private and non-profit developers.

Barrier: It is difficult for allottees to obtain clearance from multiple owners.

Recommendations

- The One-Stop Mortgage Center Initiative should support federal legislation aimed at simplifying the heirship issues, such as removing Federal Privacy Act restrictions against the BIA releasing names of heirs to allotments.
- Chapters with allotted land should develop programs to assist allottees to obtain the necessary changes.

Barrier: BIA approval of the credit package is time consuming.

Recommendations

- The BIA Area Office should be allocated a new position dedicated solely to reviewing homesite lease and credit applications.
- The BIA Central Office should provide better guidance to area and agencies offices regarding criteria for reviewing credit applications. It should also allocate a new position to the Navajo Area Office dedicated solely to reviewing homesite lease and mortgages.
- The BIA Area Office should fax notice of its approval of mortgages to the lender, upon request.

III. DEVELOP COMPREHENSIVE CONSUMER GUIDE

Barrier: Navajo residents have to work with many different tribal and federal agencies to obtain a mortgage. The Navajo Partnership for Housing, Inc. assists families to prepare for homeownership and, to a limited extent, can help them navigate through the bureaucracy. However, there is no comprehensive summary of the homesite lease and mortgage lending process.

Recommendation

- The Local Working Group should compile each agency's guidelines into one comprehensive guide to homeownership on the Navajo Nation. This consumer guide should be distributed through all housing providers, including Chapter Houses.

IV. CLARIFY FEDERAL AND TRIBAL REQUIREMENTS FOR ENVIRONMENTAL AND ARCHEOLOGICAL CLEARANCES

Barrier: Navajo residents are often uncertain about when an environmental or archeological clearance is required.

- The Navajo Historic Preservation Department should develop guidelines explaining the archeological clearance process.
- The One-Stop Mortgage Center Initiative should determine whether the Navajo Environmental Protection Agency could be recognized as a federal agency with sovereign immunity and determine its own environmental requirements.

V. EXPEDITE AND IMPROVE TITLE PROCESS

Barrier: It takes too long to obtain a Title Status Report (TSR).

Recommendations

- The Albuquerque Title Plant should allow public access to title plants so that title companies can conduct title searches.
- The One-Stop Mortgage Center Initiative should explore whether tribes could assume title plant functions through Public Law 93-638 and whether this function could be funded by NAHASDA.

Accomplishment

- The Navajo Nation, in partnership with the BIA Albuquerque Title Plant, established a title examiner position to streamline processing between the Navajo Area Office and the Albuquerque Title Plant.

VI. SUPPORT GROWTH OF PRIVATE MORTGAGE MARKET ON NAVAJO NATION

Barrier: Lenders are concerned about the marketability of a home in the event of a default and foreclosure.

Recommendations

- The Local Working Group should explore the creation of an intermediary that would purchase defaulted property from the lender and resell it to a tribal member.
- Masterleases should include language to allow developers to purchase defaulted property from the lender and resell it to a tribal member.

Barrier: It is difficult to get an accurate appraisal of property on the Navajo Nation.

Recommendations

- The Local Working Group should compile a list of appraisers who are willing to work on the reservation for inclusion in the consumer guide and distribution to local lenders.
- The Local Working Group should compile a database of all available information on existing appraisals to serve as comparables. The Navajo Housing Authority is conducting appraisals on all of its housing stock to promote equity financing for rehabilitation and small business.

Barrier: Lenders require title insurance policies, but few title companies will issue a title policy on reservation land.

Recommendations

- The Local Working Group should compile a list of title insurance companies who are willing to work on the reservation for inclusion in the consumer guide and distribution to local lenders.

Barrier: There are no housing or building codes on the Navajo Nation to govern the construction of housing, which adds to the reluctance of lenders to make mortgage loans especially (construction financing) on the reservation.

Recommendations

- The tribal government should adopt a housing code that would require licensed contractors to build to code. The tribal agency that has authority for land-use planning could also enforce the building code by licensing contractors and conducting inspections.

Barrier: BIA regulations restrict the use of home equity loans.

Recommendations

- The One-Stop Mortgage Center Initiative should propose an appropriate amendment to allow residents of trust land to take advantage of the full benefits of homeownership.

APPENDIX C
The Second One-Stop Mortgage Center Pilot Project
Oglala Sioux Tribe Partnership for Housing, Inc.
Pine Ridge, South Dakota

In August 1998, HUD Secretary Andrew Cuomo visited the Pine Ridge Indian Reservation to examine first-hand the severe housing and economic development challenges facing the Oglala Sioux Tribe. He found that many economic hurdles persist on the Pine Ridge reservation. Unemployment can reach as high as 85 percent during certain times of the year. Little infrastructure exists, and commerce is minimal. As a result, living conditions are deplorable. An estimated 4,000 families need homes. Overcrowding is severe, and in many cases, three or four families share a single house.

During Secretary Cuomo's visit, Tribal leaders discussed the need for a philosophical change in the delivery of housing services. Since the 1960's, the Oglala Sioux Tribe's designated housing authority has provided rental and other federally assisted housing options, but the Housing Authority has not had the capacity to provide extensive homeownership services. As a result of Cuomo's close consultation with Tribal leaders in housing issues, the Tribe received assistance from HUD to create a not-for-profit entity, the Oglala Sioux Tribe Partnership for Housing, Inc. (OSTPHI). The Oglala Sioux Partnership's mission is to promote homeownership on the Pine Ridge reservation and provide long-term housing and financial services to Oglala Lakota tribal members. The Oglala Lakota name for the nonprofit is **Tatanka Woihanble Otipi: Buffalo Dreams, Gathering Homes**. The Oglala Sioux Partnership will serve many functions: help identify families ready to buy a home, provide families with home buyer counseling, serve as a liaison between families and lending institutions, assist families in finding an affordable home for purchase or construction, as well as locating the best lending package. OSTPHI also will help find or provide gap financing, and, most importantly, entice the private sector to address real estate needs, construction development, and financing on the reservation.

Secretary Cuomo believes that creation of this type of tribal non-profit, specifically targeted to homeownership services, should not be limited to the Pine Ridge Reservation. Secretary Cuomo's goal in working with the Oglala Sioux Tribe and tribal leaders across the country is to create a national housing model to build and renovate affordable housing on tribal lands and help more Native Americans become homeowners. This model, entitled **Shared Visions**, is being designed for replication on tribal lands everywhere, to increase the number of affordable, quality homes and make it easier for Native Americans to obtain mortgages. To showcase the creation of this national housing model, the Oglala Sioux Tribe will host the Pine Ridge Building Summit, July 30 - August 7, 1999. The Summit will be the Oglala Sioux Partnership's first initiative to improve housing and economic conditions on the reservation. The Building Summit will result in 300 new or rehabilitated homes in all nine districts on the reservation by the year 2000. The first building event will be a seven-day effort, when 50 homes will be built or rehabilitated. New roads and water and sewer systems will be constructed, and an additional 250 homes will be constructed in 2000.

A primary focus of the Pine Ridge Building Summit will be the use of volunteer labor to offset the cost of housing construction. More importantly, **Shared Visions** will include a self-help housing component which brings together financial subsidies with “sweat equity.” “Sweat equity” refers to labor that families contribute to the construction of their homes. The level of sweat equity will depend upon the skills and health of the families involved. Having families assist in the construction of their homes makes the homes more affordable and provides a heightened sense of ownership for the homebuyer. Sweat equity also provides an opportunity to teach construction and related skills to family members who participate.

Since its inception, Secretary Cuomo has insisted that national tribal leaders take the lead in the design and implementation of **Shared Visions**. Cuomo has encouraged tribes to consider this an opportunity to actively seek public and private sector partners in housing to meet the immediate housing needs of tribes, and to increase private investment activity on reservations in general. At Pine Ridge, OSTPHI is working closely with Norwest Mortgage to facilitate homebuyer readiness and mortgage loans for families interested in the Pine Ridge Building Summit. Norwest has had a long-standing relationship with northern plains Tribes, and is a leader in mortgage lending throughout Indian Country. OSTPHI has identified potential homebuyers through outreach in the community including hosting homebuyer fairs, sending mailings, holding informational meetings, and collecting pre-applications. Norwest has begun screening applicants for mortgage loans and forwarded approved applications to HUD’s Office of Native American Programs for Section 184 underwriting approval. Working together, these partners have provided individual application assistance to each household, and will provide mandatory homeownership counseling for approved applicants. OSTPH and Norwest are also offering counseling to applicants with credit issues, to repair their credit and prepare them for homeownership. Once they address credit and budget issues, OSTPH will work with them to obtain a mortgage.

Developing the **Shared Visions** model and preparing for the Building Summit has been an excellent example of interagency coordination on the ground at Pine Ridge. OSTPH is coordinating closely with BIA on construction preparation for homes to be built during the Building Summit, including streamlined approval of sites for preparation. Recent designation of Pine Ridge as an Empowerment Zone in January of 1999 also compliments the economic development aspect of the **Shared Visions** effort through coordination with USDA Rural Development. At the same time, HUD and tribes have worked to incorporate private interests nationwide. Partnering with tribes will be the members of the National Partners in Homeownership, including Habitat for Humanity, the National American Indian Housing Council, the Neighborhood Re-investment Corporation, the National Association of Homebuilders, and the Mortgage Bankers Association of America, to name a few. Through the One-Stop Mortgage Center Initiative, the U.S. Department of Agriculture, Treasury, Interior, Bureau of Indian Affairs, and other federal agencies also are contributing to Shared Visions, as well as the overall effort to reform mortgage lending on tribal lands. OSTPH is also moving forward with fund-raising efforts for operation, new construction, housing counseling, and financial products.

The Pine Ridge Building Summit is only the beginning. The long-term goal of **Shared Visions** is to help solve the housing crisis on American Indian Reservations across the country by

finding innovative ways to build affordable, quality homes and encourage homeownership and private sector investment in reservation communities.

Because **Shared Visions** attempts to address many of the goals of the One-Stop Mortgage Center Initiative, Secretary Cuomo and the One-Stop Mortgage Center Initiative designated the Oglala Sioux Partnership as the second One-Stop Mortgage Center pilot project. The Navajo Partnership for Housing, Inc. was designated as the first pilot project as a reinvention of the existing Navajo capacity to provide homeownership services to tribal members. Pine Ridge, on the other hand, has extremely limited capacity for providing homeownership services. The **Shared Visions** initiative currently underway is an educational and capacity building effort to fill an existing void in homeownership services to residents. Incorporating the principals of the One-Stop Mortgage Center throughout the development of a new homeownership facilitating non-profit will insure OSTPHI's success in increasing homeownership opportunities on Pine Ridge and prove that the One-Stop principles will work for any reservation community currently lacking homeownership services.

APPENDIX D

RESOURCE LIST

The following represents a list of partners that have demonstrated cultural awareness and sensitivity in past partnerships or have programs that will enhance the development of culturally appropriate partnerships.

GOVERNMENT AGENCIES

Bureau of Indian Affairs, Office of Indian Education Programs - 1849 C Street, NW, Washington, DC 20240-0001, 202-208-6123

See <http://shaman.unm.edu/oiep/studsch.htm> for information about students and schools, and <http://shaman.urun.edu/oiep/prog2.htm> for information about programs.

The mission of the BIA Office of Indian Affairs is to provide education from childhood through adult life for Indian people. Dr. Sandra Fox has worked with curriculum development and would like to work more with the American Indian Business Leaders and other resource organizations to further financial literacy and programs for economic and homebuyer education in Indian country. Extensive information about programs and local contacts is available at the OIEP website.

Contact:

- Dennis Fox, Assistant Director.
- Dr. Sandra Fox, Oglala Lakota - Chief of Monitoring and Evaluation.
- Charlie Geboe (202) 208-4040

Department of Housing and Urban Development, Office of Native American Programs - 451 17th Street, SW, Room 4128 South, Washington, DC 20410-5000

See <http://www.codetalk.fed.us.onapstaf.htinc> for information about HUD programs for Native American housing.

Contact:

- Jacqueline Johnson, Deputy Assistant Secretary (202) 401-7914

Community Development Financial Institution Fund - 601 13th Street, NW - 200S, Washington, DC 20005

See www.treas.gov/cdfi for information about this wholly owned government corporation within the U.S. Treasury.

CDFI promotes economic revitalization and development in distressed urban and rural communities throughout the United States.

Contact:

- Ellen Lazar, Executive Director (202) 622-8662
- Rodger Boyd, Native American Issues

COLLEGES AND UNIVERSITIES

Haskell Indian Nations University, 155 Indian Avenue, Lawrence, Kansas 66046-4800, (785)-749-8404 (phone), (785) 832-6606 (fax), <http://www.haskell.edu/>.

Haskell serves all federally recognized tribes, focusing on education, research and cultural programs that increase knowledge and support educational needs of American Indians. They offer four-year degrees in education, Native American Studies and business administration. The Center for Tribal Entrepreneurial Studies is working on developing training for tribal leadership and developing entrepreneurial curriculum for elementary and high school teachers.

Contact:

- Cheryl Foley Chuckluck, Director of the Center for Tribal Entrepreneurial Studies, (785) 749-8404 ext. 293.
- Don Bread, Business Department (785) 749-8402

Salish Kootenai Community College, 52000 Highway 93, Box 117, Pablo, MT 59855, (406) 675-4800 (phone), (404) 675-4801 (fax).

Salish Kootenai College offers degree programs in vocational training, community service, Indian culture, history and adult education. They are funded by the Kauffman Foundation to do curriculum development, and have been doing work on educational literacy issues.

Contact:

- Michelle Lansdowne (406) 675-4800 ext. 246 - educational literacy issues, michelle_lansdowne@skc.edu.

Fond du Lac Tribal Community College

The college has recognized the need for increased understanding of how credit works and has established a personal finance course for students. College officials are also working with the University of Minnesota to establish a two year business/financial services curriculum for community college students that will begin the Fall semester of 1999.

Contact:

- Bryan Jon Maciewski (218) 879-0800, (800) 657-3712, bjon@mail.fdl.cc.mn.us

Tribal Colleges

Thirty tribes operate their own colleges. See <http://niikaan.fdl.cc.nm.us/tqi/tcweblinks.htm> for a complete list of mailing addresses and telephone numbers. See <http://flinfo.pitt.edu/-Imitten/education.html> for website addresses.

EDUCATIONAL ASSOCIATIONS

American Indian Higher Education Consortium

Consortium of 30 tribal colleges. Publishes the *Tribal College Journal*, which includes 12/97 article, "American Indian Culture and Curriculum". See <http://nikaan.fdl.cc.nm.us/tcj/>.

National Federation for Teaching Entrepreneurship

See www.nftebiz.org.

Contact:

- Michael Caslin 111 (212) 232-2244 (212) 978-0105 (voice mail): Executive Director. See nftecaslin@msn.com.

National Indian Education Association

Founded in 1969 to give American Indians and Alaska Natives a national voice in improving access to educational opportunity. See <http://www.niea.org/>.

Contact:

- Dr. Sherry R. Allison, President: Senior research scientist at the Center for Development and Disability, University of New Mexico - Albuquerque.
- Gloria Grant, Board Member: Navajo-Omaha, curriculum center director for Chinle Unified School District No. 24.
- Elmer J. Guy, Board Member: Navajo. Executive Director for Navajo Nation, division of Dine education, Window Rock.

FOUNDATIONS

Ewing Marion Kauffman Foundation, 4801 Rockhill Road, Kansas City, MO 64110-2046, 816-932-1151 (phone) (816) 932-1430 (fax). See www.emkforg, www.entreworld.org.

The Kauffman Foundation is a large, relatively new foundation with substantial research capacity that supports youth education and entrepreneurship. They have provided substantial funding for curriculum development to Haskell Indian Nations University in Lawrence, Kansas and the Salish Kootenai College in Pablo, Montana. One of the programs they support is a Mini-Society modular curriculum in which children ages 8 to 12 design and develop their own society in which to learn about entrepreneurship.

Contact:

- Rhonda Holman (816) 932-1151: Director of Community Entrepreneurship.
- Dr. Marilyn Karilsky: Expert on curriculum development.

Fannie Mae Foundation, 4000 Wisconsin Ave., North Tower, Suite One, Washington, DC 20016.

The mission of the Fannie Mae Foundation is to transform communities through innovative partnerships and initiatives that revitalize neighborhoods and create affordable homeownership and housing opportunities across America.

Contact: Julie Ha, Manager of Targeted Outreach Programs (202) 274-8034

NONPROFIT ORGANIZATIONS

American Indian Business Leaders, University of Montana, Gallagher Business Building, Suite 366, Missoula, MT 59812, (406) 243-4879 (phone), (406) 243-2086 (fax).

AIBL was organized at the national level in 1995, and is advised by the American Indian Higher Education Consortium (AIHEC). They have worked with the BIA's Office of Indian Education and others to develop an economic education curriculum, and are very interested in working further on culturally appropriate education. Their general purpose is to stimulate tribal economic growth and stability, with an emphasis on maintaining culturally appropriate education. Their general purpose is to stimulate tribal economic growth and stability, with an emphasis on maintaining culturally appropriate American Indian business development. Board members include Sherry Salway Black (Oglala Lakota) of the First Nations Development Institute and banker Gerald Sherman (Oglala Lakota). Chairman Dave Archambault is a former president of the American Indian Higher Education Consortium.

Contact:

- Dave Archambault, Oglala Lakota, Chairman of the board of directors (701) 854-7201 or (701) 854-7245.
- Michelle Henderson, Asiniboine, Executive Director (406) 243-4879.

America's Promise - Alliance for Youth

This is an initiative started by General Colin Powell and former presidents that supports youth through mentors, safety, health, education, and service. See www.americasp-omise.org.

First Nations Development Institute, The Stores Building, 11917 Main Street, Fredericksburg, VA 22408, fax (540) 371-3515.

The primary mission of First Nations is to promote culturally appropriate economic development by and for Native peoples. In addition to economic development, this 18year-old organization has been working with banks and others on financial literacy and housing issues. They recently formed a Native Assets Research Center to promote research on native issues and to address policy issues.

Contact:

- Sherry Salway Black, Oglala Lakota , Vice President (540) 371-5615.

North American Native Bankers Association

The North American Native Bankers Associations a nonprofit association of Indian owned financial institutions. Formed in 1998, this organization was created to strengthen and increase the number of Indian owned financial institutions in the United States and Canada. See www.naba.org.

Contact:

- J.D. Colbert, President (405) 292-3020

Lakota Fund

Nonprofit housing and small business development organization serving the needs of Native Americans on the Pine Ridge reservation in South Dakota.

Contact:

- Elsie Meeks, Executive Director (612) 824-9363. See **Error! Bookmark not defined.**

Minnesota Indian Economic Development Fund

The Minnesota Indian Economic Development Fund acts as a catalyst for entrepreneurial

activities and a gap financier completing the link between the borrower and the primary lender.

Contact:

- William Connelly, Executive Director (612) 824-9363

National American Indian Housing Council, 900 2nd Street, NE, Suite 009, Washington, DC 20002, fax (202) 789-1758, <http://naihc.indian.com/>.

The NAIHC is an Indian organization that advocates for improved Native American housing and provides technical assistance, training, research and information services to tribes.

Contact:

- Chris Boesen, Executive Director (202) 789-1754

National Center for American Indian Economic Development, 953 E. Juanita Avenue, Mesa, AZ 85204-6622, fax (602) 545-4208.

The National Center has provided management consulting and assistance to small businesses in Indian Country for 27 years. They have been recommended as a partner because of the philosophy of their approach to working in Indian country and their network of contacts for dissemination of materials to individuals and tribes. The mission of the organization is to develop and expand the American Indian private sector to employ Indian labor and increase the number of tribal and individual Indian owned businesses. NCAIED positively impacts and involves reservation communities, by establishing business relationships between Indian enterprises and private industry.

Contact:

- Ken Robbins, President (602) 545-1298. See www.nacied.org

Future Business Leaders of America

Future Business Leaders is an educational association of students preparing for careers in business and business-related fields, divisions for middle school, high school and post-secondary students. 13,000 chapters in the United States, supported by dues and contributions. See <http://www.fbلا-pbl.org/fag>.

Junior Achievement

Economic education program for students K-12, taught primarily by classroom volunteers. Has been used extensively by tribes in Alaska. See <http://www.ja.org/index.asp>.

Contact:

- Vera Tanier (719) 540-6252: Director of Strategic Alliances and Volunteers.

FOR-PROFIT ORGANIZATIONS

Falmouth Institute Offers Training, consulting and publications for Indian country. See <http://www.falmouthinsti.com/index.htm>.

Financial Institutions

The following institutions have developed programs and curriculum for use in Indian Country: Bank of America-Nations Bank, Washington Mutual, Wells Fargo and Norwest.

OTHER ORGANIZATIONS

Federal Deposit Insurance Corporation
Federal Home Loan Bank
Federal Reserve System
Freddie Mac

Neighborhood Reinvestment Corporation
Office of Comptroller of the Currency
Office of Thrift Supervision
U.S. Department of Education
Neighborhood Housing Services of America

Before You Begin

In this section, we want to challenge you to think carefully about your decision to create a new organization. You see an urgent need in your community, a need that's going unmet, and you've decided to do something about it. Is creating a business the only way to "do something about it?" There may be another way to meet your goal, and if so, it's probably simpler than creating an organization. Start by answering these questions with the help of people who'll be very honest with you:

- Are other organizations doing what you plan to do? _____
If so,
 - ◆ Do they serve the population you want to serve? _____

 - ◆ Are they good at what they do? _____
 - ◆ Do you intend to replace them? _____

 - ◆ Are their clients satisfied with the services? _____

 - ◆ Do they make enough money to stay in business comfortably? _____

 - ◆ Are they well-known and well respected? _____

If you answered yes to these questions, expect competition. So your services must be at least as good as existing services and at least as convenient. If your target customers believe existing services meet their needs, and if there's no excess demand in the market, there's probably no need for your new business.

Now consider these questions:

- Can you generate enough money to sustain a viable business? _____
 - ◆ Have you drafted a resource development strategy? _____

 - ◆ Are you going to rely on funds other than government grants? _____

 - ◆ Will your clients pay the cost (*to you*) of the services they receive? _____

 - ◆ Have you clearly identified your target population? _____

 - ◆ Are there enough potential customers in your target area to support a new business? _____
 - ◆ Will you offer services for which there is *active demand*? (Active demand refers to goods or services that people can and will take advantage of today, rather than at some point in the future.) _____

Negatives here should send you back to the beginning, asking whether you should create a new organization. Don't assume you'll have endless government and foundation grants for your work and that the public will eagerly support your good intentions. This is wishful thinking, not careful planning. And without the latter, you may fold nearly as quickly as you open.

If you plan to serve people with low incomes, decide how you'll supplement the cost of services; even if you charge fees, they must be nominal. Unlike a for-profit business, your customers won't be able to pay the cost of your services.

Decide exactly who you want to serve and how to offer services they'll take advantage of immediately. Your prospective customers have more choices than you may think. Consider this example: Your new nonprofit organization builds four modestly priced homes in a community with low ownership rates. Yet no one seems interested in them. You discover that your target buyers typically need better access to transportation services than those available to your new houses. Furthermore, most have school-aged children and won't even consider relocating them to the school district that serves your new houses. They choose instead to continue paying too much of their income for low-quality rental housing. And your lovely new houses sit vacant.

Do your homework first. Ask yourself tough questions. If you don't like the answers, outline potential solutions before you open, not after. If you can't answer most of the problems you uncover, get qualified help. You may find help in your city or county's community development department or housing department, successful service providers working in other parts of the city or in other cities, paid consultants, and publications or programs from organizations like Enterprise.

It's not unusual to grapple with tough questions at this stage, and this is the perfect time for creative thinking. That creativity can help you develop a successful organization or find other ways to achieve your goal. Here are a few more things to think about:

- Perhaps you can help a local service provider do a better job. You could
 - ◆ Provide transportation to and from appointments for the service provider's customers
 - ◆ Offer a complementary service to the service provider's customers in exchange for space and administrative support
 - ◆ Become an active member of the service provider's board
 - ◆ Take on the mantle of community organizer and educator, mobilizing the community to support the service provider and to use its services
 - ◆ Organize your faith community to raise money, sponsor community awareness events, and volunteer time to the service provider

There may be dozens of ways you can help existing institutions do a better job of serving people in your community. Creating a new organization is only one of the ways, and it's one of the most difficult.

Should Our Business Be A “Nonprofit”?

Most people who decide to create an organization that serves people with low and moderate incomes automatically plan to make that organization a nonprofit. So let’s look first at what that means.

What Is A Nonprofit?

A common misconception is that the Internal Revenue Service (IRS) grants nonprofit status and that the terms “nonprofit” and “tax exempt” are synonyms. Not so. Incorporating a business, whether for profit or not, is a matter of state law. One criteria for being designated “nonprofit” is what *doesn’t* happen to your profit—namely that it *doesn’t* go to the organization’s board. Another is that the organization exists to carry out public, educational, civic, charitable, religious, or similar activities. Nonprofit status, then, refers primarily to the reason the organization exists--its mission.

Incorporation as a nonprofit under state law doesn’t automatically yield tax exemption. In California, new nonprofits prepay a “minimum franchise tax” of at least \$600 to the Secretary of State unless they receive exemption from state taxes. In Texas, nonprofits are also subject to franchise taxes unless specifically exempted by the state. Each state defines the particular kinds of nonprofits eligible for exemption.

After incorporating as a nonprofit, most nonprofit organizations apply to IRS tax-exempt status. And some states grant exemption from state income taxes to nonprofits with federal tax-exempt status. The point here is that becoming a nonprofit and becoming tax exempt are two distinct transactions.

What “Nonprofit” Doesn’t Mean

The term nonprofit often causes another misconception—that nonprofit organizations shouldn’t make money. Not so. Nonprofit status means that that profit-making is not the organization’s goal and its board doesn’t benefit from the money it makes.

Every business needs to make money to remain strong, expand services, and weather economic downturns. Profit is simply money earned in excess of the cost of doing business. It’s not a dirty word. After all, the needs in most communities far exceed the ability of most nonprofits to fully answer them. Nonprofit boards and managers should plan and expect to make money—not for the sake of making money, but for the sake of the people they serve.

Is Nonprofit Status For You?

There are several compelling reasons for creating a nonprofit organization. Perhaps the most important is that it's a prerequisite for becoming exempt from federal and state taxes. Another reason is that people *expect* certain kinds of "charitable" organizations to be nonprofit and may hesitate to give financial support to those that aren't nonprofit. A third reason is that funders like federal and local government agencies and private foundations grant hundreds of thousands of dollars each year to nonprofit, tax-exempt organizations.

Accounting Considerations

What are the pros and cons of operating as a nonprofit from an accounting point of view? An accountant with accounting firm KPMG Peat Marwick says the primary difference relates to the way nonprofits have to record contributions and report on them in their financial statements. Setting up and maintaining the right kind of accounting system is critical, but also easily done with an accountant who's well-versed in nonprofit accounting and a with an experienced bookkeeper to record day-to-day financial transactions.

Another Option

Nonprofit status may not be your only option, though. Some nonprofits support their operations through profit-making activities not related to their nonprofit programs. Other nonprofits exist to create new jobs or businesses in their communities. Both want and need to generate as much income as possible, and nonprofit status may not be the best option for them.

IRS grants tax-exempt status only to nonprofit organizations and only for certain eligible activities. If your proposed money-making activities are not consistent with a IRS-approved charitable purposes, nonprofit and tax-exempt status may be counterproductive for you.

Advantages of for-profit status include (1) the availability of certain grants and loans specifically for for-profits [such as from the Small Business Administration], (2) exemption from nonprofit and tax-exempt paperwork requirements, (3) greater flexibility to decide how to spend the company's profit, and (4) the ability to compete head to head with for profit businesses. Carefully weigh these advantages against those of being nonprofit.

Here's another fact to consider. If you generate profit to support your organization through activities unrelated to your IRS-approved charitable purpose, IRS will tax it as "unrelated business income." Your tax exemption applies only to the IRS-approved activities described by your mission. So you must pay taxes on this income and continue to file forms required by your state's nonprofit corporation law and by IRS.

So if you plan to generate significant ongoing support for your nonprofit operation through unrelated business income, talk with your legal and accounting advisors about the pros and cons of creating a for-profit operation for that purpose.

How Do We Incorporate?

To incorporate, you'll have to file some type of articles of organization, called *articles of incorporation* in most states, the charter in others. (This guide will use the term "articles of incorporation.") This document is a series of paragraphs describing the organization's purpose and structure. States provide either a fill-in-the-blank form, a sample format, or instructions for developing your own articles. Most states allow you to add paragraphs to your articles that meet your organization's particular needs. One of the most important of these contains language required by IRS for those who want federal tax-exempt status. (More about this later.)

Some organizations will have their articles drafted by an attorney, but in most states you can draft your own and then have a lawyer review them for completeness and compliance with your state's nonprofit corporation law. Many states suggest, but not require a legal review since it's important that you include all the provisions required by state law along with those you need to describe your particular organizational structure.

The First Step To Incorporating

A good starting point is a basic understanding of how to incorporate in your state. You can get this information from the Secretary of State (or Commonwealth). You'll have to draft articles of incorporation in the acceptable format, and submit the signed document(s) to the designated state agency along with the appropriate fee. You'll receive by mail either a certificate of incorporation, an officially approved version of your original articles, or some other notice of incorporation.

You'll get the fastest approval if you follow your state's rules carefully. A few states provide one-stop-shopping and will tell you every form to file, every agency to contact, and every fee to pay in order to create and operate a nonprofit corporation. In most states, though, you're on your own. The information is available, but you have to figure out where to look. Your attorney is a valuable resource if you don't have the time to research all your state's requirements.

We've looked into the basic requirements in several states and offer these tips:

- (1) Learn the minimum number of people needed to incorporate. The **District of Columbia**, for example, requires three people, while **Missouri** and **Maryland** require one. (The incorporator is the person responsible for creating the corporation; his job is done once the organization has been incorporated.)

- (2) Be sure you include the right signatures in your articles of incorporation. **Maryland** and **Oregon** require that *each* incorporator sign the articles, while **Georgia** requires only one signature.
- (3) File the right number of documents. Some states require that you file an original and one or more copies of your articles. And sometimes the “duplicates” need *original* signatures.
- (4) Choose your corporate name carefully. You can’t incorporate with a name that’s identical to or “deceptively similar to” that of another corporation registered in your state. Many states allow you to check for name availability—or even reserve a name—before you submit your articles. Usually, the name availability check is free, but you pay to reserve a name.
- (5) Pay the correct fee. The fee to file your articles is inexpensive in most states. Here are several examples:
 - California \$30
 - Georgia \$60
 - Kansas \$25
 - Maryland \$40
 - Massachusetts \$35
 - Missouri \$25
 - New York \$125
 - Texas \$25
- (6) Learn about other nonprofit start-up requirements in your state. For example, some states require that you register as a charitable organization if you plan to raise money in that state, and you’ll normally have to contact an agency other than the Secretary of State’s office. Also, in many states, you have to file for exemption from state income or franchise taxes—even though you’ve incorporated as a nonprofit.

The Boilerplate Articles of Incorporation

On the next few pages you’ll see a sample document. Most of the items are self explanatory. For those that aren’t, we’ve included explanations. After the boilerplate, you’ll find a completed (fictitious) sample that’s ready to be signed and filed. At the end of this guide, you’ll find blank articles that you can retype or copy and fill in the blanks. It’s a good idea to keep a computerized version of the document; you may need to change it several times before you file it, and later on you may need to amend it.

Remember to review your state’s requirements ; this boilerplate may not work for you. And don’t forget to check with your attorney before you spend a lot of time on this.

CODE TO TEXT COLOR

Black:	The articles
Blue:	The information you must fill in
Magenta:	An explanation about the information you must fill in

**ARTICLES OF INCORPORATION OF
(THE NAME OF YOUR CORPORATION)**

In most states, your name must include one of the following words: incorporated, corporation, or limited, or the abbreviation for one of these.

(A Nonprofit Corporation)

The undersigned, being at least eighteen years of age, acting as incorporator, does [Some states require or you may wish to show more than one incorporator. In that case, say ""incorporators, do."] hereby form a nonprofit corporation under and by virtue of the (your state's name) Nonprofit Corporation Law. [Or the name of the appropriate law in your state.]

FIRST: The name of the corporation (hereinafter called the "Corporation") is (the name of your corporation). [Be sure the name is spelled exactly the same way it's spelled at the top, including tags like "Inc."!]

SECOND: The period of its duration is perpetual. [If you plan to exist only until some identifiable point in time, say so here.]

THIRD: The Corporation is organized and shall be operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code").

In furtherance of these purposes, the Corporation, [brief description of your intended activities.] [If you plan to be tax-exempt, check your state's rules about the kinds of activities are recognized as exempt. In some states, IRS designation isn't enough.]

The Corporation may engage in any and all other charitable activities permitted to an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding future provisions of the federal tax law. To these ends, the Corporation may do and engage in any and all lawful activities that may be incidental or reasonably necessary to any of these purposes, and it shall have and may exercise all other powers and authority now or hereafter conferred upon nonprofit corporations in the State of [your state]. [Your state won't require this article, but IRS will.]

No part of the income or principal of the Corporation shall inure to the benefit of any director or officer of this Corporation or any other private individual, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered to it, and to make reasonable payments and distributions in furtherance of the aforementioned purposes of the Corporation.

The Corporation shall not engage in any activity which is prohibited to a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any corresponding future provisions of the federal tax law. In accordance with the existing federal tax law, the Corporation shall not participate or intervene in any political campaign on behalf of any candidate for public office by publishing or distributing statements, or in any other way. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation. [Required by IRS.]

FOURTH: The Corporation shall not have members. [You may want members. If so, describe them briefly.]

FIFTH: A statement as to the manner in which directors shall be elected or appointed shall be set forth in the bylaws of the Corporation. Sole voting power in the Corporation shall be vested in the Board of Directors. [Some states call them “trustees.”]

SIXTH: Provisions for the distribution of assets on dissolution or the termination of the Corporation are as follows:

Although the period of duration of the Corporation is perpetual, if for any reason the Corporation is to be dissolved or otherwise terminated, no part of the property of the Corporation or any of the proceeds shall be distributed to or inure to the benefit of any of the directors of the Corporation. Upon the dissolution of the Corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes. [Required by IRS and also by some states.]

SEVENTH: The present address of the principal office of the Corporation in [your state] is [your office address]. The name and address of the registered agent [or statutory agent] of the Corporation in [your state] are [your

resident agent's name and street address—not PO box]. The resident [or statutory] agent is a citizen of [your state] residing therein.

EIGHTH: The initial number of directors of the Corporation shall be [number of founding board members] ,which number may be increased or decreased pursuant to the bylaws of the Corporation. [Usually you're required to start with at least three.] The names and addresses of the directors who shall act until the first meeting or until their successors are duly chosen and qualified are:
[List names and addresses of founding board members or trustees.]

NINTH: The Corporation shall not be authorized to issue capital stock.

TENTH: The directors and officers of the Corporation shall have no liability to the Corporation for money damages except (i) to the extent that it is proven that such person actually received an improper benefit or profit in money, property or services or (ii) to the extent that a judgment or other final adjudication adverse to such person is entered in a proceeding based on a finding in the proceeding that the person's action, or failure to act, was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding. This Article shall not be construed to affect the liability of a person in any capacity other than as a director or officer of the Corporation. [Some states have language of their own in the law about this. Check on it.]

ELEVENTH: The name and address of the incorporator[s] are:
[Name(s) and address(es) of incorporator(s)]

IN WITNESS WHEREOF, I [we] have signed these Articles of Incorporation, acknowledging the same to be my [or "our"] act, on this [date] day of [name of month, year]. Add a signature line for each incorporator.

Signature of Incorporator Date Signed
Typed Name of Incorporator
Incorporator

Signature of Incorporator Date Signed
Signature of Incorporator
Incorporator

Some states require the following:

I [notary's name], a Notary Public, hereby certify that on the [day] day of [month],[list the name of each incorporator who must sign] appeared before me and signed the foregoing document as incorporators, and have averred that the statements therein contained are true.

Notary's Signature
Notary Public

My Commission Expires: Date Commission Expires

**ARTICLES OF INCORPORATION OF
NEIGHBORHOOD HELPERS, INCORPORATED**

(A Nonprofit Corporation)

The undersigned, being at least eighteen years of age, acting as incorporator, does hereby form a nonprofit corporation under and by virtue of the Maryland Nonprofit Corporation Law.

FIRST: The name of the corporation (hereinafter called the "Corporation") is **NEIGHBORHOOD HELPERS INCORPORATED.**

SECOND: The period of its duration is perpetual.

THIRD: The Corporation is organized and shall be operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code").

In furtherance of these purposes, the Corporation will work in the Skylark neighborhood of Baltimore, Maryland to renovate its deteriorating housing stock and to provide safe and decent housing to low-income neighborhood residents living in substandard housing.

The Corporation may engage in any and all other charitable activities permitted to an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding future provisions of the federal tax law. To these ends, the Corporation may do and engage in any and all lawful activities that may be incidental or reasonably necessary to any of these purposes, and it shall have and may exercise all other powers and authority now or hereafter conferred upon nonprofit corporations in the State of Maryland.

No part of the income or principal of the Corporation shall inure to the benefit of any director or officer of this Corporation or any other private individual, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered to it, and to make reasonable payments and distributions in furtherance of the aforementioned purposes of the Corporation.

The Corporation shall not engage in any activity which is prohibited to a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any corresponding future provisions of the federal tax law. In accordance with the existing federal tax law, the Corporation shall not participate or intervene in any political campaign on behalf of any candidate for

Neighborhood Helpers, Incorporated
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public office by publishing or distributing statements, or in any other way.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation.

FOURTH: The Corporation shall not have members.

FIFTH: A statement as to the manner in which directors shall be elected or appointed shall be set forth in the bylaws of the Corporation. Sole voting power in the Corporation shall be vested in the Board of Directors.

SIXTH: Provisions for the distribution of assets on dissolution or the termination of the Corporation are as follows:

Although the period of duration of the Corporation is perpetual, if for any reason the Corporation is to be dissolved or otherwise terminated, no part of the property of the Corporation or any of the proceeds shall be distributed to or inure to the benefit of any of the directors of the Corporation. Upon the dissolution of the Corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

SEVENTH: The present address of the principal office of the Corporation in Maryland is 1000 Blue Sky Road, Baltimore, Maryland 20000-30444. The name and address of the resident agent of the Corporation in Maryland are Bernice Jones, 2 Badde Avenue, Lincolntown, Maryland 20300-3945. The resident agent is a citizen of Maryland residing therein.

EIGHTH: The initial number of directors of the Corporation shall be three (3), which number may be increased or decreased pursuant to the bylaws

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of the Corporation. The names and addresses of the directors who shall act until the first meeting or until their successors are duly chosen and qualified are:

Bernice Jones, 2 Badde Avenue, Lincolntown, MD 20300-3945
Jonathan Brackford, 23 Ohno Street, Olive Grove, MD 27373-3838
Terry Yacking, 5837 Chattering Lane, Washington, DC 20000-8383

NINTH: The Corporation shall not be authorized to issue capital stock.

TENTH: The directors and officers of the Corporation shall have no liability to the Corporation for money damages except (i) to the extent that it is proven that such person actually received an improper benefit or profit in money, property or services or (ii) to the extent that a judgment or other final adjudication adverse to such person is entered in a proceeding based on a finding in the proceeding that the person's action, or failure to act, was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding. This Article shall not be construed to affect the liability of a person in any capacity other than as a director or officer of the Corporation.

ELEVENTH: The name and address of the incorporator are:

Bernice Jones
2 Badde Avenue,
Lincolntown, Maryland 20300-3945

IN WITNESS WHEREOF, I have signed these Articles of Incorporation, acknowledging the same to be my act, on this 1st day of October, 1998.

Bernice Jones
Incorporator

How Do We Become Tax-Exempt?

We touched on the issue of tax-exempt status in our earlier discussion; let's look at it more closely now. The Internal Revenue Service (IRS) grants certain nonprofit organizations exemption from federal (not state) income taxes, conferring what's called 501(c)(3) status. (That designation refers to a section of the IRS code.)

The Rules

It's important to understand the rules that govern federal tax exemptions. You don't want to waste time, effort, or money, and you want to become exempt as soon as possible. There are things to remember as you prepare your application, and you inherit reporting and other requirements after becoming exempt. So be sure to learn the rules up front.

Where can you find help? An ideal place to look for the information you need is the IRS web site. The "Tax Exempt Organizations" page links you to information about applying for exemption and to the rules for exempt organization operations, such as employee tax withholdings and unrelated business income tax returns. It's quick, easy and free, and it helps you find information you didn't know to look for. If you don't have Internet capability, you can get the forms directly from IRS, along with instructional publications and forms free of charge.

IRS ON THE WEB: Go to <http://www.irs.gov>. Click on the mailbox to enter. Scroll down to the bottom and click on "Tax Info For You." Then on that page, scroll down to "Tax-Exempt Organizations." You'll find important topics here. Also, scroll down that page to "Tax-Exempt Organization's Tax Kit." This matrix page allows you to download forms and publications for tax-exempt organizations, with documents available in several different computer formats. Also, IRS Publication 557 is a comprehensive guide for aspiring exempt organizations as is also available online.

Applying For Exempt Status

To qualify for federal income tax exemption, an organization must be a corporation, community chest, fund, or foundation, and it must exist to carry out one of the types of activities listed below:

- ✓ charitable
- ✓ religious
- ✓ educational
- ✓ scientific
- ✓ literary
- ✓ testing for public safety
- ✓ fostering national or international amateur sports competition
- ✓ prevention of cruelty to children or animals

EXCEPTIONS TO THE RULE: Nonprofits with annual gross receipts under \$5,000 (except foundations) and churches need not file to be exempt from federal income taxes; IRS considers them exempt. But **everyone** who wants an IRS "determination letter" **acknowledging** their exemption must apply for it.

Nonprofit community development organizations typically apply for tax-exemption under Section 501(c)(3) using *IRS Package 1023, Application for Recognition of Exemption*. We'll look at that application, but first, here are some things to consider before you start working on it.

Employer Identification Number

Every organization needs an employer ID number in order to become exempt, even if you don't have employees. Here's the quickest way to get it:

- (1) complete *IRS form SS-4, Application for Employer Identification Number*;
- (2) apply to IRS by telephone, calling the number given in the form's instructions;
- (3) wait for your number, and record it at the top of the form; and
- (4) sign and mail the original form within 24 hours.

We've included that form and its instructions at the end of this guide.

A Private Foundation?

Here's something that may surprise you: According to IRS regulations, every organization that qualifies for the 501(c)(3) tax exemption is a private foundation **unless** it (a) is not required to file for exemption (churches, and nonprofits grossing less than \$5000 per year are not), or (b) receives broad public support or actively supports an organization with broad public support—making it a public charity instead of a private foundation.

Did you get that? Well, it's not so simple as it looks. According to *IRS Publication 557, Tax-Exempt Status for Your Organization*, even if your nonprofit is considered a public charity, IRS must **presume** that it's a private foundation unless you notify them that it's a public charity. Private foundations face more restrictions and requirements than public charities, and contributions to private foundations may not be treated as favorably.

What does this mean for you? Consider these two things:

- 1) If you've been operating for less than 8 months, pay special attention to Part III of *Form 1023, Application for Recognition of Exemption*. This section asks whether the organization is a private foundation and asks more questions that allow you to verify your answer. IRS only offers what it calls an "advance ruling" on your tax-exempt status to new nonprofits. The advance ruling is good for five years, and during that time your organization will be treated like a public charity. At the end of that time, IRS will ask for financial data to verify that, indeed, your organization has operated as a public charity rather than as a foundation.

- 2) If you apply for tax-exempt status within 15 months of the date of incorporation, your tax-exempt status becomes effective as of the incorporation date. Otherwise, the exemption applies beginning on the date IRS received your application for exemption. This could cause trouble for early donors who thought they were given to a tax-exempt organization.

A Public Charity

A public charity is by definition “publicly supported.” And IRS says your organization is a foundation **unless** it can either pass its “one-third test” or its “facts and circumstances” test for public support. To pass the first test your organization must normally get at least one-third of its total support from government, or the general public, or some combination of these. To pass the second test, your support from government and the general public must be at least 10% of your total income, *and* you must work continually to attract more public support.

As you can see, you should carefully review the instructions for completing form 1023. You want 501(c)(3) approval, not questions and challenges from IRS. If necessary, get help from someone who’s done this successfully before. IRS offers friendly and very helpful advice; so don’t hesitate to call for help. After all, they’re the experts.

Organizing Documents

Along with your application for exemption, you must include a copy of your articles of incorporation or other organizing instrument and a certificate of incorporation, or whatever your state sent to verify the existence of your corporation. If you’ve adopted bylaws, IRS wants those, too, but these aren’t organizing instruments; so you needn’t adopt them in a rush just to include them with the application. Here’s an important tip: You must send IRS a *conformed* copy of your articles. A conformed copy is the version of your articles that reflects the original language plus all amendments. (See *Publication 557* for details.)

IRS requires that your articles contain certain language. The articles must limit your organization’s activities to those allowed under 501(c)(3) and can’t empower it to carry out 501(c)(3)-prohibited activities. Further, your bylaws should indicate that your organization’s assets are permanently dedicated to an exempt purpose and must be distributed for an exempt purpose if your organization dissolves. The sample articles in our appendix meet this test.

Armed with this background, you’re ready to work on your 501(c)(3) application.

Your 501(c)(3) Application

Putting together this application requires strong communication among the founders, along with a big dose of patience. Here’s what IRS says in its “Instructions for Form 1023” about the time it takes to complete the paperwork:

The time needed to complete and files these forms will vary depending on individual circumstances. The estimated average times are:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to IRS
1023 Parts I to IV	55hr., 29 min.	4 hr., 37 min.	8 hr., 7 min.

Every applicant must complete the nine pages that make up parts one through four, and certain nonprofits also must complete one or more of the other 10 “schedules.”

We’re not suggesting that you can’t put together a high quality application in less time than IRS estimates. But we *are* saying that it’s not always quick, and it’s not always easy. Quality, not speed, should be your goal. After all, you won’t be approved any faster if IRS has to ask you for clarification, more information, or corrections. Remember the rule: Do It Right The First Time!

Where To Start?

The first thing to do is collect all the forms you’ll have to submit and the how-to information that comes with them. Here’s what you’ll need at a minimum:

- ❑ *IRS Publication 557, Tax-Exempt for Your Organization* (Rev. May 1997)
- ❑ *Form 1023 and Instructions, Application for Recognition of Exemption*
- ❑ *IRS Form 872-C, Consent Fixing of Limitation Upon Assessment of Tax Under Section 4940 of the internal Revenue Code* (Yes, that’s the form’s name, and it’s required if you need an advance ruling.)
- ❑ *IRS Form 8718, User Fee for Exempt Organization Determination Letter Request*

You should also gather certain organizational documents:

- ❑ Certificate of incorporation or its equivalent
- ❑ Bylaws, if adopted
- ❑ Budget projections for the next three years

After you’ve gathered the papers, it’s a good idea to copy your official documents and re-file them. IRS wants *copies* for their files and doesn’t return originals. Next, copy the IRS application forms and schedules so you’ll have a working copy, recording your answers in pencil on this one. Then, after you’ve worked out all the bugs, type and mail the forms.

Now let’s look at Form 1023. It comes with 6 pages of step-by-step instructions, (most of it in fine print). Here are some important highlight from the instructions.

Procedural Checklist

Page 7 of the Instructions for *Form 1023* is a good place to start, and it begins by telling you politely what happens when you send in incomplete information. In short, don't do it.

The Fee

Federal law requires that IRS collect a fee from applicants for determinations of tax-exempt status; so the fee can't be waived. Think of the fee as a "package" consisting of your check and the accompanying *Form 8718, User Fee for Exempt Organization Determination Letter*. Don't send in the fee without this form attached, and don't send in *Form 1023* without the fee. You'll just get the whole thing back. Attach the fee "package" to the front of *1023* application.

Form 8718 is mercifully short and easy to complete. You include the organization's name and employer identification number, check the box for the kind of application you're submitting, attach your fee package, and it's ready to go.

What kind of application are you submitting? Well, there are three choices, and the fee you pay depends on the choice that applies to you.

- 1) The first type of application comes from an organization making its first request for a determination of exemption **and** having either annual gross receipts not more than \$10K during the past four years **or** a new organization that expects not more than \$10K in annual gross receipts during its first four years in operation. The fee is \$150.
- 2) The second type of application comes from an organization that had annual gross receipts averaging more than \$10K during the past four years **or** a new organization that expects more than \$10K in annual gross receipts during its first four years in operation.
- 3) The third type of application comes from an already-exempt organization applying for a *group exemption letter*. In this case, the applicant—the central organization—is applying for exemption for one or more subordinate organizations. The subordinates, then, need not file their own applications for exemption. Also, the central organization can apply for the group exemption by letter instead of completing IRS forms.

Part I Identification of Applicant

Every applicant for exemption must complete the first nine pages of the application. Ten other schedules or forms are included with the package, but chances are, you'll have to complete only one or two of them. For example, there are separate schedules for churches, schools, child care providers, and private operating foundations. And there's form 872-C for those asking for an advance ruling.

The questions on page one are clear, but here are some things to think about:

Accounting Period

On line 4, you'll have to give the month your accounting period ends. This can be any 12-month period you've designated to be your fiscal year, whether or not it begins in January. Some nonprofits live on federal funds and adopt the federal fiscal year—October through September. Others choose the fiscal year of their local or state government. Still others avoid closing out their books during tax season by choosing a July through June fiscal year. Choose the fiscal year that works for you; your first fiscal “year” of operation may be shorter than 12 months. Talk with your accountant about this.

Activity Code

For line 6, choose up to three codes that most accurately describe your activities, with the most accurate code listed first. The last page of the application package offers several dozen activity options with corresponding codes. If one code describes your operation perfectly, use it; you don't have to choose three. Later in the application, you'll have to fully describe your activities, and your description should match the activity code(s) you list here.

Item 11 asks you to attach your articles of incorporation with proper notice of the date they were approved by your state. Without this, your organization is ineligible for exemption. The instructions—but not the application form—also ask for a copy of your bylaws if you've adopted them.

Page 1 ends with an authorized signature and date. Strangely enough, you may as well prepare this page last; you still have eight more pages and at least one other form to complete. Your work has only begun!

Part II Activities and Operational Information

Activity Description

Page two begins with a request for a *detailed* narrative of your activities—past, present, and planned. With crystal clarity, describe the what, why and how of your activities. If your organization is a start-up, this is a critical item. Without a track record, you'll have to get an *advance ruling*, as we mentioned earlier. To get it, your activity description must be detailed enough for IRS to conclude that your activities qualify you for exemption under the law. Read the instructions carefully so that you answer the questions fully. Consider getting someone unfamiliar with your organization to review your description of what the organization does. The founders are often too close to the issue to be objective here. If the reader can't accurately describe your activities in his own words, try again. Edit your material using the simplest, clearest language you can until she understands. It's better to confuse your reader than to confuse IRS staff.

Part III Technical Requirements

The questions in this section explain themselves.

Part IV Financial Data

Existing organizations must report revenue and expenses (income statement) and then assets and liabilities (balance sheet) for the current fiscal year and the three previous years—or as many years as they’ve existed if they’re younger than four years old. The exception here is for organizations under *one* year old. New organizations submit *budget projections* for two accounting periods, along with a current balance sheet.

A word of caution: Don’t pull out your income statement and balance sheet and start filling in the blanks on Part IV without reading the instructions. Specific items of cost, revenue, assets, and liabilities belong on each line on the form. For example, line 1 of the Statement of Revenue and Expenses (income statement) asks for “gifts, grants, and contributions received.” But you have to read the instructions to learn that you shouldn’t include contributions from governments or from the general public for your exempt activities.

And line 1 on the Balance Sheet asks for “cash.” When you read the instructions, you’ll see this really means “cash and cash equivalents,” or instruments that can be readily turned into cash—like certificates of deposit and treasury bills.

If you’ve been operating for a while and you’re not well-versed in accounting, pick up the phone and call your accountant. She’ll probably save you time, effort, and a king-size headache.

Part IV brings you to the end of the main application form; so you’re nearly done if you’ve completed it.

Advance Ruling Form

Remember the “advance ruling?” If you’re requesting one, complete Form 872-C. It’s simple, easy, and self explanatory, but a must if your organization has operated for fewer than eight months.

Remaining Schedules

If you’re developing a child care center or a school, or if you plan to award scholarships, you’ll need to complete another schedule. We won’t cover those here because they’re relatively short and simple forms and come with instructions.

The Final Steps

You’ve penciled in all the information, and now you’re ready to finalize your application. Here’s how:

- 1) Type the application,
- 2) Have a the board chair or president sign on the first page,
- 3) Include a separate detailed description of your activities if there was too little room on the form in Part II Activities and Operational Information,
- 4) Attach your organizing documents,
- 5) Attach all the schedules called for in Part IV Financial Data,
- 6) Attach any other schedule that applies to your organization,
- 7) Be sure *every* attachment has you organization's name, address and employer identification number,
- 8) Note on each attachment that it's related to Form 1023; identify the section it belongs to,
- 9) Attach the fee package we talked about earlier,
- 10) Make two copies for your own records, and
- 11) Mail it by conventional or overnight delivery. Either way, make sure you have a receipt.

IRS will acknowledge that your application arrived, though the IRS guide offers no time frame. You may get a request for more information, or if your application is incomplete or missing the payment, IRS will return the package without reviewing it. It may take several weeks to several months to get a determination. A carefully prepared application has the best chance of getting timely approval.

CONCLUSION

We've offered tools we think will help you make a strong start as a nonprofit organization. The preparation is not always quick, and it's not always simple. But the founders of every new organization owe it to themselves to develop a strong foundation, one that allows them to carry out the mission with confidence instead of putting one administrative fire after another. It pays in the long run to Do It Right The First Time.

APPENDIX

ARTICLES OF INCORPORATION OF

A Nonprofit Corporation

The undersigned, being at least eighteen years of age, acting as incorporator, does hereby form a nonprofit corporation under and by virtue of the

FIRST: The name of the corporation (hereinafter called the "Corporation") is

SECOND: The period of its duration is

THIRD: The Corporation is organized and shall be operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code").

In furtherance of these purposes, the Corporation,

The Corporation may engage in any and all other charitable activities permitted to an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding future provisions of the federal tax law. To these ends, the Corporation may do and engage in any and all lawful activities that may be incidental or reasonably necessary to any of these purposes, and it shall have and may exercise all other powers and authority now or hereafter conferred upon nonprofit corporations in the State of

No part of the income or principal of the Corporation shall inure to the benefit of any director or officer of this Corporation or any other private individual, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered to it, and to make reasonable payments and distributions in furtherance of the aforementioned purposes of the Corporation.

The Corporation shall not engage in any activity which is prohibited to a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any corresponding future provisions of the federal tax law. In accordance with the existing federal tax law, the Corporation shall not participate or intervene in any political campaign on behalf of any candidate for public office by

publishing or distributing statements, or in any other way. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation.

FOURTH:

FIFTH: A statement as to the manner in which directors shall be elected or appointed shall be set forth in the bylaws of the Corporation. Sole voting power in the Corporation shall be vested in the Board of Directors.

SIXTH: Provisions for the distribution of assets on dissolution or the termination of the Corporation are as follows:

Although the period of duration of the Corporation is perpetual, if for any reason the Corporation is to be dissolved or otherwise terminated, no part of the property of the Corporation or any of the proceeds shall be distributed to or inure to the benefit of any of the directors of the Corporation. Upon the dissolution of the Corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

SEVENTH: The present address of the principal office of the Corporation in _____ is _____ . The name and address of the resident agent of the Corporation in _____ are _____ . The resident agent is a citizen of _____ residing therein.

EIGHTH: The initial number of directors of the Corporation shall be _____ ,which number may be increased or decreased pursuant to the bylaws of the Corporation. The names and addresses of the directors who shall act until the first meeting or until their successors are duly chosen and qualified are:

NINTH: The Corporation shall not be authorized to issue capital stock.

TENTH: The directors and officers of the Corporation shall have no liability to the Corporation for money damages except (i) to the extent that it is proven that such person actually received an improper benefit or profit in money, property or services or (ii) to the extent that a judgment or other final adjudication adverse to such person is entered in a proceeding based on a finding in the proceeding that the person's action, or failure to act, was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding. This Article shall not be construed to affect the liability of a person in any capacity other than as a director or officer of the Corporation.

ELEVENTH: The name and address of each incorporator appears below:

IN WITNESS WHEREOF, _____ have signed these Articles of Incorporation, acknowledging the same to be _____ act, on this _____ day of _____

Incorporator

Incorporator

Incorporator

Incorporator

Application for Employer Identification Number

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, certain individuals, and others. See instructions.)

EIN
OMB No. 1545-0003

► **Keep a copy for your records.**

Please type or print clearly.	1 Name of applicant (legal name) (see instructions)	
	2 Trade name of business (if different from name on line 1)	3 Executor, trustee, "care of" name
	4a Mailing address (street address) (room, apt., or suite no.)	5a Business address (if different from address on lines 4a and 4b)
	4b City, state, and ZIP code	5b City, state, and ZIP code
	6 County and state where principal business is located	
	7 Name of principal officer, general partner, grantor, owner, or trustee—SSN or ITIN may be required (see instructions) ► _____	

8a Type of entity (Check only one box.) (see instructions)

Caution: If applicant is a limited liability company, see the instructions for line 8a.

- | | |
|---|--|
| <input type="checkbox"/> Sole proprietor (SSN) _____ | <input type="checkbox"/> Estate (SSN of decedent) _____ |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Personal service corp. |
| <input type="checkbox"/> REMIC | <input type="checkbox"/> National Guard |
| <input type="checkbox"/> State/local government | <input type="checkbox"/> Farmers' cooperative |
| <input type="checkbox"/> Church or church-controlled organization | <input type="checkbox"/> Trust |
| <input type="checkbox"/> Other nonprofit organization (specify) ► _____ | <input type="checkbox"/> Federal government/military |
| <input type="checkbox"/> Other (specify) ► _____ | <input type="checkbox"/> Other corporation (specify) ► _____ |

8b If a corporation, name the state or foreign country (if applicable) where incorporated

State	Foreign country
-------	-----------------

9 Reason for applying (Check only one box.) (see instructions)

<input type="checkbox"/> Started new business (specify type) ► _____	<input type="checkbox"/> Banking purpose (specify purpose) ► _____
<input type="checkbox"/> Hired employees (Check the box and see line 12.)	<input type="checkbox"/> Changed type of organization (specify new type) ► _____
<input type="checkbox"/> Created a pension plan (specify type) ► _____	<input type="checkbox"/> Purchased going business
	<input type="checkbox"/> Created a trust (specify type) ► _____
	<input type="checkbox"/> Other (specify) ► _____

10 Date business started or acquired (month, day, year) (see instructions)

11 Closing month of accounting year (see instructions)

12 First date wages or annuities were paid or will be paid (month, day, year). **Note:** If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (month, day, year) ►

13 Highest number of employees expected in the next 12 months. **Note:** If the applicant does not expect to have any employees during the period, enter -0-. (see instructions) ►

Nonagricultural	Agricultural	Household
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14 Principal activity (see instructions) ►

15 Is the principal business activity manufacturing? Yes No
 If "Yes," principal product and raw material used ►

16 To whom are most of the products or services sold? Please check one box. Business (wholesale) N/A
 Public (retail) Other (specify) ►

17a Has the applicant ever applied for an employer identification number for this or any other business? Yes No
Note: If "Yes," please complete lines 17b and 17c.

17b If you checked "Yes" on line 17a, give applicant's legal name and trade name shown on prior application, if different from line 1 or 2 above.
 Legal name ► Trade name ►

17c Approximate date when and city and state where the application was filed. Enter previous employer identification number if known.

Approximate date when filed (mo., day, year)	City and state where filed	Previous EIN
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Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.

Business telephone number (include area code)
Fax telephone number (include area code)

Name and title (Please type or print clearly.) ►

Signature ► Date ►

Note: Do not write below this line. For official use only.

Please leave blank ►	Geo.	Ind.	Class	Size	Reason for applying
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

Use Form SS-4 to apply for an employer identification number (EIN). An EIN is a nine-digit number (for example, 12-3456789) assigned to sole proprietors, corporations, partnerships, estates, trusts, and other entities for tax filing and reporting purposes. The information you provide on this form will establish your business tax account.

Caution: An EIN is for use in connection with your business activities only. Do **NOT** use your EIN in place of your social security number (SSN).

Who Must File

You must file this form if you have not been assigned an EIN before and:

- You pay wages to one or more employees including household employees.
- You are required to have an EIN to use on any return, statement, or other document, even if you are not an employer.
- You are a withholding agent required to withhold taxes on income, other than wages, paid to a nonresident alien (individual, corporation, partnership, etc.). A withholding agent may be an agent, broker, fiduciary, manager, tenant, or spouse, and is required to file **Form 1042**, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.
- You file **Schedule C**, Profit or Loss From Business, **Schedule C-EZ**, Net Profit From Business, or **Schedule F**, Profit or Loss From Farming, of **Form 1040**, U.S. Individual Income Tax Return, and have a Keogh plan or are required to file excise, employment, or alcohol, tobacco, or firearms returns.

The following must use EINs even if they do not have any employees:

- State and local agencies who serve as tax reporting agents for public assistance recipients, under Rev. Proc. 80-4, 1980-1 C.B. 581, should obtain a separate EIN for this reporting. See **Household employer** on page 3.
- Trusts, except the following:
 1. Certain grantor-owned trusts. (See the **Instructions for Form 1041**.)
 2. Individual Retirement Arrangement (IRA) trusts, unless the trust has to file **Form 990-T**, Exempt Organization Business Income Tax Return. (See the **Instructions for Form 990-T**.)
- Estates
- Partnerships
- REMICs (real estate mortgage investment conduits) (See the **Instructions for Form 1066**, U.S. Real Estate Mortgage Investment Conduit Income Tax Return.)
- Corporations
- Nonprofit organizations (churches, clubs, etc.)
- Farmers' cooperatives
- Plan administrators (A plan administrator is the person or group of persons specified as the administrator by the instrument under which the plan is operated.)

When To Apply for a New EIN

New Business. If you become the new owner of an existing business, **do not** use the EIN of the former owner. IF YOU ALREADY HAVE AN EIN, USE THAT NUMBER. If you do not have an EIN, apply for one on this form. If you become the "owner" of a corporation by acquiring its stock, use the corporation's EIN.

Changes in Organization or Ownership. If you already have an EIN, you may need to get a new one if either the organization or ownership of your business changes. If you incorporate a sole proprietorship or form a partnership, you must get a new EIN. However, **do not** apply for a new EIN if:

- You change only the name of your business,
- You elected on **Form 8832**, Entity Classification Election, to change the way the entity is taxed, or
- A partnership terminates because at least 50% of the total interests in partnership capital and profits were sold or exchanged within a 12-month period. (See Regulations section 301.6109-1(d)(2)(iii).) The EIN for the terminated partnership should continue to be used. This rule applies to terminations occurring after May 8, 1997. If the termination took place after May 8, 1996, and before May 9, 1997, a new EIN must be obtained for the new partnership unless the partnership and its partners are consistent in using the old EIN.

Note: If you are electing to be an "S corporation," be sure you file **Form 2553**, Election by a Small Business Corporation.

File Only One Form SS-4. File only one Form SS-4, regardless of the number of businesses operated or trade names under which a business operates. However, each corporation in an affiliated group must file a separate application.

EIN Applied for, But Not Received. If you do not have an EIN by the time a return is due, write "Applied for" and the date you applied in the space shown for the number. **Do not** show your social security number (SSN) as an EIN on returns.

If you do not have an EIN by the time a tax deposit is due, send your payment to the Internal Revenue Service Center for your filing area. (See **Where To Apply** below.) Make your check or money order payable to Internal Revenue Service and show your name (as shown on Form SS-4), address, type of tax, period covered, and date you applied for an EIN. Send an explanation with the deposit.

For more information about EINs, see **Pub. 583**, Starting a Business and Keeping Records, and **Pub. 1635**, Understanding your EIN.

How To Apply

You can apply for an EIN either by mail or by telephone. You can get an EIN immediately by calling the Tele-TIN number for the service center for your state, or you can send the completed Form SS-4 directly to the service center to receive your EIN by mail.

Application by Tele-TIN. Under the Tele-TIN program, you can receive your EIN by telephone and use it immediately to file a return or make a payment. To receive an EIN by telephone, complete Form SS-4, then call the Tele-TIN number listed for your state under **Where To Apply**. The person making the call must be authorized to sign the form. (See **Signature** on page 4.)

An IRS representative will use the information from the Form SS-4 to establish your account and assign you an EIN. Write the number you are given on the upper right corner of the form and sign and date it.

Mail or fax (facsimile) the signed SS-4 **within 24 hours** to the Tele-TIN Unit at the service center address for your state. The IRS representative will give you the fax number. The fax numbers are also listed in Pub. 1635.

Taxpayer representatives can receive their client's EIN by telephone if they first send a fax of a completed **Form 2848**, Power of Attorney and Declaration of Representative, or **Form 8821**, Tax Information Authorization, to the Tele-TIN unit. The Form 2848 or Form 8821 will be used solely to release the EIN to the representative authorized on the form.

Application by Mail. Complete Form SS-4 at least 4 to 5 weeks before you will need an EIN. Sign and date the application and mail it to the service center address for your state. You will receive your EIN in the mail in approximately 4 weeks.

Where To Apply

The Tele-TIN numbers listed below will involve a long-distance charge to callers outside of the local calling area and can be used only to apply for an EIN. THE NUMBERS MAY CHANGE WITHOUT NOTICE. Call 1-800-829-1040 to verify a number or to ask about the status of an application by mail.

If your principal business, office or agency, or legal residence in the case of an individual, is located in:

Call the Tele-TIN number shown or file with the Internal Revenue Service Center at:

Florida, Georgia, South Carolina

Attn: Entity Control
Atlanta, GA 39901
770-455-2360

New Jersey, New York City and counties of Nassau, Rockland, Suffolk, and Westchester

Attn: Entity Control
Holtsville, NY 00501
516-447-4955

New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Attn: Entity Control
Andover, MA 05501
978-474-9717

Illinois, Iowa, Minnesota, Missouri, Wisconsin

Attn: Entity Control
Stop 6800
2306 E. Bannister Rd.
Kansas City, MO 64999
816-926-5999

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia

Attn: Entity Control
Philadelphia, PA 19255
215-516-6999

Indiana, Kentucky, Michigan, Ohio, West Virginia

Attn: Entity Control
Cincinnati, OH 45999
606-292-5467

Kansas, New Mexico, Oklahoma, Texas	Attn: Entity Control Austin, TX 73301 512-460-7843
Alaska, Arizona, California (counties of Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba), Colorado, Idaho, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	Attn: Entity Control Mail Stop 6271 P.O. Box 9941 Ogden, UT 84201 801-620-7645
California (all other counties), Hawaii	Attn: Entity Control Fresno, CA 93888 209-452-4010
Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Tennessee	Attn: Entity Control Memphis, TN 37501 901-546-3920
If you have no legal residence, principal place of business, or principal office or agency in any state	Attn: Entity Control Philadelphia, PA 19255 215-516-6999

Specific Instructions

The instructions that follow are for those items that are not self-explanatory. Enter N/A (nonapplicable) on the lines that do not apply.

Line 1. Enter the legal name of the entity applying for the EIN exactly as it appears on the social security card, charter, or other applicable legal document.

Individuals. Enter your first name, middle initial, and last name. If you are a sole proprietor, enter your individual name, not your business name. Enter your business name on line 2. Do not use abbreviations or nicknames on line 1.

Trusts. Enter the name of the trust.

Estate of a decedent. Enter the name of the estate.

Partnerships. Enter the legal name of the partnership as it appears in the partnership agreement. **Do not** list the names of the partners on line 1. See the specific instructions for line 7.

Corporations. Enter the corporate name as it appears in the corporation charter or other legal document creating it.

Plan administrators. Enter the name of the plan administrator. A plan administrator who already has an EIN should use that number.

Line 2. Enter the trade name of the business if different from the legal name. The trade name is the "doing business as" name.

Note: Use the full legal name on line 1 on all tax returns filed for the entity. However, if you enter a trade name on line 2 and choose to use the trade name instead of the legal name, enter the trade name on all returns you file. To prevent processing delays and errors, **always** use either the legal name only or the trade name only on all tax returns.

Line 3. Trusts enter the name of the trustee. Estates enter the name of the executor, administrator, or other fiduciary. If the entity applying has a designated person to receive tax information, enter that person's name as the "care of" person. Print or type the first name, middle initial, and last name.

Line 7. Enter the first name, middle initial, last name, and SSN of a principal officer if the business is a corporation; of a general partner if a partnership; of the owner of a single member entity that is disregarded as an entity separate from its owner; or of a grantor, owner, or trustor if a trust. If the person in question is an alien individual with a previously assigned individual taxpayer identification number (ITIN), enter the ITIN in the space provided, instead of an SSN. You are not required to enter an SSN or ITIN if the reason you are applying for an EIN is to make an entity classification election (see Regulations section 301.7701-1 through 301.7701-3), and you are a nonresident alien with no effectively connected income from sources within the United States.

Line 8a. Check the box that best describes the type of entity applying for the EIN. If you are an alien individual with an ITIN previously assigned to you, enter the ITIN in place of a requested SSN.

Caution: This is not an election for a tax classification of an entity. See "Limited liability company" below.

If not specifically mentioned, check the "Other" box, enter the type of entity and the type of return that will be filed (for example, common trust fund, Form 1065). Do not enter N/A. If you are an alien individual applying for an EIN, see the **Line 7** instructions above.

Sole proprietor. Check this box if you file Schedule C, C-EZ, or F (Form 1040) and have a Keogh plan, or are required to file excise, employment, or alcohol, tobacco, or firearms returns, or are a payer of gambling

winnings. Enter your SSN (or ITIN) in the space provided. If you are a nonresident alien with no effectively connected income from sources within the United States, you do not need to enter an SSN or ITIN.

REMIC. Check this box if the entity has elected to be treated as a real estate mortgage investment conduit (REMIC). See the **Instructions for Form 1066** for more information.

Other nonprofit organization. Check this box if the nonprofit organization is other than a church or church-controlled organization and specify the type of nonprofit organization (for example, an educational organization).

If the organization also seeks tax-exempt status, you must file either **Package 1023**, Application for Recognition of Exemption, or **Package 1024**, Application for Recognition of Exemption Under Section 501(a). Get **Pub. 557**, Tax Exempt Status for Your Organization, for more information.

Group exemption number (GEN). If the organization is covered by a group exemption letter, enter the four-digit GEN. (Do not confuse the GEN with the nine-digit EIN.) If you do not know the GEN, contact the parent organization. Get Pub. 557 for more information about group exemption numbers.

Withholding agent. If you are a withholding agent required to file Form 1042, check the "Other" box and enter "Withholding agent."

Personal service corporation. Check this box if the entity is a personal service corporation. An entity is a personal service corporation for a tax year only if:

- The principal activity of the entity during the testing period (prior tax year) for the tax year is the performance of personal services substantially by employee-owners, and
- The employee-owners own at least 10% of the fair market value of the outstanding stock in the entity on the last day of the testing period.

Personal services include performance of services in such fields as health, law, accounting, or consulting. For more information about personal service corporations, see the **Instructions for Form 1120**, U.S. Corporation Income Tax Return, and **Pub. 542**, Corporations.

Limited liability company (LLC). See the definition of limited liability company in the **Instructions for Form 1065**. An LLC with two or more members can be a partnership or an association taxable as a corporation. An LLC with a single owner can be an association taxable as a corporation or an entity disregarded as an entity separate from its owner. See Form 8832 for more details.

- If the entity is classified as a partnership for Federal income tax purposes, check the "partnership" box.
- If the entity is classified as a corporation for Federal income tax purposes, mark the "Other corporation" box and write "limited liability co." in the space provided.
- If the entity is disregarded as an entity separate from its owner, check the "Other" box and write in "disregarded entity" in the space provided.

Plan administrator. If the plan administrator is an individual, enter the plan administrator's SSN in the space provided.

Other corporation. This box is for any corporation other than a personal service corporation. If you check this box, enter the type of corporation (such as insurance company) in the space provided.

Household employer. If you are an individual, check the "Other" box and enter "Household employer" and your SSN. If you are a state or local agency serving as a tax reporting agent for public assistance recipients who become household employers, check the "Other" box and enter "Household employer agent." If you are a trust that qualifies as a household employer, you do not need a separate EIN for reporting tax information relating to household employees; use the EIN of the trust.

QSSS. For a qualified subsidiary S subsidiary (QSSS) check the "Other" box and specify "QSSS."

Line 9. Check only **one** box. Do not enter N/A.

Started new business. Check this box if you are starting a new business that requires an EIN. If you check this box, enter the type of business being started. **Do not** apply if you already have an EIN and are only adding another place of business.

Hired employees. Check this box if the existing business is requesting an EIN because it has hired or is hiring employees and is therefore required to file employment tax returns. **Do not** apply if you already have an EIN and are only hiring employees. For information on the applicable employment taxes for family members, see **Circular E**, Employer's Tax Guide (Publication 15).

Created a pension plan. Check this box if you have created a pension plan and need this number for reporting purposes. Also, enter the type of plan created.

Note: Check this box if you are applying for a trust EIN when a new pension plan is established.

Banking purpose. Check this box if you are requesting an EIN for banking purposes only, and enter the banking purpose (for example, a bowling league for depositing dues or an investment club for dividend and interest reporting).

Changed type of organization. Check this box if the business is changing its type of organization, for example, if the business was a sole proprietorship and has been incorporated or has become a partnership. If you check this box, specify in the space provided the type of change made, for example, "from sole proprietorship to partnership."

Purchased going business. Check this box if you purchased an existing business. **Do not** use the former owner's EIN. **Do not** apply for a new EIN if you already have one. Use your own EIN.

Created a trust. Check this box if you created a trust, and enter the type of trust created. For example, indicate if the trust is a nonexempt charitable trust or a split-interest trust.

Note: Do not check this box if you are applying for a trust EIN when a new pension plan is established. Check "Created a pension plan."

Exception. Do not file this form for certain grantor-type trusts. The trustee does not need an EIN for the trust if the trustee furnishes the name and TIN of the grantor/owner and the address of the trust to all payors. See the Instructions for Form 1041 for more information.

Other (specify). Check this box if you are requesting an EIN for any reason other than those for which there are checkboxes, and enter the reason.

Line 10. If you are starting a new business, enter the starting date of the business. If the business you acquired is already operating, enter the date you acquired the business. Trusts should enter the date the trust was legally created. Estates should enter the date of death of the decedent whose name appears on line 1 or the date when the estate was legally funded.

Line 11. Enter the last month of your accounting year or tax year. An accounting or tax year is usually 12 consecutive months, either a calendar year or a fiscal year (including a period of 52 or 53 weeks). A calendar year is 12 consecutive months ending on December 31. A fiscal year is either 12 consecutive months ending on the last day of any month other than December or a 52-53 week year. For more information on accounting periods, see **Pub. 538**, Accounting Periods and Methods.

Individuals. Your tax year generally will be a calendar year.

Partnerships. Partnerships generally must adopt one of the following tax years:

- The tax year of the majority of its partners,
- The tax year common to all of its principal partners,
- The tax year that results in the least aggregate deferral of income, or
- In certain cases, some other tax year.

See the **Instructions for Form 1065**, U.S. Partnership Return of Income, for more information.

REMIC. REMICs must have a calendar year as their tax year.

Personal service corporations. A personal service corporation generally must adopt a calendar year unless:

- It can establish a business purpose for having a different tax year, or
- It elects under section 444 to have a tax year other than a calendar year.

Trusts. Generally, a trust must adopt a calendar year except for the following:

- Tax-exempt trusts,
- Charitable trusts, and
- Grantor-owned trusts.

Line 12. If the business has or will have employees, enter the date on which the business began or will begin to pay wages. If the business does not plan to have employees, enter N/A.

Withholding agent. Enter the date you began or will begin to pay income to a nonresident alien. This also applies to individuals who are required to file Form 1042 to report alimony paid to a nonresident alien.

Line 13. For a definition of agricultural labor (farmwork), see **Circular A**, Agricultural Employer's Tax Guide (Publication 51).

Line 14. Generally, enter the exact type of business being operated (for example, advertising agency, farm, food or beverage establishment, labor union, real estate agency, steam laundry, rental of coin-operated vending machine, or investment club). Also state if the business will involve the sale or distribution of alcoholic beverages.

Governmental. Enter the type of organization (state, county, school district, municipality, etc.).

Nonprofit organization (other than governmental). Enter whether organized for religious, educational, or humane purposes, and the principal activity (for example, religious organization—hospital, charitable).

Mining and quarrying. Specify the process and the principal product (for example, mining bituminous coal, contract drilling for oil, or quarrying dimension stone).

Contract construction. Specify whether general contracting or special trade contracting. Also, show the type of work normally performed (for example, general contractor for residential buildings or electrical subcontractor).

Food or beverage establishments. Specify the type of establishment and state whether you employ workers who receive tips (for example, lounge—yes).

Trade. Specify the type of sales and the principal line of goods sold (for example, wholesale dairy products, manufacturer's representative for mining machinery, or retail hardware).

Manufacturing. Specify the type of establishment operated (for example, sawmill or vegetable cannery).

Signature. The application must be signed by (a) the individual, if the applicant is an individual, (b) the president, vice president, or other principal officer, if the applicant is a corporation, (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the applicant is a partnership or other unincorporated organization, or (d) the fiduciary, if the applicant is a trust or an estate.

How To Get Forms and Publications

Phone. You can order forms, instructions, and publications by phone. Just call 1-800-TAX-FORM (1-800-829-3676). You should receive your order or notification of its status within 7 to 15 workdays.

Personal computer. With your personal computer and modem, you can get the forms and information you need using:

- IRS's Internet Web Site at www.irs.ustreas.gov
- Telnet at iris.irs.ustreas.gov
- File Transfer Protocol at ftp.irs.ustreas.gov

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CD-ROM. To order the CD-ROM call the Superintendent of Documents at 202-512-1800 or connect to www.access.gpo.gov/su_docs

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to comply with section 6109 and the regulations thereunder which generally require the inclusion of an employer identification number (EIN) on certain returns, statements, or other documents filed with the Internal Revenue Service. Information on this form may be used to determine which Federal tax returns you are required to file and to provide you with related forms and publications. We disclose this form to the Social Security Administration for their use in determining compliance with applicable laws. We will be unable to issue an EIN to you unless you provide all of the requested information which applies to your entity.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	7 min.
Learning about the law or the form	19 min.
Preparing the form	45 min.
Copying, assembling, and sending the form to the IRS	20 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send this form to this address. Instead, see **Where To Apply** on page 2.



Application for Employer Identification Number

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, certain individuals, and others. See instructions.)

EIN
OMB No. 1545-0003

► **Keep a copy for your records.**

Please type or print clearly.	1 Name of applicant (legal name) (see instructions)	
	2 Trade name of business (if different from name on line 1)	3 Executor, trustee, "care of" name
	4a Mailing address (street address) (room, apt., or suite no.)	5a Business address (if different from address on lines 4a and 4b)
	4b City, state, and ZIP code	5b City, state, and ZIP code
	6 County and state where principal business is located	
	7 Name of principal officer, general partner, grantor, owner, or trustee—SSN or ITIN may be required (see instructions) ► _____	

8a Type of entity (Check only one box.) (see instructions)

Caution: If applicant is a limited liability company, see the instructions for line 8a.

- | | |
|---|--|
| <input type="checkbox"/> Sole proprietor (SSN) _____ | <input type="checkbox"/> Estate (SSN of decedent) _____ |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Personal service corp. |
| <input type="checkbox"/> REMIC | <input type="checkbox"/> National Guard |
| <input type="checkbox"/> State/local government | <input type="checkbox"/> Farmers' cooperative |
| <input type="checkbox"/> Church or church-controlled organization | <input type="checkbox"/> Trust |
| <input type="checkbox"/> Other nonprofit organization (specify) ► _____ | <input type="checkbox"/> Federal government/military |
| <input type="checkbox"/> Other (specify) ► _____ | <input type="checkbox"/> Other corporation (specify) ► _____ |

8b If a corporation, name the state or foreign country (if applicable) where incorporated

State	Foreign country
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9 Reason for applying (Check only one box.) (see instructions)

<input type="checkbox"/> Started new business (specify type) ► _____	<input type="checkbox"/> Banking purpose (specify purpose) ► _____
<input type="checkbox"/> Hired employees (Check the box and see line 12.)	<input type="checkbox"/> Changed type of organization (specify new type) ► _____
<input type="checkbox"/> Created a pension plan (specify type) ► _____	<input type="checkbox"/> Purchased going business
	<input type="checkbox"/> Created a trust (specify type) ► _____
	<input type="checkbox"/> Other (specify) ► _____

10 Date business started or acquired (month, day, year) (see instructions)

11 Closing month of accounting year (see instructions)

12 First date wages or annuities were paid or will be paid (month, day, year). **Note:** If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (month, day, year) ►

13 Highest number of employees expected in the next 12 months. **Note:** If the applicant does not expect to have any employees during the period, enter -0-. (see instructions) ►

Nonagricultural	Agricultural	Household
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14 Principal activity (see instructions) ►

15 Is the principal business activity manufacturing? Yes No
 If "Yes," principal product and raw material used ►

16 To whom are most of the products or services sold? Please check one box. Business (wholesale) N/A
 Public (retail) Other (specify) ►

17a Has the applicant ever applied for an employer identification number for this or any other business? Yes No
Note: If "Yes," please complete lines 17b and 17c.

17b If you checked "Yes" on line 17a, give applicant's legal name and trade name shown on prior application, if different from line 1 or 2 above.
 Legal name ► Trade name ►

17c Approximate date when and city and state where the application was filed. Enter previous employer identification number if known.

Approximate date when filed (mo., day, year)	City and state where filed	Previous EIN
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Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.

Business telephone number (include area code)
Fax telephone number (include area code)

Name and title (Please type or print clearly.) ►

Signature ► Date ►

Note: Do not write below this line. For official use only.

Please leave blank ►	Geo.	Ind.	Class	Size	Reason for applying
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

Use Form SS-4 to apply for an employer identification number (EIN). An EIN is a nine-digit number (for example, 12-3456789) assigned to sole proprietors, corporations, partnerships, estates, trusts, and other entities for tax filing and reporting purposes. The information you provide on this form will establish your business tax account.

Caution: An EIN is for use in connection with your business activities only. Do **NOT** use your EIN in place of your social security number (SSN).

Who Must File

You must file this form if you have not been assigned an EIN before and:

- You pay wages to one or more employees including household employees.
- You are required to have an EIN to use on any return, statement, or other document, even if you are not an employer.
- You are a withholding agent required to withhold taxes on income, other than wages, paid to a nonresident alien (individual, corporation, partnership, etc.). A withholding agent may be an agent, broker, fiduciary, manager, tenant, or spouse, and is required to file **Form 1042**, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.
- You file **Schedule C**, Profit or Loss From Business, **Schedule C-EZ**, Net Profit From Business, or **Schedule F**, Profit or Loss From Farming, of **Form 1040**, U.S. Individual Income Tax Return, and have a Keogh plan or are required to file excise, employment, or alcohol, tobacco, or firearms returns.

The following must use EINs even if they do not have any employees:

- State and local agencies who serve as tax reporting agents for public assistance recipients, under Rev. Proc. 80-4, 1980-1 C.B. 581, should obtain a separate EIN for this reporting. See **Household employer** on page 3.
- Trusts, except the following:
 1. Certain grantor-owned trusts. (See the **Instructions for Form 1041**.)
 2. Individual Retirement Arrangement (IRA) trusts, unless the trust has to file **Form 990-T**, Exempt Organization Business Income Tax Return. (See the **Instructions for Form 990-T**.)
- Estates
- Partnerships
- REMICs (real estate mortgage investment conduits) (See the **Instructions for Form 1066**, U.S. Real Estate Mortgage Investment Conduit Income Tax Return.)
- Corporations
- Nonprofit organizations (churches, clubs, etc.)
- Farmers' cooperatives
- Plan administrators (A plan administrator is the person or group of persons specified as the administrator by the instrument under which the plan is operated.)

When To Apply for a New EIN

New Business. If you become the new owner of an existing business, **do not** use the EIN of the former owner. IF YOU ALREADY HAVE AN EIN, USE THAT NUMBER. If you do not have an EIN, apply for one on this form. If you become the "owner" of a corporation by acquiring its stock, use the corporation's EIN.

Changes in Organization or Ownership. If you already have an EIN, you may need to get a new one if either the organization or ownership of your business changes. If you incorporate a sole proprietorship or form a partnership, you must get a new EIN. However, **do not** apply for a new EIN if:

- You change only the name of your business,
- You elected on **Form 8832**, Entity Classification Election, to change the way the entity is taxed, or
- A partnership terminates because at least 50% of the total interests in partnership capital and profits were sold or exchanged within a 12-month period. (See Regulations section 301.6109-1(d)(2)(iii).) The EIN for the terminated partnership should continue to be used. This rule applies to terminations occurring after May 8, 1997. If the termination took place after May 8, 1996, and before May 9, 1997, a new EIN must be obtained for the new partnership unless the partnership and its partners are consistent in using the old EIN.

Note: If you are electing to be an "S corporation," be sure you file **Form 2553**, Election by a Small Business Corporation.

File Only One Form SS-4. File only one Form SS-4, regardless of the number of businesses operated or trade names under which a business operates. However, each corporation in an affiliated group must file a separate application.

EIN Applied for, But Not Received. If you do not have an EIN by the time a return is due, write "Applied for" and the date you applied in the space shown for the number. **Do not** show your social security number (SSN) as an EIN on returns.

If you do not have an EIN by the time a tax deposit is due, send your payment to the Internal Revenue Service Center for your filing area. (See **Where To Apply** below.) Make your check or money order payable to Internal Revenue Service and show your name (as shown on Form SS-4), address, type of tax, period covered, and date you applied for an EIN. Send an explanation with the deposit.

For more information about EINs, see **Pub. 583**, Starting a Business and Keeping Records, and **Pub. 1635**, Understanding your EIN.

How To Apply

You can apply for an EIN either by mail or by telephone. You can get an EIN immediately by calling the Tele-TIN number for the service center for your state, or you can send the completed Form SS-4 directly to the service center to receive your EIN by mail.

Application by Tele-TIN. Under the Tele-TIN program, you can receive your EIN by telephone and use it immediately to file a return or make a payment. To receive an EIN by telephone, complete Form SS-4, then call the Tele-TIN number listed for your state under **Where To Apply**. The person making the call must be authorized to sign the form. (See **Signature** on page 4.)

An IRS representative will use the information from the Form SS-4 to establish your account and assign you an EIN. Write the number you are given on the upper right corner of the form and sign and date it.

Mail or fax (facsimile) the signed SS-4 **within 24 hours** to the Tele-TIN Unit at the service center address for your state. The IRS representative will give you the fax number. The fax numbers are also listed in Pub. 1635.

Taxpayer representatives can receive their client's EIN by telephone if they first send a fax of a completed **Form 2848**, Power of Attorney and Declaration of Representative, or **Form 8821**, Tax Information Authorization, to the Tele-TIN unit. The Form 2848 or Form 8821 will be used solely to release the EIN to the representative authorized on the form.

Application by Mail. Complete Form SS-4 at least 4 to 5 weeks before you will need an EIN. Sign and date the application and mail it to the service center address for your state. You will receive your EIN in the mail in approximately 4 weeks.

Where To Apply

The Tele-TIN numbers listed below will involve a long-distance charge to callers outside of the local calling area and can be used only to apply for an EIN. THE NUMBERS MAY CHANGE WITHOUT NOTICE. Call 1-800-829-1040 to verify a number or to ask about the status of an application by mail.

If your principal business, office or agency, or legal residence in the case of an individual, is located in:

Call the Tele-TIN number shown or file with the Internal Revenue Service Center at:

Florida, Georgia, South Carolina

Attn: Entity Control
Atlanta, GA 39901
770-455-2360

New Jersey, New York City and counties of Nassau, Rockland, Suffolk, and Westchester

Attn: Entity Control
Holtsville, NY 00501
516-447-4955

New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Attn: Entity Control
Andover, MA 05501
978-474-9717

Illinois, Iowa, Minnesota, Missouri, Wisconsin

Attn: Entity Control
Stop 6800
2306 E. Bannister Rd.
Kansas City, MO 64999
816-926-5999

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia

Attn: Entity Control
Philadelphia, PA 19255
215-516-6999

Indiana, Kentucky, Michigan, Ohio, West Virginia

Attn: Entity Control
Cincinnati, OH 45999
606-292-5467

Kansas, New Mexico, Oklahoma, Texas	Attn: Entity Control Austin, TX 73301 512-460-7843
Alaska, Arizona, California (counties of Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba), Colorado, Idaho, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	Attn: Entity Control Mail Stop 6271 P.O. Box 9941 Ogden, UT 84201 801-620-7645
California (all other counties), Hawaii	Attn: Entity Control Fresno, CA 93888 209-452-4010
Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Tennessee	Attn: Entity Control Memphis, TN 37501 901-546-3920
If you have no legal residence, principal place of business, or principal office or agency in any state	Attn: Entity Control Philadelphia, PA 19255 215-516-6999

Specific Instructions

The instructions that follow are for those items that are not self-explanatory. Enter N/A (nonapplicable) on the lines that do not apply.

Line 1. Enter the legal name of the entity applying for the EIN exactly as it appears on the social security card, charter, or other applicable legal document.

Individuals. Enter your first name, middle initial, and last name. If you are a sole proprietor, enter your individual name, not your business name. Enter your business name on line 2. Do not use abbreviations or nicknames on line 1.

Trusts. Enter the name of the trust.

Estate of a decedent. Enter the name of the estate.

Partnerships. Enter the legal name of the partnership as it appears in the partnership agreement. **Do not** list the names of the partners on line 1. See the specific instructions for line 7.

Corporations. Enter the corporate name as it appears in the corporation charter or other legal document creating it.

Plan administrators. Enter the name of the plan administrator. A plan administrator who already has an EIN should use that number.

Line 2. Enter the trade name of the business if different from the legal name. The trade name is the "doing business as" name.

Note: Use the full legal name on line 1 on all tax returns filed for the entity. However, if you enter a trade name on line 2 and choose to use the trade name instead of the legal name, enter the trade name on all returns you file. To prevent processing delays and errors, **always** use either the legal name only or the trade name only on all tax returns.

Line 3. Trusts enter the name of the trustee. Estates enter the name of the executor, administrator, or other fiduciary. If the entity applying has a designated person to receive tax information, enter that person's name as the "care of" person. Print or type the first name, middle initial, and last name.

Line 7. Enter the first name, middle initial, last name, and SSN of a principal officer if the business is a corporation; of a general partner if a partnership; of the owner of a single member entity that is disregarded as an entity separate from its owner; or of a grantor, owner, or trustor if a trust. If the person in question is an alien individual with a previously assigned individual taxpayer identification number (ITIN), enter the ITIN in the space provided, instead of an SSN. You are not required to enter an SSN or ITIN if the reason you are applying for an EIN is to make an entity classification election (see Regulations section 301.7701-1 through 301.7701-3), and you are a nonresident alien with no effectively connected income from sources within the United States.

Line 8a. Check the box that best describes the type of entity applying for the EIN. If you are an alien individual with an ITIN previously assigned to you, enter the ITIN in place of a requested SSN.

Caution: This is not an election for a tax classification of an entity. See "Limited liability company" below.

If not specifically mentioned, check the "Other" box, enter the type of entity and the type of return that will be filed (for example, common trust fund, Form 1065). Do not enter N/A. If you are an alien individual applying for an EIN, see the **Line 7** instructions above.

Sole proprietor. Check this box if you file Schedule C, C-EZ, or F (Form 1040) and have a Keogh plan, or are required to file excise, employment, or alcohol, tobacco, or firearms returns, or are a payer of gambling

winnings. Enter your SSN (or ITIN) in the space provided. If you are a nonresident alien with no effectively connected income from sources within the United States, you do not need to enter an SSN or ITIN.

REMIC. Check this box if the entity has elected to be treated as a real estate mortgage investment conduit (REMIC). See the **Instructions for Form 1066** for more information.

Other nonprofit organization. Check this box if the nonprofit organization is other than a church or church-controlled organization and specify the type of nonprofit organization (for example, an educational organization).

If the organization also seeks tax-exempt status, you must file either **Package 1023**, Application for Recognition of Exemption, or **Package 1024**, Application for Recognition of Exemption Under Section 501(a). Get **Pub. 557**, Tax Exempt Status for Your Organization, for more information.

Group exemption number (GEN). If the organization is covered by a group exemption letter, enter the four-digit GEN. (Do not confuse the GEN with the nine-digit EIN.) If you do not know the GEN, contact the parent organization. Get Pub. 557 for more information about group exemption numbers.

Withholding agent. If you are a withholding agent required to file Form 1042, check the "Other" box and enter "Withholding agent."

Personal service corporation. Check this box if the entity is a personal service corporation. An entity is a personal service corporation for a tax year only if:

- The principal activity of the entity during the testing period (prior tax year) for the tax year is the performance of personal services substantially by employee-owners, and
- The employee-owners own at least 10% of the fair market value of the outstanding stock in the entity on the last day of the testing period.

Personal services include performance of services in such fields as health, law, accounting, or consulting. For more information about personal service corporations, see the **Instructions for Form 1120**, U.S. Corporation Income Tax Return, and **Pub. 542**, Corporations.

Limited liability company (LLC). See the definition of limited liability company in the **Instructions for Form 1065**. An LLC with two or more members can be a partnership or an association taxable as a corporation. An LLC with a single owner can be an association taxable as a corporation or an entity disregarded as an entity separate from its owner. See Form 8832 for more details.

- If the entity is classified as a partnership for Federal income tax purposes, check the "partnership" box.
- If the entity is classified as a corporation for Federal income tax purposes, mark the "Other corporation" box and write "limited liability co." in the space provided.
- If the entity is disregarded as an entity separate from its owner, check the "Other" box and write in "disregarded entity" in the space provided.

Plan administrator. If the plan administrator is an individual, enter the plan administrator's SSN in the space provided.

Other corporation. This box is for any corporation other than a personal service corporation. If you check this box, enter the type of corporation (such as insurance company) in the space provided.

Household employer. If you are an individual, check the "Other" box and enter "Household employer" and your SSN. If you are a state or local agency serving as a tax reporting agent for public assistance recipients who become household employers, check the "Other" box and enter "Household employer agent." If you are a trust that qualifies as a household employer, you do not need a separate EIN for reporting tax information relating to household employees; use the EIN of the trust.

QSSS. For a qualified subsidiary S subsidiary (QSSS) check the "Other" box and specify "QSSS."

Line 9. Check only **one** box. Do not enter N/A.

Started new business. Check this box if you are starting a new business that requires an EIN. If you check this box, enter the type of business being started. **Do not** apply if you already have an EIN and are only adding another place of business.

Hired employees. Check this box if the existing business is requesting an EIN because it has hired or is hiring employees and is therefore required to file employment tax returns. **Do not** apply if you already have an EIN and are only hiring employees. For information on the applicable employment taxes for family members, see **Circular E**, Employer's Tax Guide (Publication 15).

Created a pension plan. Check this box if you have created a pension plan and need this number for reporting purposes. Also, enter the type of plan created.

Note: Check this box if you are applying for a trust EIN when a new pension plan is established.

Banking purpose. Check this box if you are requesting an EIN for banking purposes only, and enter the banking purpose (for example, a bowling league for depositing dues or an investment club for dividend and interest reporting).

Changed type of organization. Check this box if the business is changing its type of organization, for example, if the business was a sole proprietorship and has been incorporated or has become a partnership. If you check this box, specify in the space provided the type of change made, for example, "from sole proprietorship to partnership."

Purchased going business. Check this box if you purchased an existing business. **Do not** use the former owner's EIN. **Do not** apply for a new EIN if you already have one. Use your own EIN.

Created a trust. Check this box if you created a trust, and enter the type of trust created. For example, indicate if the trust is a nonexempt charitable trust or a split-interest trust.

Note: Do not check this box if you are applying for a trust EIN when a new pension plan is established. Check "Created a pension plan."

Exception. Do not file this form for certain grantor-type trusts. The trustee does not need an EIN for the trust if the trustee furnishes the name and TIN of the grantor/owner and the address of the trust to all payors. See the Instructions for Form 1041 for more information.

Other (specify). Check this box if you are requesting an EIN for any reason other than those for which there are checkboxes, and enter the reason.

Line 10. If you are starting a new business, enter the starting date of the business. If the business you acquired is already operating, enter the date you acquired the business. Trusts should enter the date the trust was legally created. Estates should enter the date of death of the decedent whose name appears on line 1 or the date when the estate was legally funded.

Line 11. Enter the last month of your accounting year or tax year. An accounting or tax year is usually 12 consecutive months, either a calendar year or a fiscal year (including a period of 52 or 53 weeks). A calendar year is 12 consecutive months ending on December 31. A fiscal year is either 12 consecutive months ending on the last day of any month other than December or a 52-53 week year. For more information on accounting periods, see **Pub. 538**, Accounting Periods and Methods.

Individuals. Your tax year generally will be a calendar year.

Partnerships. Partnerships generally must adopt one of the following tax years:

- The tax year of the majority of its partners,
- The tax year common to all of its principal partners,
- The tax year that results in the least aggregate deferral of income, or
- In certain cases, some other tax year.

See the **Instructions for Form 1065**, U.S. Partnership Return of Income, for more information.

REMIC. REMICs must have a calendar year as their tax year.

Personal service corporations. A personal service corporation generally must adopt a calendar year unless:

- It can establish a business purpose for having a different tax year, or
- It elects under section 444 to have a tax year other than a calendar year.

Trusts. Generally, a trust must adopt a calendar year except for the following:

- Tax-exempt trusts,
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Line 12. If the business has or will have employees, enter the date on which the business began or will begin to pay wages. If the business does not plan to have employees, enter N/A.

Withholding agent. Enter the date you began or will begin to pay income to a nonresident alien. This also applies to individuals who are required to file Form 1042 to report alimony paid to a nonresident alien.

Line 13. For a definition of agricultural labor (farmwork), see **Circular A**, Agricultural Employer's Tax Guide (Publication 51).

Line 14. Generally, enter the exact type of business being operated (for example, advertising agency, farm, food or beverage establishment, labor union, real estate agency, steam laundry, rental of coin-operated vending machine, or investment club). Also state if the business will involve the sale or distribution of alcoholic beverages.

Governmental. Enter the type of organization (state, county, school district, municipality, etc.).

Nonprofit organization (other than governmental). Enter whether organized for religious, educational, or humane purposes, and the principal activity (for example, religious organization—hospital, charitable).

Mining and quarrying. Specify the process and the principal product (for example, mining bituminous coal, contract drilling for oil, or quarrying dimension stone).

Contract construction. Specify whether general contracting or special trade contracting. Also, show the type of work normally performed (for example, general contractor for residential buildings or electrical subcontractor).

Food or beverage establishments. Specify the type of establishment and state whether you employ workers who receive tips (for example, lounge—yes).

Trade. Specify the type of sales and the principal line of goods sold (for example, wholesale dairy products, manufacturer's representative for mining machinery, or retail hardware).

Manufacturing. Specify the type of establishment operated (for example, sawmill or vegetable cannery).

Signature. The application must be signed by (a) the individual, if the applicant is an individual, (b) the president, vice president, or other principal officer, if the applicant is a corporation, (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the applicant is a partnership or other unincorporated organization, or (d) the fiduciary, if the applicant is a trust or an estate.

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For small businesses, return preparers, or others who may frequently need tax forms or publications, a CD-ROM containing over 2,000 tax products (including many prior year forms) can be purchased from the Government Printing Office.

CD-ROM. To order the CD-ROM call the Superintendent of Documents at 202-512-1800 or connect to www.access.gpo.gov/su_docs

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to comply with section 6109 and the regulations thereunder which generally require the inclusion of an employer identification number (EIN) on certain returns, statements, or other documents filed with the Internal Revenue Service. Information on this form may be used to determine which Federal tax returns you are required to file and to provide you with related forms and publications. We disclose this form to the Social Security Administration for their use in determining compliance with applicable laws. We will be unable to issue an EIN to you unless you provide all of the requested information which applies to your entity.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	7 min.
Learning about the law or the form	19 min.
Preparing the form	45 min.
Copying, assembling, and sending the form to the IRS	20 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send this form to this address. Instead, see **Where To Apply** on page 2.





Department of the Treasury
Internal Revenue Service

Application for Recognition of Exemption

Under Section 501(c)(3) of the Internal Revenue Code

Contents:

Form 1023 and
Instructions
Form 872-C

*Note: For the addresses for filing **Form 1023**, see **Form 8718**, User Fee for Exempt Organization Letter Request. For obtaining an employer identification number (EIN), see **Form SS-4**, Application for Employer Identification Number.*

**Package 1023
(Rev. April 1996)**



Instructions for Form 1023

(Revised April 1996)

Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

Section references are to the Internal Revenue Code unless otherwise noted.

Note: Retain a copy of the completed Form 1023 in the organization's permanent records. See **Public Inspection of Form 1023** regarding public inspection of approved applications.

Paperwork Reduction Act Notice.—We ask for the information on this form to carry out the Internal Revenue laws of the United States. If you want your organization to be recognized as tax-exempt by the IRS, you are required to give us this information. We need it to determine whether the organization meets the legal requirements for tax-exempt status.

The organization is not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. The rules governing the confidentiality of the Form 1023 application are covered in Code section 6104.

The time needed to complete and file these forms will vary depending on individual circumstances. The estimated average times are:

Form	Recordkeeping	Learning about the law or the form	Preparing, and sending the form to IRS
1023 Parts I to IV	55 hr., 29 min.	4 hr., 37 min.	8 hr., 7 min.
1023 Sch. A	7 hr., 10 min.	-0- min.	7 min.
1023 Sch. B	4 hr., 47 min.	30 min.	36 min.
1023 Sch. C	5 hr., 1 min.	35 min.	43 min.
1023 Sch. D	4 hr., 4 min.	42 min.	47 min.
1023 Sch. E	9 hr., 20 min.	1 hr., 5 min.	1 hr., 17 min.
1023 Sch. F	2 hr., 39 min.	2 hr., 53 min.	3 hr., 3 min.
1023 Sch. G	2 hr., 38 min.	-0- min.	2 min.
1023 Sch. H	1 hr., 55 min.	42 min.	46 min.
1023 Sch. I	3 hr., 35 min.	-0- min.	4 min.
872-C	1 hr., 26 min.	24 min.	26 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the application to this address. Instead, see **Where To File** on page 2.

General Instructions

User fee.—A user fee must be paid with determination letter requests submitted to the Internal Revenue Service. **Form 8718**, User Fee for Exempt Organization Determination Letter Request, must be submitted with this application along with the appropriate fee as stated on Form 8718. Form 8718 may be obtained through your local IRS office or by calling the telephone number given below for obtaining forms and publications.

Helpful information.—For additional information, get **Pub. 557**, Tax-Exempt Status for Your Organization; **Pub. 578**, Tax Information for Private Foundations and Foundation Managers; and **Pub. 598**, Tax on Unrelated Business Income of Exempt Organizations. You may also call 1-800-829-4477 to listen to recorded tax information. A touch-tone telephone is required. **Topic #310**, Tax-exempt status for organizations, and **Topic #311**, How to apply for exempt status, are informative. These topic numbers may change. If so, listen to the directory of topics for the new topic numbers or refer to the

instructions for a current **Form 1040**, U.S. Individual Income Tax Return, for the updated list of Tele-Tax Topics. For additional forms and publications, call 1-800-829-3676 (1-800-Tax-Form).

Purpose of Form

1. Completed Form 1023 required for section 501(c)(3) exemption.—Unless it meets either of the exceptions in item 2 below, or notifies the IRS that it is applying for recognition of section 501(c)(3) exempt status, no organization formed after October 9, 1969, will be considered tax-exempt under section 501(c)(3).

An organization notifies the IRS by filing a completed Form 1023. Form 1023 also solicits the information that the IRS needs to determine if the organization is a private foundation.

2. Organizations not required to file Form 1023.—The following organizations will be considered tax-exempt under section 501(c)(3) even if they do not file Form 1023: **(a)** churches, their integrated auxiliaries, and conventions or associations of churches, or **(b)** any organization that is not a private foundation (as defined in section 509(a)) and that has gross receipts in each taxable year of normally not more than \$5,000.

Even if these organizations are not required to file Form 1023 to be tax-exempt, they may wish to file Form 1023 and receive a determination letter of IRS recognition of their section 501(c)(3) status to obtain certain incidental benefits such as public recognition of their tax-exempt status; exemption from certain state taxes; advance assurance to donors of deductibility of contributions; exemption from certain Federal excise taxes; nonprofit mailing privileges, etc.

3. Other organizations.—In applying for a determination letter, cooperative service organizations, described in section 501(e) and (f), and child care organizations, described in section 501(k), use Form 1023 and are treated as section 501(c)(3) organizations.

4. Group exemption letter.—Generally, Form 1023 is not used to apply for a group exemption letter. For information on how to apply for a group exemption letter, see Pub. 557.

What To File

All applicants must complete pages 1 through 9 of Form 1023. The following organizations must also complete the schedules or form indicated:

1. Churches — Schedule A
2. Schools — Schedule B
3. Hospitals and Medical Research — Schedule C
4. Supporting Organizations (509(a)(3)) — Schedule D
5. Private Operating Foundations — Schedule E
6. Homes for the Aged or Handicapped — Schedule F
7. Child Care — Schedule G
8. Scholarship Benefits or Student Aid — Schedule H
9. Organizations that have taken over or will take over a "for profit" institution — Schedule I
10. Organizations requesting an advance ruling in Part III, Line 11 — Form 872-C

Attachments.—State on each attachment that it relates to Form 1023 and identify the applicable part and line item number. Also show on each attachment the organization's name, address, and employer identification number (EIN). Use 8½ by 11 inch paper for attachments.

In addition to the required documents and statements, include with the application any additional information citing court decisions, rulings, opinions, etc., that will expedite processing of the application. Generally, attachments in the form of tape recordings are not acceptable unless accompanied by a transcript.

When To File

An organization formed after October 9, 1969, must file Form 1023 to be recognized as an organization described in section 501(c)(3). Generally, if an organization files its application within 15 months after the end of the month in which it was formed, and if the IRS approves the application, the effective date of the organization's section 501(c)(3) status will be the date it was organized.

Generally, if an organization does not file its application (Form 1023) within 15 months after the end of the month in which it was formed, it will not qualify for exempt status during the period before the date of its application. For exceptions and special rules, including automatic extensions in some cases, see Part III of Form 1023.

Where To File

File the completed application, and all information required, with the IRS key district office for the organization's principal place of business or office as listed in Form 8718. As soon as possible after the complete application is received, you will be advised of the IRS's determination and of the annual returns (if any) that the organization will be required to file.

Signature Requirements

An officer, a trustee who is authorized to sign, or another person authorized by a power of attorney must sign this application. Send the power of attorney with the application when you file it. **Form 2848**, Power of Attorney and Declaration of Representative, may be used for this purpose.

Deductibility of Contributions

Deductions for charitable contributions are not allowed for any gifts or bequests made to organizations that do not qualify under section 501(c)(3). The effective date of an organization's section 501(c)(3) status determines the date that contributions to it are deductible by donors. (See **When To File** on page 1.)

Contributions by U.S. residents to foreign organizations generally are not deductible. Tax treaties between the U.S. and certain foreign countries provide limited exceptions. Foreign organizations (other than those in Canada or Mexico) claiming eligibility to receive contributions deductible by U.S. residents must attach an English copy of the U.S. tax treaty that provides for such deductibility.

Public Inspection of Form 1023

IRS responsibilities.—If the application is approved, it and any supporting documents will be open to public inspection in any key district office and in the Internal Revenue Service's National Office, as required by section 6104. In addition, any letter or other document issued by the IRS with regard to the application will be open to public inspection. However, information relating to a trade secret, patent, style of work, or apparatus that, if released, would adversely affect the organization, or any other information that would adversely affect the national defense, will not be made available for public inspection. Applicants must identify this information by clearly marking it "NOT SUBJECT TO PUBLIC INSPECTION" and attach a statement explaining why the organization asks that the information be withheld. If the IRS agrees, the information will be withheld.

Organization's responsibilities.—The organization must make available for public inspection a copy of its approved application and supporting documents, along with any document or letter issued by the IRS. These must be available during regular business hours at the organization's principal office and at each of its regional or district offices having at least three paid employees. See Notice 88-120, 1988-2 C.B. 454. If any person under a duty to comply with the inspection provisions fails to comply with these requirements, a penalty of \$10 a day will be imposed for each day the failure continues.

Appeal Procedures

The organization's application will be considered by the key district office which will either:

1. Issue a favorable determination letter;
2. Issue a proposed adverse determination letter denying the exempt status requested; or
3. Refer the case to the National Office.

If we send you a proposed adverse determination, we will advise you of your appeal rights at that time.

Language and Currency Requirements

Form 1023 and attachments must be prepared in English. If the organizational document or bylaws are in any other language, an English translation must be furnished. If the organization produces or distributes foreign language publications that are submitted with the application, you may be asked to provide English translations for one or more of them during the processing of the application.

Report all financial information in U.S. dollars (specify the conversion rate used). Combine amounts from within and outside the United States and report the total for each item on the financial statements.

For example:

Gross Investment Income	
From U.S. sources	\$4,000
From non-U.S. sources	<u>1,000</u>
Amount to report on income statement	\$5,000

Annual Information Return

If the annual information return for tax-exempt organizations becomes due while its application for recognition of exempt status is pending with the IRS (including any appeal of a proposed adverse determination), the organization should file **Form 990**, Return of Organization Exempt From Income Tax, (or **Form 990-EZ**, Short Form Return of Organization Exempt From Income Tax) and if required, **Schedule A (Form 990)**, Organization Exempt Under Section 501(c)(3), or **Form 990-PF**, Return of Private Foundation, if a private foundation, and indicate that an application is pending.

Special Rule for Canadian Colleges and Universities

A Canadian college or university that has received a **Form T2051**, Notification of Registration, from Revenue Canada (Department of National Revenue, Taxation) and whose registration has not been revoked, does not have to complete all parts of Form 1023 that would otherwise be applicable. Such an organization must complete only Part I of Form 1023 and Schedule B (Schools, Colleges, and Universities). The organization must also attach a copy of its **Form T2050**, Application for Registration, together with all the required attachments that it submitted to Revenue Canada. If any attachments were prepared in French, an English translation must be furnished.

Other Canadian organizations seeking a determination of section 501(c)(3) status must complete Form 1023 in the same manner as U.S. organizations.

Specific Instructions

The following instructions are keyed to the line items on the application form:

Part I. Identification of Applicant

Line 1. Full name and address of organization.—Enter the organization's name exactly as it appears in its creating document including amendments. If the organization will be operating under another name, show the other name in parentheses. Enter your nine-digit ZIP code.

If the organization's address is outside the United States or its possessions or territories, enter the information on the line for "City or town, state, and ZIP code" in the following order: city, province or state, foreign postal code, and the name of the foreign country. **Do not** abbreviate the country name.

Line 2. Employer identification number (EIN).—All organizations must have an EIN. Enter the nine-digit EIN assigned to the organization by the IRS. If the organization does **not** have an EIN, get **Form SS-4**, Application for Employer Identification Number, for details on how to obtain an EIN immediately by telephone. If the organization has previously applied for a number, enter "applied for" and attach a statement giving the date of the application and the office where it was filed. **Do not** apply for an EIN more than once.

Line 3. Person to contact.—Enter the name and telephone number of the person to contact during business hours if more information is needed. The contact person should be an officer, director, or a person with power of attorney who is familiar with the organization's activities and is authorized to act on its behalf. Attach Form 2848 or other power of attorney.

Line 4. Month the annual accounting period ends.—Enter the month the organization's annual accounting period ends. The accounting period is usually the 12-month period that is the organization's tax year. The organization's first tax year depends on the accounting period chosen. (The first tax year could be less than 12 months).

Line 5. Date formed.—Enter the date the organization became a legal entity. For a corporation, this is the date that the articles of incorporation were approved by the appropriate state official. For an unincorporated organization, it is the date its constitution or articles of association were adopted.

Line 6. Activity codes.—Select up to three of the code numbers listed on the back cover that best describe or most accurately identify the organization's purposes, activities, or type of organization. Enter the codes in the order of importance.

Line 7.—Indicate if the organization is one of the following:

- 501(e) Cooperative hospital service organization;
- 501(f) Cooperative service organization of operating educational organization;
- 501(k) Organization providing child care.

If none of the above applies, make no entry on line 7.

Line 8.—Indicate if the organization has ever filed a Form 1023 or **Form 1024**, Application for Recognition of Exemption Under Section 501(a), with the IRS.

Line 9.—If the organization for which this application is being filed is a private foundation, answer "N/A." If the organization is not required to file Form 990 (or Form 990-EZ) and is not a private foundation, answer "No" and attach an explanation. Get the Form 990 Instructions and refer to page 2 for a discussion of organizations not required to file Form 990 (or Form 990-EZ). Otherwise, answer "Yes."

Line 10.—Indicate if the organization has ever filed Federal income tax returns as a taxable organization or filed returns as an exempt organization (e.g., Form 990, 990-EZ, 990-PF, or 990-T, Exempt Organization Business Income Tax Return).

Line 11. Type of organization and organizational documents.—

Submit a conformed copy of the organizing instrument. If the organization does not have an organizing instrument, it will not qualify for exempt status. A conformed copy is one that agrees with the original and all amendments to it. The conformed copy may be a photocopy of the original signed and dated organizing document OR it may be a copy of the organizing document that is not signed but is accompanied by a written declaration signed by an authorized individual stating that the copy is a complete and accurate copy of the original signed and dated document.

In the case of a corporation, a copy of the articles of incorporation, approved and dated by an appropriate state official, is sufficient by itself. If an unsigned copy of the articles of incorporation is submitted, it must be accompanied by the written declaration discussed above. Signed or unsigned copies of the articles of incorporation must be accompanied by a declaration stating that the original copy of the articles was filed with, and approved by, the state. The date filed must be specified.

In the case of an unincorporated association, the conformed copy of the constitution, articles of association, or other organizing document must indicate in the document itself, or in a written declaration, that the organization was formed by the adoption of the document by two or more persons.

If the organization has adopted bylaws, include a current copy. The bylaws need not be signed if submitted as an attachment to the application for recognition of exemption. The bylaws of an organization alone are not an organizing instrument. They are merely the internal rules and regulations of the organization.

In the case of a trust, a copy of the signed and dated trust instrument must be furnished.

For your organization to qualify for exempt status, its organizing instrument must contain a proper dissolution clause, or state law must provide for distribution of assets for one or more exempt (section 501(c)(3)) purposes upon dissolution. If you rely on state law, please cite the law and briefly state its provisions on an attachment. Foreign organizations must cite and attach a copy of the foreign statute along with an English language translation.

See Pub. 557 for a discussion of dissolution clauses under the heading, **Dedication and Distribution of Assets**. Examples of dissolution clauses are shown in the sample organizing instruments.

The organizing instrument must also specify the organizational purposes and the purposes specified must be limited to one or more of those set out in section 501(c)(3). See Pub. 557 for detailed instructions and for sample organizing instruments that satisfy the requirements of section 501(c)(3) and the related regulations.

Part II. Activities and Operational Information

Line 1.—It is important that you report all activities carried on by the organization to enable the IRS to make a proper determination of the organization's exempt status.

Line 2.—If it is anticipated that the organization's principal sources of support will increase or decrease substantially in relation to the organization's total support, attach a statement describing anticipated changes and explaining the basis for the expectation.

Line 3.—For purposes of providing the information requested on line 3, "fundraising activity" includes the solicitation of contributions and both functionally related activities and unrelated business activities. Include a description of the nature and magnitude of the activities.

Line 4a.—Furnish the mailing addresses of the organization's principal officers, directors, or trustees. Do not give the address of the organization.

Line 4b.—The annual compensation includes salary, bonus, and any other form of payment to the individual for services while employed by the organization.

Line 4c.—Public officials include anyone holding an elected position or anyone appointed to a position by an elected official.

Line 4d.—For purposes of this application, a "disqualified person" is any person who, if the applicant organization were a private foundation, is:

1. A "substantial contributor" to the foundation (defined below);
2. A foundation manager;
3. An owner of more than 20% of the total combined voting power of a corporation that is a substantial contributor to the foundation;
4. A "member of the family" of any person described in 1, 2, or 3 above;
5. A corporation, partnership, or trust in which persons described in 1, 2, 3, or 4 above, hold more than 35% of the combined voting power, the profits interest, or the beneficial interests; and
6. Any other private foundation that is effectively controlled by the same persons who control the first-mentioned private foundation or any other private foundation substantially all of whose contributions were made by the same contributors.

A substantial contributor is any person who gave a total of more than \$5,000 to the organization, and those contributions are more than 2% of all the contributions and bequests received by the organization from the date it was created up to the end of the year the contributions by the substantial contributor were received. A creator of a trust is treated as a substantial contributor regardless of the amount contributed by that person or others.

See Pub. 578 for more information on "disqualified persons."

Line 5.—If your organization controls or is controlled by another exempt organization or a taxable organization, answer "Yes." "Control" means that:

1. Fifty percent (50%) or more of the filing organization's officers, directors, trustees, or key employees are also officers, directors, trustees, or key employees of the second organization being tested for control;
2. The filing organization appoints 50% or more of the officers, directors, trustees, or key employees of the second organization; or
3. Fifty percent (50%) or more of the filing organization's officers, directors, trustees, or key employees are appointed by the second organization.

Control exists if the 50% test is met by any one group of persons even if collectively the 50% test is not met. Examples of special relationships are common officers and the sharing of office space or employees.

Line 6.—If the organization conducts any financial transactions (either receiving funds or paying out funds), or nonfinancial activities with an exempt organization (other than a 501(c)(3) organization), or with a political organization, answer "Yes," and explain.

Line 7.—If the organization must report its income and expense activity to any other organization (tax-exempt or taxable entity), answer "Yes."

Line 8.—Examples of assets used to perform an exempt function are: land, building, equipment, and publications. Do not include cash or property producing investment income. If you have no assets used in performing the organization's exempt function, answer "N/A."

Line 10a.—If the organization is managed by another exempt organization, a taxable organization, or an individual, answer "Yes."

Line 10b.—If the organization leases property from anyone or leases any of its property to anyone, answer “Yes.”

Line 11.—A membership organization for purposes of this question is an organization that is composed of individuals or organizations who:

1. Share in the common goal for which the organization was created;
2. Actively participate in achieving the organization’s purposes; and
3. Pay dues.

Line 12.—Examples of benefits, services, and products are: meals to homeless people, home for the aged, museum open to the public, and a symphony orchestra giving public performances.

Note: *Organizations that provide low-income housing should see Rev. Proc. 96-32, 1996-20 I.R.B. 14, for a “safe harbor” and an alternative facts and circumstances test to be used in completing line 12.*

Line 13.—An organization is attempting to influence legislation if it contacts or urges the public to contact members of a legislative body, for the purpose of proposing, supporting, or opposing legislation, or if it advocates the adoption or rejection of legislation.

If you answer “Yes,” you may want to file **Form 5768**, Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation.

Line 14.—An organization is intervening in a political campaign if it promotes or opposes the candidacy or prospective candidacy of an individual for public office.

Part III. Technical Requirements

Line 1.—If you check “Yes,” proceed to line 8. If you check “No,” proceed to line 2.

Line 2a.—To qualify as an integrated auxiliary, an organization must not be a private foundation and must satisfy the affiliation and support tests of Regulations section 1.6033-2(h).

Line 3.—Relief from the 15-month filing requirement is granted automatically if the organization submits a completed Form 1023 within 12 months from the end of the 15-month period.

Line 4.—See Rev. Proc. 92-85, 1992-2 C.B. 490, for information about an extension beyond the 27-month period. According to section 5.01 of Rev. Proc. 92-85, the IRS will allow an organization an extension of time to file a Form 1023 application under a reasonable action and good-faith standard. In such case, the organization does not need to provide any further information or affidavits provided that it files its application before the IRS has discovered the organization’s failure to file an application.

Line 5.—The reasons for late filing should be specific to your particular organization and situation. Rev. Proc. 92-85 lists the factors the IRS will consider in determining if good cause exists for granting an extension of time to file the application. (Also see Pub. 557.) To address these factors, your response on line 5 should provide the following information:

1. Whether the organization consulted an attorney or accountant knowledgeable in tax matters or communicated with a responsible IRS employee (before or after the organization was created) to ascertain the organization’s Federal filing requirements and, if so, the names and occupations or titles of the persons contacted, the approximate dates, and the substance of the information obtained;
2. How and when the organization learned about the 15-month deadline for filing Form 1023;
3. Whether any significant intervening circumstances beyond the organization’s control prevented it from submitting the application timely or within a reasonable period of time after it learned of the requirement to file the application within the 15-month period; and
4. Any other information that you believe may establish good cause for not filing timely or otherwise justify granting the relief sought.

Line 7.—The organization may still be able to qualify for exemption under section 501(c)(4) for the period preceding the effective date of its exemption as a section 501(c)(3) organization. If the organization is qualified under section 501(c)(4) and page 1 of Form 1024 is filed as directed, the organization will not be liable for income tax returns as a taxable entity. Contributions to section 501(c)(4) organizations are generally not deductible by donors as charitable contributions.

Line 8.—Private foundations are subject to various requirements, restrictions, and excise taxes under Chapter 42 of the Code that do not apply to public charities. Also, contributions to private

foundations may receive less favorable treatment than contributions to public charities. See Pub. 578. Therefore, it is usually to an organization’s advantage to show that it qualifies as a public charity rather than as a private foundation if its activities or sources of support permit it to do so. Unless an organization meets one of the exceptions below, it is a private foundation. In general, an organization is **not** a private foundation if it is:

1. A church, school, hospital, or governmental unit;
2. A medical research organization operated in conjunction with a hospital;
3. An organization operated for the benefit of a college or university that is owned or operated by a governmental unit;
4. An organization that normally receives a substantial part of its support in the form of contributions from a governmental unit or from the general public as provided in section 170(b)(1)(A)(vi);
5. An organization that normally receives not more than one-third of its support from gross investment income and more than one-third of its support from contributions, membership fees, and gross receipts related to its exempt functions (subject to certain exceptions) as provided in section 509(a)(2);
6. An organization operated solely for the benefit of, and in connection with, one or more organizations described above (or for the benefit of one or more of the organizations described in section 501(c)(4), (5), or (6) of the Code and also described in 5 above), but not controlled by disqualified persons other than foundation managers, as provided in section 509(a)(3); or
7. An organization organized and operated to test for public safety as provided in section 509(a)(4).

Line 9.—Basis for private operating foundation status: (Complete this line **only** if you answered “Yes” to the question on line 8.)

A “private operating foundation” is a private foundation that spends substantially all of its adjusted net income or its minimum investment return, whichever is less, directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated. The foundation must satisfy the income test and one of the three supplemental tests: **(1)** the assets test; **(2)** the endowment test; or **(3)** the support test. For additional information, see Pub. 578.

Line 10.—Basis for nonprivate foundation status: Check the box that shows why your organization is not a private foundation.

Box (a). A church or convention or association of churches.

Box (b). A school.—See the definition in the instructions for Schedule B.

Box (c). A hospital or medical research organization.—See the instructions for Schedule C.

Box (d). A governmental unit.—This category includes a state, a possession of the United States, or a political subdivision of any of the foregoing, or the United States, or the District of Columbia.

Box (e). Organizations operated in connection with or solely for organizations described in (a) through (d) or (g), (h), and (i).—The organization must be organized and operated for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in section 509(a)(1) or (2). It must be operated, supervised, or controlled by or in connection with one or more of the organizations described in the instructions for boxes **(a)** through **(d)** or **(g)**, **(h)**, and **(i)**. It must not be controlled directly or indirectly by disqualified persons (other than foundation managers or organizations described in section 509(a)(1) or (2)). To show whether the organization satisfies these tests, complete Schedule D.

Box (f). An organization testing for public safety.—An organization in this category is one that tests products to determine their acceptability for use by the general public. It does not include any organization testing for the benefit of a manufacturer as an operation or control in the manufacture of its product.

Box (g). Organization for the benefit of a college or university owned or operated by a governmental unit.—The organization must be organized and operated exclusively for the benefit of a college or university that is an educational organization within the meaning of section 170(b)(1)(A)(ii) and is an agency or instrumentality of a state or political subdivision of a state; is owned or operated by a state or political subdivision of a state; or is owned or operated by an agency or instrumentality of one or more states or political subdivisions. The organization must also normally receive a substantial part of its support from the United States or any state or political subdivision of a state, or from direct or indirect contributions from the general

public or from a combination of these sources. An organization described in section 170(b)(1)(A)(iv) will be subject to the same publicly supported rules that are applicable to 170(b)(1)(A)(vi) organizations described in box (h) below.

Box (h). Organization receiving support from a governmental unit or from the general public.—The organization must receive a substantial part of its support from the United States or any state or political subdivision, or from direct or indirect contributions from the general public, or from a combination of these sources. The organization may satisfy the support requirement in either of two ways. It will be treated as publicly supported if the support it normally receives from the above-described governmental units and the general public equals at least one-third of its total support. It will also be treated as publicly supported if the support it normally receives from governmental or public sources equals at least 10% of total support and the organization is set up to attract new and additional public or governmental support on a continuous basis. If the organization's governmental and public support is at least 10%, but not over one-third of its total support, the questions on lines 1 through 14 of Part II will apply to determine both the organization's claim of exemption and whether it is publicly supported. Preparers should exercise care to assure that those questions are answered in detail.

Box (i). Organization described in section 509(a)(2).—The organization must satisfy the support test under section 509(a)(2)(A) and the gross investment income test under section 509(a)(2)(B). To satisfy the support test, the organization must normally receive more than one-third of its support from: (a) gifts, grants, contributions, or membership fees, and (b) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity that is not an unrelated trade or business (subject to certain limitations discussed below). This one-third of support must be from organizations described in section 509(a)(1), governmental sources, or persons other than disqualified persons. In computing gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in an activity that is not an unrelated trade or business, the gross receipts from any one person or from any bureau or similar agency of a governmental unit are includable only to the extent they do not exceed the greater of \$5,000 or 1% of the organization's total support. To satisfy the gross investment income test, the organization must not receive more than one-third of its support from gross investment income.

Box (j).—If you believe the organization meets the public support test of section 170(b)(1)(A)(vi) or 509(a)(2) but are uncertain as to which public support test it satisfies, check box (j). By checking this box, you are claiming that the organization is not a private foundation and are agreeing to let the IRS compute the public support of your organization and determine the correct foundation status.

Line 11.—To receive a definitive (final) ruling under sections 170(b)(1)(A)(vi) and 509(a)(1) or under section 509(a)(2), an organization must have completed a tax year consisting of at least 8 months. Organizations that checked box (h), (i), or (j) on line 10 that do not satisfy the 8-month requirement must request an advance ruling covering their first 5 tax years instead of a definitive ruling.

An organization that satisfies the 8-month requirement has two options:

1. It may request a definitive ruling. In this event, the organization's qualification under sections 170(b)(1)(A)(vi) and 509(a)(1) or under section 509(a)(2) will be based on the support that the organization has received to date; or

2. It may request an advance ruling. If the IRS issues the advance ruling, the organization's public support computation will be based on the support it receives during its first 5 tax years. An organization should consider this option if it has not received significant public support during its first tax year or during its first and second tax years, but it reasonably expects to receive such support by the end of its fifth tax year. An organization that receives an advance ruling is treated, during the 5-year advance ruling period, as a public charity (rather than a private foundation) for certain purposes, including those relating to the deductibility of contributions by the general public.

Line 12.—For definition of an unusual grant, see instructions for Part IV-A, line 12.

Line 13.—Answer this question only if you checked box (g), (h), or (j) on line 10.

Line 14.—Answer the question on this line only if you checked box (i) or (j) on line 10 and are requesting a definitive ruling on line 11.

Line 15.—Answer "Yes" or "No" on each line. If "Yes," you must complete the appropriate schedule. Each schedule is included in this application package with accompanying instructions. For a brief definition of each type of organization, see the appropriate schedule.

Part IV. Financial Data

The Statement of Revenue and Expenses must be completed for the current year and each of the 3 years immediately before it (or the years the organization has existed, if less than 4). Any applicant that has existed for less than 1 year must give financial data for the current year and proposed budgets for the following 2 years. We may request financial data for more than 4 years if necessary. All financial information for the current year must cover the period beginning on the first day of the organization's established annual accounting period and ending on any day that is within 60 days of the date of this application. If the date of this application is less than 60 days after the first day of the current accounting period, no financial information is required for the current year. Financial information is required for the 3 preceding years regardless of the current year requirements. Please note that if no financial information is required for the current year, the preceding year's financial information can end on any day that is within 60 days of the date of this application. Prepare the statements using the method of accounting and the accounting period (entered on line 4 of Part I) the organization uses in keeping its books and records. If the organization uses a method other than the cash receipts and disbursements method, attach a statement explaining the method used.

A. Statement of Revenue and Expenses

Line 1.—Do not include amounts received from the general public or a governmental unit for the exercise or performance of the organization's exempt functions. However, payments made by a governmental unit to enable the organization to provide a service to the general public should be included. Also, do not include unusual grants. For an explanation of unusual grants, see the discussion for **Line 12** on the following page.

Line 2.—Include amounts received from members for the basic purpose of providing support to the organization. These are considered to be contributions. Do not include payments to purchase admissions, merchandise, services, or use of facilities.

Line 3.—Include on this line the income received from dividends, interest, and payments received on securities loans, rents, and royalties.

Line 4.—Enter the organization's net income from any activities that are regularly carried on and are not related to the organization's exempt purposes. Examples of such income include fees from the commercial testing of products; income from renting office equipment or other personal property; and income from the sale of advertising in an exempt organization's periodical. See Pub. 598 for information about unrelated business income and activities.

Line 5.—Enter the amount collected by the local tax authority from the general public that has been allocated for your organization.

Line 6.—To report the value of services and/or facilities furnished by a governmental unit, use the fair market value at the time the service/facility was furnished to your organization. Do not include any other donated services or facilities in Part IV.

Line 7.—Enter the total income from all sources that is not reported on lines 1 through 6, or lines 9, 11, and 12. Attach a schedule that lists each type of revenue source and the amount derived from each.

Line 9.—Include income generated by the organization's exempt function activities (charitable, educational, etc.) and by its nontaxable fundraising events (excluding any contributions received). Examples of such income include the income derived by a symphony orchestra from the sale of tickets to its performances; and raffles, bingo, or other fundraising-event income that is not taxable as unrelated business income because the income-producing activities are not regularly carried on or because they are conducted with substantially all (at least 85%) volunteer labor. Record related cost of sales on line 22, Other.

Line 11.—Attach a schedule that shows a description of each asset, the name of the person to whom sold, and the amount received. In the case of publicly traded securities sold through a broker, the name of the purchaser is not required.

Line 12.—Unusual grants generally consist of substantial contributions and bequests from disinterested persons that:

1. Are attracted by reason of the publicly supported nature of the organization;
2. Are unusual and unexpected as to the amount; and
3. Would, by reason of their size, adversely affect the status of the organization as normally meeting the support test of section 170(b)(1)(A)(vi) or section 509(a)(2), as the case may be.

If the organization is awarded an unusual grant and the terms of the granting instrument provide that the organization will receive the funds over a period of years, the amount received by the organization each year under the grant may be excluded. See the regulations under sections 170 and 509.

Line 14.—Fundraising expenses represent the total expenses incurred in soliciting contributions, gifts, grants, etc.

Line 15.—Attach a schedule showing the name of the recipient, a brief description of the purposes or conditions of payment, and the amount paid. The following example shows the format and amount of detail required for this schedule:

Recipient	Purpose	Amount
Museum of Natural History	General operating budget	\$9,000
State University	Books for needy students	4,500
Richard Roe	Educational scholarship	2,200

Colleges, universities, and other educational institutions and agencies subject to the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) are not required to list the names of individuals who were provided scholarships or other financial assistance where such disclosure would violate the privacy provisions of the law. Instead, such organizations should group each type of financial aid provided, indicate the number of individuals who received the aid, and specify the aggregate dollar amount.

Line 16.—Attach a schedule showing the name of each recipient, a brief description of the purposes or condition of payment, and amount paid. Do not include any amounts that are on line 15. The schedule should be similar to the schedule shown in the line 15 instructions above.

Line 17.—Attach a schedule that shows the name of the person compensated; the office or position; the average amount of time devoted to the organization's affairs per week, month, etc.; and the amount of annual compensation. The following example shows the format and amount of detail required:

Name	Position	Time devoted	Annual salary
Philip Poe	President and general manager	16 hrs. per wk.	\$7,500

Line 18.—Enter the total of employees' salaries not reported on line 17.

Line 19.—Enter the total interest expense for the year, excluding mortgage interest treated as occupancy expense on line 20.

Line 20.—Enter the amount paid for the use of office space or other facilities, heat, light, power, and other utilities, outside janitorial services, mortgage interest, real estate taxes, and similar expenses.

Line 21.—If your organization records depreciation, depletion, and similar expenses, enter the total.

Line 22.—Attach a schedule listing the type and amount of each significant expense for which a separate line is not provided. Report other miscellaneous expenses as a single total if not substantial in amount.

B. Balance Sheet

Line 1.—Enter the total cash in checking and savings accounts, temporary cash investments (money market funds, CDs, treasury bills, or other obligations that mature in less than 1 year), change funds, and petty cash funds.

Line 2.—Enter the total accounts receivable that arose from the sale of goods and/or performance of services, less any reserve for bad debt.

Line 3.—Enter the amount of materials, goods, and supplies purchased or manufactured by the organization and held to be sold or used in some future period.

Line 4.—Attach a schedule that shows the name of the borrower, a brief description of the obligation, the rate of return on the principal indebtedness, the due date, and the amount due. The following example shows the format and amount of detail required:

Name of borrower	Description of obligation	Rate of return	Due date	Amount
Hope Soap Corporation	Debenture bond (no senior issue outstanding)	10%	Jan. 2004	\$ 7,500
Big Spool Company	Collateral note secured by company's fleet of 20 delivery trucks	12%	Jan. 2003	62,000

Line 5.—Attach a schedule listing the organization's corporate stock holdings. For stock of closely held corporations, the statement should show the name of the corporation, a brief summary of the corporation's capital structure, and the number of shares held and their value as carried on the organization's books. If such valuation does not reflect current fair market value, also include fair market value. For stock traded on an organized exchange or in substantial quantities over the counter, the statement should show the name of the corporation, a description of the stock and the principal exchange on which it is traded, the number of shares held, and their value as carried on the organization's books. The following example shows the format and the amount of detail required:

Name of corporation	Capital structure (or exchange on which traded)	Shares	Book amount	Fair market value
Little Spool Corporation	100 shares nonvoting preferred issued and outstanding, no par value; 50 shares common issued and outstanding, no par value.			
	Preferred shares:	50	\$20,000	\$24,000
	Common shares:	10	25,000	30,000
Flintlock Corporation	Class A common N.Y.S.E.	20	3,000	3,500

Line 6.—Report each loan separately, even if more than one loan was made to the same person. Attach a schedule that shows the borrower's name, purpose of loan, repayment terms, interest rate, and original amount of loan.

Line 7.—Enter the book value of government securities held (U.S., state, or municipal). Also enter the book value of buildings and equipment held for investment purposes. Attach a schedule identifying and reporting the book value of each.

Line 8.—Enter the book value of buildings and equipment **not** held for investment. This includes plant and equipment used by the organization in conducting its exempt activities. Attach a schedule listing these assets held at the end of the current tax year/period and the cost or other basis.

Line 9.—Enter the book value of land **not** held for investment.

Line 10.—Enter the book value of each category of assets not reported on lines 1 through 9. Attach a schedule listing each.

Line 12.—Enter the total of accounts payable to suppliers and others, such as salaries payable, accrued payroll taxes, and interest payable.

Line 13.—Enter the unpaid portion of grants and contributions that the organization has made a commitment to pay other organizations or individuals.

Line 14.—Enter the total of mortgages and other notes payable outstanding at the end of the current tax year/period. Attach a schedule that shows each item separately and the lender's name, purpose of loan, repayment terms, interest rate, and original amount.

Line 15.—Enter the amount of each liability not reported on lines 12 through 14. Attach a separate schedule.

Line 17.—Under fund accounting, an organization segregates its assets, liabilities, and net assets into separate funds according to restrictions on the use of certain assets. Each fund is like a separate entity in that it has a self-balancing set of accounts showing assets, liabilities, equity (fund balance), income, and expenses. If the organization does not use fund accounting, report only the "net assets" account balances, such as: capital stock, paid-in capital, and retained earnings or accumulated income.

Procedural Checklist

Make sure the application is complete.

If you do not complete all applicable parts or do not provide all required attachments, we may return the incomplete application to your organization for resubmission with the missing information or attachments. This will delay the processing of the application and may delay the effective date of your organization's exempt status. The organization may also incur additional user fees.

Have you . . .

- _____ Attached **Form 8718** (User Fee for Exempt Organization Determination Letter Request) and the appropriate fee?
- _____ Located the correct **IRS key district office** for the mailing of the application? (See **Where To File** addresses on Form 8718.) Do **not** file the application with your local Internal Revenue Service Center.
- _____ Completed Parts I through IV and any other schedules that apply to the organization?
- _____ Shown the organization's **Employer Identification Number (EIN)**?
 - a. If your organization has an EIN, write it in the space provided.
 - b. If this is a newly formed organization and does not have an Employer Identification Number, obtain an EIN by telephone. (See Specific Instructions, Part I, Line 2, on page 2.)
- _____ Described your organization's **specific activities** as directed in Part II, line 1, of the application?
- _____ Included a **conformed copy** of the complete organizing instrument? (See Specific Instructions, Part I, Line 11, on page 3.)
- _____ Had the application signed by one of the following?
 - a. An officer or trustee who is authorized to sign (e.g., president, treasurer); **or**
 - b. A person authorized by a power of attorney (Submit Form 2848, or other power of attorney)
- _____ Enclosed **financial statements** (Part IV)?
 - a. Current year (must include period up to within 60 days of the date the application is filed) and 3 preceding years.
 - b. Detailed breakdown of revenue and expenses (no lump sums).
 - c. If the organization has been in existence less than 1 year, you must also submit proposed budgets for 2 years showing the amounts and types of receipts and expenditures anticipated.

Note: *During the technical review of a completed application by the Employee Plans/Exempt Organizations Division in the key district or by Exempt Organizations Division in the National Office, it may be necessary to contact the organization for more specific or additional information.*

Do not send this checklist with the application.

Part II Activities and Operational Information

- 1** Provide a detailed narrative description of all the activities of the organization—past, present, and planned. **Do not merely refer to or repeat the language in the organizational document.** List each activity separately in the order of importance based on the relative time and other resources devoted to the activity. Indicate the percentage of time for each activity. Each description should include, as a minimum, the following: **(a)** a detailed description of the activity including its purpose and how each activity furthers your exempt purpose; **(b)** when the activity was or will be initiated; and **(c)** where and by whom the activity will be conducted.

-
- 2** What are or will be the organization's sources of financial support? List in order of size.

-
- 3** Describe the organization's fundraising program, both actual and planned, and explain to what extent it has been put into effect. Include details of fundraising activities such as selective mailings, formation of fundraising committees, use of volunteers or professional fundraisers, etc. Attach representative copies of solicitations for financial support.
-

Part II Activities and Operational Information (Continued)

4 Give the following information about the organization's governing body:

a Names, addresses, and titles of officers, directors, trustees, etc.

b Annual compensation

c Do any of the above persons serve as members of the governing body by reason of being public officials or being appointed by public officials? Yes No
If "Yes," name those persons and explain the basis of their selection or appointment.

d Are any members of the organization's governing body "disqualified persons" with respect to the organization (other than by reason of being a member of the governing body) or do any of the members have either a business or family relationship with "disqualified persons"? (See **Specific Instructions** for Part II, Line 4d, on page 3.) Yes No
If "Yes," explain.

5 Does the organization control or is it controlled by any other organization? Yes No
Is the organization the outgrowth of (or successor to) another organization, or does it have a special relationship with another organization by reason of interlocking directorates or other factors? Yes No
If either of these questions is answered "Yes," explain.

6 Does or will the organization directly or indirectly engage in any of the following transactions with any political organization or other exempt organization (other than a 501(c)(3) organization): (a) grants; (b) purchases or sales of assets; (c) rental of facilities or equipment; (d) loans or loan guarantees; (e) reimbursement arrangements; (f) performance of services, membership, or fundraising solicitations; or (g) sharing of facilities, equipment, mailing lists or other assets, or paid employees? Yes No
If "Yes," explain fully and identify the other organizations involved.

7 Is the organization financially accountable to any other organization? Yes No
If "Yes," explain and identify the other organization. Include details concerning accountability or attach copies of reports if any have been submitted.

Part II Activities and Operational Information (Continued)

8 What assets does the organization have that are used in the performance of its exempt function? (Do not include property producing investment income.) If any assets are not fully operational, explain their status, what additional steps remain to be completed, and when such final steps will be taken. If "None," indicate "N/A."

9 Will the organization be the beneficiary of tax-exempt bond financing within the next 2 years? Yes No

10a Will any of the organization's facilities or operations be managed by another organization or individual under a contractual agreement? Yes No

b Is the organization a party to any leases? Yes No

If either of these questions is answered "Yes," attach a copy of the contracts and explain the relationship between the applicant and the other parties.

11 Is the organization a membership organization? Yes No
If "Yes," complete the following:

a Describe the organization's membership requirements and attach a schedule of membership fees and dues.

b Describe the organization's present and proposed efforts to attract members and attach a copy of any descriptive literature or promotional material used for this purpose.

c What benefits do (or will) the members receive in exchange for their payment of dues?

12a If the organization provides benefits, services, or products, are the recipients required, or will they be required, to pay for them? N/A Yes No
If "Yes," explain how the charges are determined and attach a copy of the current fee schedule.

b Does or will the organization limit its benefits, services, or products to specific individuals or classes of individuals? N/A Yes No
If "Yes," explain how the recipients or beneficiaries are or will be selected.

13 Does or will the organization attempt to influence legislation? Yes No
If "Yes," explain. Also, give an estimate of the percentage of the organization's time and funds that it devotes or plans to devote to this activity.

14 Does or will the organization intervene in any way in political campaigns, including the publication or distribution of statements? Yes No
If "Yes," explain fully.

Part III Technical Requirements

1 Are you filing Form 1023 within 15 months from the end of the month in which your organization was created or formed? Yes No
If you answer "Yes," do not answer questions on lines 2 through 7 below.

2 If one of the exceptions to the 15-month filing requirement shown below applies, check the appropriate box and proceed to question 8.
Exceptions—You are not required to file an exemption application within 15 months if the organization:
 a Is a church, interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church. See Specific Instructions, Line 2a, on page 4;
 b Is not a private foundation and normally has gross receipts of not more than \$5,000 in each tax year; or
 c Is a subordinate organization covered by a group exemption letter, but only if the parent or supervisory organization timely submitted a notice covering the subordinate.

3 If the organization does not meet any of the exceptions on line 2 above, are you filing Form 1023 within 27 months from the end of the month in which the organization was created or formed? Yes No

If "Yes," your organization qualifies under section 4.01 of Rev. Proc. 92-85, 1992-2 C.B. 490, for an automatic 12-month extension of the 15-month filing requirement. Do not answer questions 4 through 7.

If "No," answer question 4.

4 If you answer "No" to question 3, has the organization been contacted by the IRS regarding its failure to file Form 1023 within 27 months from the end of the month in which the organization was created or formed? Yes No

If "No," your organization is requesting an extension of time to apply under the "reasonable action and good faith" requirements of section 5.01 of Rev. Proc. 92-85. Do not answer questions 5 through 7.

If "Yes," answer question 5.

5 If you answer "Yes" to question 4, does the organization wish to request relief from the 15-month filing requirement? Yes No

If "Yes," give the reasons for not filing this application prior to being contacted by the IRS. See Specific Instructions, Line 5, on page 4 before completing this item. Do not answer questions 6 and 7.

If "No," answer question 6.

6 If you answer "No" to question 5, your organization's qualification as a section 501(c)(3) organization can be recognized only from the date this application is filed with your key District Director. Therefore, do you want us to consider the application as a request for recognition of exemption as a section 501(c)(3) organization from the date the application is received and not retroactively to the date the organization was created or formed? Yes No

7 If you answer "Yes" to question 6 above and wish to request recognition of section 501(c)(4) status for the period beginning with the date the organization was formed and ending with the date the Form 1023 application was received (the effective date of the organization's section 501(c)(3) status), check here and attach a completed page 1 of Form 1024 to this application.

Part III Technical Requirements (Continued)

- 8** Is the organization a private foundation?
 Yes (Answer question 9.)
 No (Answer question 10 and proceed as instructed.)

- 9** If you answer "Yes" to question 8, does the organization claim to be a private operating foundation?
 Yes (Complete Schedule E.)
 No

After answering question 9 on this line, go to line 15 on page 7.

- 10** If you answer "No" to question 8, indicate the public charity classification the organization is requesting by checking the box below that most appropriately applies:

THE ORGANIZATION IS NOT A PRIVATE FOUNDATION BECAUSE IT QUALIFIES:

- | | | |
|----------|---|--|
| a | <input type="checkbox"/> As a church or a convention or association of churches
(CHURCHES MUST COMPLETE SCHEDULE A.) | Sections 509(a)(1)
and 170(b)(1)(A)(i) |
| b | <input type="checkbox"/> As a school (MUST COMPLETE SCHEDULE B.) | Sections 509(a)(1)
and 170(b)(1)(A)(ii) |
| c | <input type="checkbox"/> As a hospital or a cooperative hospital service organization, or a
medical research organization operated in conjunction with a
hospital (MUST COMPLETE SCHEDULE C.) | Sections 509(a)(1)
and 170(b)(1)(A)(iii) |
| d | <input type="checkbox"/> As a governmental unit described in section 170(c)(1). | Sections 509(a)(1)
and 170(b)(1)(A)(v) |
| e | <input type="checkbox"/> As being operated solely for the benefit of, or in connection with,
one or more of the organizations described in a through d , g , h , or i
(MUST COMPLETE SCHEDULE D.) | Section 509(a)(3) |
| f | <input type="checkbox"/> As being organized and operated exclusively for testing for public
safety. | Section 509(a)(4) |
| g | <input type="checkbox"/> As being operated for the benefit of a college or university that is
owned or operated by a governmental unit. | Sections 509(a)(1)
and 170(b)(1)(A)(iv) |
| h | <input type="checkbox"/> As receiving a substantial part of its support in the form of
contributions from publicly supported organizations, from a
governmental unit, or from the general public. | Sections 509(a)(1)
and 170(b)(1)(A)(vi) |
| i | <input type="checkbox"/> As normally receiving not more than one-third of its support from
gross investment income and more than one-third of its support from
contributions, membership fees, and gross receipts from activities
related to its exempt functions (subject to certain exceptions). | Section 509(a)(2) |
| j | <input type="checkbox"/> The organization is a publicly supported organization but is not sure
whether it meets the public support test of block h or block i . The
organization would like the IRS to decide the proper classification. | Sections 509(a)(1)
and 170(b)(1)(A)(vi)
or Section 509(a)(2) |

If you checked one of the boxes a through f in question 10, go to question 15. If you checked box g in question 10, go to questions 12 and 13. If you checked box h, i, or j, in question 10, go to question 11.

Part III Technical Requirements (Continued)

11 If you checked box **h, i, or j** in question 10, has the organization completed a tax year of at least 8 months?
 Yes—Indicate whether you are requesting:
 A definitive ruling (Answer questions 12 through 15.)
 An advance ruling (Answer questions 12 and 15 and attach two Forms 872-C completed and signed.)
 No—**You must request an advance ruling by completing and signing two Forms 872-C and attaching them to the application.**

12 If the organization received any unusual grants during any of the tax years shown in Part IV-A, attach a list for each year showing the name of the contributor; the date and the amount of the grant; and a brief description of the nature of the grant.

13 If you are requesting a definitive ruling under section 170(b)(1)(A)(iv) or (vi), check here and:
a Enter 2% of line 8, column (e), Total, of Part IV-A. _____
b Attach a list showing the name and amount contributed by each person (other than a governmental unit or “publicly supported” organization) whose total gifts, grants, contributions, etc., were more than the amount entered on line **13a** above.

14 If you are requesting a definitive ruling under section 509(a)(2), check here and:
a For each of the years included on lines 1, 2, and 9 of Part IV-A, attach a list showing the name of and amount received from each “disqualified person.” (For a definition of “disqualified person,” see **Specific Instructions**, Part II, Line 4d, on page 3.)
b For each of the years included on line 9 of Part IV-A, attach a list showing the name of and amount received from each payer (other than a “disqualified person”) whose payments to the organization were more than \$5,000. For this purpose, “payer” includes, but is not limited to, any organization described in sections 170(b)(1)(A)(i) through (vi) and any governmental agency or bureau.

15 Indicate if your organization is one of the following. If so, complete the required schedule. (Submit only those schedules that apply to your organization. Do not submit blank schedules.)	Yes	No	If “Yes,” complete Schedule:
Is the organization a church?			A
Is the organization, or any part of it, a school?			B
Is the organization, or any part of it, a hospital or medical research organization?			C
Is the organization a section 509(a)(3) supporting organization?			D
Is the organization a private operating foundation?			E
Is the organization, or any part of it, a home for the aged or handicapped?			F
Is the organization, or any part of it, a child care organization?			G
Does the organization provide or administer any scholarship benefits, student aid, etc.?			H
Has the organization taken over, or will it take over, the facilities of a “for profit” institution? . . .			I

Part IV Financial Data

Complete the financial statements for the current year and for each of the 3 years immediately before it. If in existence less than 4 years, complete the statements for each year in existence. If in existence less than 1 year, also provide proposed budgets for the 2 years following the current year.

A. Statement of Revenue and Expenses

		Current tax year	3 prior tax years or proposed budget for 2 years			
		(a) From to	(b) 19.....	(c) 19.....	(d) 19.....	(e) TOTAL
Revenue	1 Gifts, grants, and contributions received (not including unusual grants—see pages 5 and 6 of the instructions)					
	2 Membership fees received					
	3 Gross investment income (see instructions for definition)					
	4 Net income from organization's unrelated business activities not included on line 3					
	5 Tax revenues levied for and either paid to or spent on behalf of the organization					
	6 Value of services or facilities furnished by a governmental unit to the organization without charge (not including the value of services or facilities generally furnished the public without charge)					
	7 Other income (not including gain or loss from sale of capital assets) (attach schedule)					
	8 Total (add lines 1 through 7)					
	9 Gross receipts from admissions, sales of merchandise or services, or furnishing of facilities in any activity that is not an unrelated business within the meaning of section 513. Include related cost of sales on line 22.					
	10 Total (add lines 8 and 9)					
	11 Gain or loss from sale of capital assets (attach schedule)					
	12 Unusual grants					
	13 Total revenue (add lines 10 through 12)					
Expenses	14 Fundraising expenses					
	15 Contributions, gifts, grants, and similar amounts paid (attach schedule)					
	16 Disbursements to or for benefit of members (attach schedule)					
	17 Compensation of officers, directors, and trustees (attach schedule)					
	18 Other salaries and wages					
	19 Interest					
	20 Occupancy (rent, utilities, etc.)					
	21 Depreciation and depletion					
	22 Other (attach schedule)					
	23 Total expenses (add lines 14 through 22)					
	24 Excess of revenue over expenses (line 13 minus line 23)					

Part IV Financial Data (Continued)

B. Balance Sheet (at the end of the period shown)		Current tax year Date
Assets		
1	Cash	1
2	Accounts receivable, net	2
3	Inventories	3
4	Bonds and notes receivable (attach schedule)	4
5	Corporate stocks (attach schedule)	5
6	Mortgage loans (attach schedule)	6
7	Other investments (attach schedule)	7
8	Depreciable and depletable assets (attach schedule)	8
9	Land	9
10	Other assets (attach schedule)	10
11	Total assets (add lines 1 through 10)	11
Liabilities		
12	Accounts payable	12
13	Contributions, gifts, grants, etc., payable	13
14	Mortgages and notes payable (attach schedule)	14
15	Other liabilities (attach schedule)	15
16	Total liabilities (add lines 12 through 15)	16
Fund Balances or Net Assets		
17	Total fund balances or net assets	17
18	Total liabilities and fund balances or net assets (add line 16 and line 17)	18

If there has been any substantial change in any aspect of the organization's financial activities since the end of the period shown above, check the box and attach a detailed explanation

**Consent Fixing Period of Limitation Upon
Assessment of Tax Under Section 4940 of the
Internal Revenue Code**

(Rev. April 1996)

Department of the Treasury
Internal Revenue Service

(See instructions on reverse side.)

**To be used with
Form 1023. Submit
in duplicate.**

Under section 6501(c)(4) of the Internal Revenue Code, and as part of a request filed with Form 1023 that the organization named below be treated as a publicly supported organization under section 170(b)(1)(A)(vi) or section 509(a)(2) during an advance ruling period,

(Exact legal name of organization as shown in organizing document)	}	and the	District Director of Internal Revenue, or Assistant Commissioner (Employee Plans and Exempt Organizations)
(Number, street, city or town, state, and ZIP code)			

Consent and agree that the period for assessing tax (imposed under section 4940 of the Code) for any of the 5 tax years in the advance ruling period will extend 8 years, 4 months, and 15 days beyond the end of the first tax year.

However, if a notice of deficiency in tax for any of these years is sent to the organization before the period expires, the time for making an assessment will be further extended by the number of days the assessment is prohibited, plus 60 days.

Ending date of first tax year
(Month, day, and year)

Name of organization (as shown in organizing document)	Date
Officer or trustee having authority to sign	
Signature ►	Title ►

For IRS use only

District Director or Assistant Commissioner (Employee Plans and Exempt Organizations)	Date
---	------

By ►

You must complete this form and attach it to the Form 1023 if you checked box **h**, **i**, or **j** of Part III, question 10, and the organization has not completed a tax year of at least 8 months.

For example: If the organization incorporated May 15 and its year ends December 31, it has completed a tax year of only 7½ months. Therefore, Form 872-C must be submitted.

- (a) Enter the name of the organization. This must be entered exactly as it appears in the organizing document. Do not use abbreviations unless the organizing document does.
- (b) Enter the current address.
- (c) Enter the ending date of the first tax year.

For example:

- (1) If the organization was formed on June 15 and it has chosen December 31 as its year end, enter December 31, 19
 - (2) If the organization was formed June 15 and it has chosen June 30 as its year end, enter June 30, 19 In this example, the organization's first tax year consists of only 15 days.
- (d) The form must be signed by an authorized officer or trustee, generally the president or treasurer.
 - (e) Enter the date that the form was signed.

DO NOT MAKE ANY OTHER ENTRIES.

Schedule A. Churches

1 Provide a brief history of the development of the organization, including the reasons for its formation.

2 Does the organization have a written creed or statement of faith? . . . Yes No
If "Yes," attach a copy.

3 Does the organization require prospective members to renounce other religious beliefs or their membership in other churches or religious orders to become members? . . . Yes No

4 Does the organization have a formal code of doctrine and discipline for its members? . . . Yes No
If "Yes," describe.

5 Describe the form of worship and attach a schedule of worship services.

6 Are the services open to the public? . . . Yes No
If "Yes," describe how the organization publicizes its services and explain the criteria for admittance.

7 Explain how the organization attracts new members.

8 (a) How many active members are currently enrolled in the church?

(b) What is the average attendance at the worship services?

9 In addition to worship services, what other religious services (such as baptisms, weddings, funerals, etc.) does the organization conduct?

Schedule A. Churches (Continued)

10 Does the organization have a school for the religious instruction of the young? **Yes** **No**

11 Were the current deacons, minister, and/or pastor formally ordained after a prescribed course of study? **Yes** **No**

12 Describe the organization's religious hierarchy or ecclesiastical government.

13 Does the organization have an established place of worship? **Yes** **No**

If "Yes," provide the name and address of the owner or lessor of the property and the address and a description of the facility.

If the organization has no regular place of worship, state where the services are held and how the site is selected.

14 Does (or will) the organization license or otherwise ordain ministers (or their equivalent) or issue church charters? **Yes** **No**

If "Yes," describe in detail the requirements and qualifications needed to be so licensed, ordained, or chartered.

15 Did the organization pay a fee for a church charter? **Yes** **No**

If "Yes," state the name and address of the organization to which the fee was paid, attach a copy of the charter, and describe the circumstances surrounding the chartering.

16 Show how many hours a week the minister/pastor and officers each devote to church work and the amount of compensation paid to each of them. If the minister or pastor is otherwise employed, indicate by whom employed, the nature of the employment, and the hours devoted to that employment.

Schedule A. Churches (Continued)

17 Will any funds or property of the organization be used by any officer, director, employee, minister, or pastor for his or her personal needs or convenience?

Yes No

If "Yes," describe the nature and circumstances of such use.

18 List any officers, directors, or trustees related by blood or marriage.

19 Give the name of anyone who has assigned income to the organization or made substantial contributions of money or other property. Specify the amounts involved.

Instructions

Although a church, its integrated auxiliaries, or a convention or association of churches is not required to file Form 1023 to be exempt from Federal income tax or to receive tax-deductible contributions, such an organization may find it advantageous to obtain recognition of exemption. In this event, you should submit information showing that your organization is a church, synagogue, association or convention of churches, religious order or religious organization that is an integral part of a church, and that it is carrying out the functions of a church.

In determining whether an admittedly religious organization is also a church, the IRS does not accept any and every assertion that such an organization is a church. Because beliefs and practices vary so widely, there is no single definition of the word "church" for tax purposes. The IRS considers the facts and circumstances of each organization applying for church status.

The IRS maintains two basic guidelines in determining that an organization meets the religious purposes test:

1. That the particular religious beliefs of the organization are truly and sincerely held, and
2. That the practices and rituals associated with the organization's religious beliefs or creed are not illegal or contrary to clearly defined public policy.

In order for the IRS to properly evaluate your organization's activities and religious purposes, it is important that all questions in Schedule A be answered accurately.

The information submitted with Schedule A will be a determining factor in granting the "church" status requested by your organization. In completing the schedule, consider the following points:

1. The organization's activities in furtherance of its beliefs must be exclusively religious, and
 2. An organization will not qualify for exemption if it has a substantial nonexempt purpose of serving the private interests of its founder or the founder's family.
-

Schedule B. Schools, Colleges, and Universities

1 Does, or will, the organization normally have: **(a)** a regularly scheduled curriculum, **(b)** a regular faculty of qualified teachers, **(c)** a regularly enrolled student body, and **(d)** facilities where its educational activities are regularly carried on? Yes No
 If "No," do not complete the rest of Schedule B.

2 Is the organization an instrumentality of a state or political subdivision of a state? Yes No
 If "Yes," document this in Part II and do not complete items 3 through 10 of Schedule B. (See instructions on the back of Schedule B.)

3 Does or will the organization (or any department or division within it) discriminate in any way on the basis of race with respect to:

a Admissions? Yes No
b Use of facilities or exercise of student privileges? Yes No
c Faculty or administrative staff? Yes No
d Scholarship or loan programs? Yes No
 If "Yes" for any of the above, explain.

4 Does the organization include a statement in its charter, bylaws, or other governing instrument, or in a resolution of its governing body, that it has a racially nondiscriminatory policy as to students? Yes No
 Attach whatever corporate resolutions or other official statements the organization has made on this subject.

5a Has the organization made its racially nondiscriminatory policies known in a manner that brings the policies to the attention of all segments of the general community that it serves? Yes No
 If "Yes," describe how these policies have been publicized and how often relevant notices or announcements have been made. If no newspaper or broadcast media notices have been used, explain.

b If applicable, attach clippings of any relevant newspaper notices or advertising, or copies of tapes or scripts used for media broadcasts. Also attach copies of brochures and catalogues dealing with student admissions, programs, and scholarships, as well as representative copies of all written advertising used as a means of informing prospective students of the organization's programs.

6 Attach a numerical schedule showing the racial composition, as of the current academic year, and projected to the extent feasible for the next academic year, of: **(a)** the student body, and **(b)** the faculty and administrative staff.

7 Attach a list showing the amount of any scholarship and loan funds awarded to students enrolled and the racial composition of the students who have received the awards.

8a Attach a list of the organization's incorporators, founders, board members, and donors of land or buildings, whether individuals or organizations.

b State whether any of the organizations listed in **8a** have as an objective the maintenance of segregated public or private school education, and, if so, whether any of the individuals listed in **8a** are officers or active members of such organizations.

9a Enter the public school district and county in which the organization is located.

b Was the organization formed or substantially expanded at the time of public school desegregation in the above district or county? Yes No

10 Has the organization ever been determined by a state or Federal administrative agency or judicial body to be racially discriminatory? Yes No

If "Yes," attach a detailed explanation identifying the parties to the suit, the forum in which the case was heard, the cause of action, the holding in the case, and the citations (if any) for the case. Also describe in detail what changes in the organization's operation, if any, have occurred since then.

Instructions

A "school" is an organization that has the primary function of presenting formal instruction, normally maintains a regular faculty and curriculum, normally has a regularly enrolled student body, and has a place where its educational activities are carried on. The term generally corresponds to the definition of an "educational organization" in section 170(b)(1)(A)(ii). Thus, the term includes primary, secondary, preparatory and high schools, and colleges and universities. The term does not include organizations engaged in both educational and noneducational activities unless the latter are merely incidental to the educational activities. A school for handicapped children is included within the term, but an organization merely providing handicapped children with custodial care is not.

For purposes of Schedule B, "Sunday schools" that are conducted by a church are not included in the term "schools," but separately organized schools (such as parochial schools, universities, and similar institutions) are included in the term.

A private school that otherwise meets the requirements of section 501(c)(3) as an educational institution will not qualify for exemption under section 501(a) unless it has a racially nondiscriminatory policy as to students. This policy means that the school admits students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in the administration of its educational policies, admissions policies, scholarship and loan programs, and athletic or

other school-administered programs. The IRS considers discrimination on the basis of race to include discrimination on the basis of color and national or ethnic origin. A policy of a school that favors racial minority groups in admissions, facilities, programs, and financial assistance will not constitute discrimination on the basis of race when the purpose and effect is to promote the establishment and maintenance of that school's racially nondiscriminatory policy as to students. See Rev. Proc. 75-50, 1975-2 C.B. 587, for guidelines and recordkeeping requirements for determining whether private schools that are applying for recognition of exemption have racially nondiscriminatory policies as to students.

Line 2

An instrumentality of a state or political subdivision of a state may qualify under section 501(c)(3) if it is organized as a separate entity from the governmental unit that created it and if it otherwise meets the organizational and operational tests of section 501(c)(3). (See Rev. Rul. 60-384, 1960-2 C.B. 172.) Any such organization that is a school is not a private school and, therefore, is not subject to the provisions of Rev. Proc. 75-50.

Schools that incorrectly answer "Yes" to line 2 will be contacted to furnish the information called for by lines 3 through 10 in order to establish that they meet the requirements for exemption. To prevent delay in the processing of your application, be sure to answer line 2 correctly and complete lines 3 through 10, if applicable.

Schedule C. Hospitals and Medical Research Organizations

- Check here if claiming to be a hospital; complete the questions in Section I of this schedule; and write "N/A" in Section II.
- Check here if claiming to be a medical research organization operated in conjunction with a hospital; complete the questions in Section II of this schedule; and write "N/A" in Section I.

Section I Hospitals

1a How many doctors are on the hospital's courtesy staff? _____

b Are all the doctors in the community eligible for staff privileges? Yes No
If "No," give the reasons why and explain how the courtesy staff is selected.

2a Does the hospital maintain a full-time emergency room? Yes No

b What is the hospital's policy on administering emergency services to persons without apparent means to pay?

c Does the hospital have any arrangements with police, fire, and voluntary ambulance services for the delivery or admission of emergency cases? Yes No
Explain.

3a Does or will the hospital require a deposit from persons covered by Medicare or Medicaid in its admission practices? Yes No
If "Yes," explain.

b Does the same deposit requirement, if any, apply to all other patients? Yes No
If "No," explain.

4 Does or will the hospital provide for a portion of its services and facilities to be used for charity patients? Yes No
Explain the policy regarding charity cases. Include data on the hospital's past experience in admitting charity patients and arrangements it may have with municipal or government agencies for absorbing the cost of such care.

5 Does or will the hospital carry on a formal program of medical training and research? Yes No
If "Yes," describe.

6 Does the hospital provide office space to physicians carrying on a medical practice? Yes No
If "Yes," attach a list setting forth the name of each physician, the amount of space provided, the annual rent, the expiration date of the current lease and whether the terms of the lease represent fair market value.

Section II Medical Research Organizations

1 Name the hospitals with which the organization has a relationship and describe the relationship.

2 Attach a schedule describing the organization's present and proposed (indicate which) medical research activities; show the nature of the activities, and the amount of money that has been or will be spent in carrying them out. (Making grants to other organizations is not direct conduct of medical research.)

3 Attach a statement of assets showing their fair market value and the portion of the assets directly devoted to medical research.

Additional Information

Hospitals

To be entitled to status as a "hospital," an organization must have, as its principal purpose or function, the providing of medical or hospital care or medical education or research. "Medical care" includes the treatment of any physical or mental disability or condition, the cost of which may be taken as a deduction under section 213, whether the treatment is performed on an inpatient or outpatient basis. Thus, a rehabilitation institution, outpatient clinic, or community mental health or drug treatment center may be a hospital if its principal function is providing the above-described services.

On the other hand, a convalescent home or a home for children or the aged is not a hospital. Similarly, an institution whose principal purpose or function is to train handicapped individuals to pursue some vocation is not a hospital. Moreover, a medical education or medical research institution is not a hospital, unless it is also actively engaged in providing medical or hospital care to patients on its premises or in its facilities on an inpatient or outpatient basis.

Cooperative Hospital Service Organizations

Cooperative hospital service organizations (section 501(e)) should not complete Schedule C.

Medical Research Organizations

To qualify as a medical research organization, the principal function of the organization must be the direct, continuous, and active conduct of medical research in conjunction with a hospital that is described in section 501(c)(3), a Federal hospital, or an instrumentality of a governmental unit referred to in section 170(c)(1). For purposes of section 170(b)(1)(A)(iii) only, the organization must be set up to use the funds it receives in the active conduct of medical research by January 1 of the fifth calendar year after receipt. The arrangement it has with donors to assure use of the funds within the 5-year period must be legally enforceable. As used here, "medical research" means investigations, experiments, and studies to discover, develop, or verify knowledge relating to the causes, diagnosis, treatment, prevention, or control of human physical or mental diseases and impairments. For further information, see Regulations section 1.170A-9(c)(2).

Schedule D. Section 509(a)(3) Supporting Organizations

1a Organizations supported by the applicant organization: Name and address of supported organization	b Has the supported organization received a ruling or determination letter that it is not a private foundation by reason of section 509(a)(1) or (2)?
	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No

c If "No" for any of the organizations listed in **1a**, explain.

2 Does the supported organization have tax-exempt status under section 501(c)(4), 501(c)(5), or 501(c)(6)? **Yes** **No**
 If "Yes," attach: **(a)** a copy of its ruling or determination letter, and **(b)** an analysis of its revenue for the current year and the preceding 3 years. (Provide the financial data using the formats in Part IV-A (lines 1-13) and Part III (lines 12, 13, and 14).)

3 Does your organization's governing document indicate that the majority of its governing board is elected or appointed by the supported organizations? **Yes** **No**
 If "Yes," skip to line 9.
 If "No," you must answer the questions on lines 4 through 9.

4 Does your organization's governing document indicate the common supervision or control that it and the supported organizations share? **Yes** **No**
 If "Yes," give the article and paragraph numbers. If "No," explain.

5 To what extent do the supported organizations have a significant voice in your organization's investment policies, in the making and timing of grants, and in otherwise directing the use of your organization's income or assets?

6 Does the mentioning of the supported organizations in your organization's governing instrument make it a trust that the supported organizations can enforce under state law and compel to make an accounting? **Yes** **No**
 If "Yes," explain.

7a What percentage of your organization's income does it pay to each supported organization?

b What is the total annual income of each supported organization?

c How much does your organization contribute annually to each supported organization?

Schedule D. Section 509(a)(3) Supporting Organizations (Continued)

8 To what extent does your organization conduct activities that would otherwise be carried on by the supported organizations? Explain why these activities would otherwise be carried on by the supported organizations.

9 Is the applicant organization controlled directly or indirectly by one or more "disqualified persons" (other than one who is a disqualified person solely because he or she is a manager) or by an organization that is not described in section 509(a)(1) or (2)? Yes No
If "Yes," explain.

Instructions

For an explanation of the types of organizations defined in section 509(a)(3) as being excluded from the definition of a private foundation, see Pub. 557, Chapter 3.

Line 1

List each organization that is supported by your organization and indicate in item **1b** if the supported organization has received a letter recognizing exempt status as a section 501(c)(3) public charity as defined in section 509(a)(1) or 509(a)(2). If you answer "No" in **1b** to any of the listed organizations, please explain in **1c**.

Line 3

Your organization's governing document may be articles of incorporation, articles of association, constitution, trust indenture, or trust agreement.

Line 9

For a definition of a "disqualified person," see **Specific Instructions**, Part II, Line 4d, on page 3 of the application's instructions.

Schedule E. Private Operating Foundations

		Most recent tax year
Income Test		
1a Adjusted net income, as defined in Regulations section 53.4942(a)-2(d)	1a	
b Minimum investment return, as defined in Regulations section 53.4942(a)-2(c)	1b	
2 Qualifying distributions:		
a Amounts (including administrative expenses) paid directly for the active conduct of the activities for which organized and operated under section 501(c)(3) (attach schedule)	2a	
b Amounts paid to acquire assets to be used (or held for use) directly in carrying out purposes described in section 170(c)(1) or 170(c)(2)(B) (attach schedule)	2b	
c Amounts set aside for specific projects that are for purposes described in section 170(c)(1) or 170(c)(2)(B) (attach schedule).	2c	
d Total qualifying distributions (add lines 2a, b, and c).	2d	
3 Percentages:		
a Percentage of qualifying distributions to adjusted net income (divide line 2d by line 1a)	3a	%
b Percentage of qualifying distributions to minimum investment return (divide line 2d by line 1b). (Percentage must be at least 85% for 3a or 3b)	3b	%
Assets Test		
4 Value of organization's assets used in activities that directly carry out the exempt purposes. Do not include assets held merely for investment or production of income (attach schedule)	4	
5 Value of any stock of a corporation that is controlled by applicant organization and carries out its exempt purposes (attach statement describing corporation)	5	
6 Value of all qualifying assets (add lines 4 and 5)	6	
7 Value of applicant organization's total assets	7	
8 Percentage of qualifying assets to total assets (divide line 6 by line 7—percentage must exceed 65%)	8	%
Endowment Test		
9 Value of assets not used (or held for use) directly in carrying out exempt purposes:		
a Monthly average of investment securities at fair market value.	9a	
b Monthly average of cash balances.	9b	
c Fair market value of all other investment property (attach schedule).	9c	
d Total (add lines 9a, b, and c).	9d	
10 Acquisition indebtedness related to line 9 items (attach schedule)	10	
11 Balance (subtract line 10 from line 9d)	11	
12 Multiply line 11 by 3 1/3% (2/3 of the percentage for the minimum investment return computation under section 4942(e)). Line 2d above must equal or exceed the result of this computation	12	
Support Test		
13 Applicant organization's support as defined in section 509(d)	13	
14 Gross investment income as defined in section 509(e)	14	
15 Support for purposes of section 4942(j)(3)(B)(iii) (subtract line 14 from line 13)	15	
16 Support received from the general public, five or more exempt organizations, or a combination of these sources (attach schedule).	16	
17 For persons (other than exempt organizations) contributing more than 1% of line 15, enter the total amounts that are more than 1% of line 15	17	
18 Subtract line 17 from line 16	18	
19 Percentage of total support (divide line 18 by line 15—must be at least 85%)	19	%
20 Does line 16 include support from an exempt organization that is more than 25% of the amount of line 15?		<input type="checkbox"/> Yes <input type="checkbox"/> No
21 Newly created organizations with less than 1 year's experience: Attach a statement explaining how the organization is planning to satisfy the requirements of section 4942(j)(3) for the income test and one of the supplemental tests during its first year's operation. Include a description of plans and arrangements, press clippings, public announcements, solicitations for funds, etc.		
22 Does the amount entered on line 2a above include any grants that the applicant organization made?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," attach a statement explaining how those grants satisfy the criteria for "significant involvement" grants described in section 53.4942(b)-1(b)(2) of the regulations.		

For more information, see back of Schedule E.

Instructions

If the organization claims to be an operating foundation described in section 4942(j)(3) and—

a. Bases its claim to private operating foundation status on normal and regular operations over a period of years; or

b. Is newly created, set up as a private operating foundation, and has at least 1 year's experience; provide the information under the **income test and under one of the three supplemental tests** (assets, endowment, or support). If the organization does not have at least 1 year's experience, provide the information called for on line 21. If the organization's private operating foundation status depends on its normal and regular operations as described in **a** above, attach a schedule similar to Schedule E showing the data in tabular form for the 3 years preceding the most recent tax year. (See Regulations section 53.4942(b)-1 for additional information before completing the "Income Test" section of this schedule.) Organizations claiming section 4942(j)(5) status must satisfy the income test and the endowment test.

A "private operating foundation" described in section 4942(j)(3) is a private foundation that spends substantially all of the smaller of its adjusted net income (as defined below) or its minimum investment return directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated. The foundation must satisfy the income test under section 4942(j)(3)(A), as modified by Regulations section 53.4942(b)-1, and one of the following three supplemental tests: **(1)** the assets test under section 4942(j)(3)(B)(i); **(2)** the endowment test under section 4942(j)(3)(B)(ii); or **(3)** the support test under section 4942(j)(3)(B)(iii).

Certain long-term care facilities described in section 4942(j)(5) are treated as private operating foundations for purposes of section 4942 only.

"Adjusted net income" is the excess of gross income determined with the income modifications described below for the tax year over the sum of deductions determined with the deduction modifications described below. Items of gross income from any unrelated trade or business and the deductions directly connected with the unrelated trade or business are taken into account in computing the organization's adjusted net income.

Income Modifications

The following are income modifications (adjustments to gross income):

- Section 103 (relating to interest on certain governmental obligations) does not apply. Thus, interest that otherwise would have been excluded should be included in gross income.
- Except as provided in **3** below, capital gains and losses are taken into account only to the extent of the net short-term gain. Long-term gains and losses are disregarded.

3. The gross amount received from the sale or disposition of certain property should be included in gross income to the extent that the acquisition of the property constituted a qualifying distribution under section 4942(g)(1)(B).

4. Repayments of prior qualifying distributions (as defined in section 4942(g)(1)(A)) constitute items of gross income.

5. Any amount set aside under section 4942(g)(2) that is "not necessary for the purposes for which it was set aside" constitutes an item of gross income.

Deduction Modifications

The following are deduction modifications (adjustments to deductions):

1. Expenses for the general operation of the organization according to its charitable purposes (as contrasted with expenses for the production or collection of income and management, conservation, or maintenance of income-producing property) should not be taken as deductions. If only a portion of the property is used for production of income subject to section 4942 and the remainder is used for general charitable purposes, the expenses connected with that property should be divided according to those purposes. Only expenses related to the income-producing portion should be taken as deductions.

2. Charitable contributions, deductible under section 170 or 642(c), should not be taken into account as deductions for adjusted net income.

3. The net operating loss deduction prescribed under section 172 should not be taken into account as a deduction for adjusted net income.

4. The special deductions for corporations (such as the dividends-received deduction) allowed under sections 241 through 249 should not be taken into account as deductions for adjusted net income.

5. Depreciation and depletion should be determined in the same manner as under section 4940(c)(3)(B).

Section 265 (relating to the expenses and interest connected with tax-exempt income) should not be taken into account.

You may find it easier to figure adjusted net income by completing column (c), Part 1, Form 990-PF, according to the instructions for that form.

An organization that has been held to be a private operating foundation will continue to be such an organization only if it meets the income test and either the assets, endowment, or support test in later years. See Regulations section 53.4942(b) for additional information. No additional request for ruling will be necessary or appropriate for an organization to maintain its status as a private operating foundation. However, data related to the above tests must be submitted with the organization's annual information return, Form 990-PF.

Schedule F. Homes for the Aged or Handicapped

1 What are the requirements for admission to residency? Explain fully and attach promotional literature and application forms.

2 Does or will the home charge an entrance or founder's fee? Yes No
If "Yes," explain and specify the amount charged.

3 What periodic fees or maintenance charges are or will be required of its residents?

4a What established policy does the home have concerning residents who become unable to pay their regular charges?

b What arrangements does the home have or will it make with local and Federal welfare units, sponsoring organizations, or others to absorb all or part of the cost of maintaining those residents?

5 What arrangements does or will the home have to provide for the health needs of its residents?

6 In what way are the home's residential facilities designed to meet some combination of the physical, emotional, recreational, social, religious, and similar needs of the aged or handicapped?

7 Provide a description of the home's facilities and specify both the residential capacity of the home and the current number of residents.

8 Attach a sample copy of the contract or agreement the organization makes with or requires of its residents.

For more information, see back of Schedule F.

Instructions

Line 1

Provide the criteria for admission to the home and submit brochures, pamphlets, or other printed material used to inform the public about the home's admissions policy.

Line 2

Indicate whether the fee charged is an entrance fee or a monthly charge, etc. Also, if the fee is an entrance fee, is it payable in a lump sum or on an installment basis?

Line 4

Indicate the organization's policy regarding residents who are unable to pay. Also, indicate whether the organization is subsidized for all or part of the cost of maintaining those residents who are unable to pay.

Line 5

Indicate whether the organization provides health care to the residents, either directly or indirectly, through some continuing arrangement with other organizations, facilities, or health personnel. If no health care is provided, indicate "N/A."

Schedule G. Child Care Organizations

1 Is the organization's primary activity the providing of care for children away from their homes? Yes No

2 How many children is the organization authorized to care for by the state (or local governmental unit), and what was the average attendance during the past 6 months, or the number of months the organization has been in existence if less than 6 months?

3 How many children are currently cared for by the organization?

4 Is substantially all (at least 85%) of the care provided for the purpose of enabling parents to be gainfully employed or to seek employment? Yes No

5 Are the services provided available to the general public? Yes No
If "No," explain.

6 Indicate the category, or categories, of parents whose children are eligible for the child care services (check as many as apply):

- low-income parents
- any working parents (or parents looking for work)
- anyone with the ability to pay
- other (explain)

Instructions

Line 5

If your organization's services are not available to the general public, indicate the particular group or groups that may utilize the services.

REMINDER—If this organization claims to operate a school, then it must also fill out Schedule B.

Schedule H. Organizations Providing Scholarship Benefits, Student Aid, etc., to Individuals

1a Describe the nature and the amount of the scholarship benefit, student aid, etc., including the terms and conditions governing its use, whether a gift or a loan, and how the availability of the scholarship is publicized. If the organization has established or will establish several categories of scholarship benefits, identify each kind of benefit and explain how the organization determines the recipients for each category. Attach a sample copy of any application the organization requires individuals to complete to be considered for scholarship grants, loans, or similar benefits. (Private foundations that make grants for travel, study, or other similar purposes are required to obtain advance approval of scholarship procedures. See Regulations sections 53.4945-4(c) and (d).)

b If you want this application considered as a request for approval of grant procedures in the event we determine that the organization is a private foundation, check here

c If you checked the box in 1b above, check the boxes for which you wish the organization to be considered.

4945(g)(1)

4945(g)(2)

4945(g)(3)

2 What limitations or restrictions are there on the class of individuals who are eligible recipients? Specifically explain whether there are, or will be, any restrictions or limitations in the selection procedures based upon race or the employment status of the prospective recipient or any relative of the prospective recipient. Also indicate the approximate number of eligible individuals.

3 Indicate the number of grants the organization anticipates making annually

4 If the organization bases its selections in any way on the employment status of the applicant or any relative of the applicant, indicate whether there is or has been any direct or indirect relationship between the members of the selection committee and the employer. Also indicate whether relatives of the members of the selection committee are possible recipients or have been recipients.

5 Describe any procedures the organization has for supervising grants (such as obtaining reports or transcripts) that it awards and any procedures it has for taking action if the terms of the grant are violated.

Additional Information

Private foundations that make grants to individuals for travel, study, or other similar purposes are required to obtain advance approval of their grant procedures from the IRS. Such grants that are awarded under selection procedures that have not been approved by the IRS are subject to a 10% excise tax under section 4945. (See Regulations sections 53.4945-4(c) and (d).)

If you are requesting advance approval of the organization's grant procedures, the following sections apply to line 1c:

4945(g)(1)—The grant constitutes a scholarship or fellowship grant that meets the provisions of section 117(a) prior to its amendment by the Tax Reform Act of 1986 and is to be used for study at an educational organization (school) described in section 170(b)(1)(A)(ii).

4945(g)(2)—The grant constitutes a prize or award that is subject to the provisions of section 74(b), if the recipient of such a prize or award is selected from the general public.

4945(g)(3)—The purpose of the grant is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

Schedule I. Successors to "For Profit" Institutions

1 What was the name of the predecessor organization and the nature of its activities?

2 Who were the owners or principal stockholders of the predecessor organization? (If more space is needed, attach schedule.)

Name and address	Share or interest

3 Describe the business or family relationship between the owners or principal stockholders and principal employees of the predecessor organization and the officers, directors, and principal employees of the applicant organization.

4a Attach a copy of the agreement of sale or other contract that sets forth the terms and conditions of sale of the predecessor organization or of its assets to the applicant organization.

b Attach an appraisal by an independent qualified expert showing the fair market value at the time of sale of the facilities or property interest sold.

5 Has any property or equipment formerly used by the predecessor organization been rented to the applicant organization or will any such property be rented? **Yes** **No**
 If "Yes," explain and attach copies of all leases and contracts.

6 Is the organization leasing or will it lease or otherwise make available any space or equipment to the owners, principal stockholders, or principal employees of the predecessor organization? **Yes** **No**
 If "Yes," explain and attach a list of these tenants and a copy of the lease for each such tenant.

7 Were any new operating policies initiated as a result of the transfer of assets from a profit-making organization to a nonprofit organization? **Yes** **No**
 If "Yes," explain.

Additional Information

A "for profit" institution for purposes of Schedule I includes any organization in which a person may have a proprietary or partnership interest, hold corporate

stock, or otherwise exercise an ownership interest. The institution need not have operated for the purpose of making a profit.

Activity Code Numbers of Exempt Organizations (select up to three codes that best describe or most accurately identify your organization's purposes, activities, operations or type of organization and enter in block 6, page 1, of the application. Enter first the code that most accurately identifies the organization.)

Code	Code	Code	Code
Religious Activities	181 Scientific research for government	322 FFA, FHA, 4-H club, etc.	520 Pacifism and peace
001 Church, synagogue, etc.	--- Scientific research (diseases) (use 161)	323 Key club	521 Economic-political system of U.S.
002 Association or convention of churches	199 Other scientific research activities	324 YMCA, YWCA, YMHA, etc.	522 Anti-communism
003 Religious order		325 Camp	523 Right to work
004 Church auxiliary	Business and Professional Organizations	326 Care and housing of children (orphanage, etc.)	524 Zoning or rezoning
005 Mission	200 Business promotion (chamber of commerce, business league, etc.)	327 Prevention of cruelty to children	525 Location of highway or transportation system
006 Missionary activities	201 Real estate association	328 Combat juvenile delinquency	526 Rights of criminal defendants
007 Evangelism	202 Board of trade	349 Other youth organization or activities	527 Capital punishment
008 Religious publishing activities	203 Regulating business		528 Stricter law enforcement
--- Bookstore (use 918)	204 Promotion of fair business practices	Conservation, Environmental, and Beautification Activities	529 Ecology or conservation
--- Genealogical activities (use 094)	205 Professional association	350 Preservation of natural resources (conservation)	530 Protection of consumer interests
029 Other religious activities	206 Professional association auxiliary	351 Combating or preventing pollution (air, water, etc.)	531 Medical care service
Schools, Colleges, and Related Activities	207 Industry trade shows	352 Land acquisition for preservation	532 Welfare system
030 School, college, trade school, etc.	208 Convention displays	353 Soil or water conservation	533 Urban renewal
031 Special school for the blind, handicapped, etc.	--- Testing products for public safety (use 905)	354 Preservation of scenic beauty	534 Busing students to achieve racial balance
032 Nursery school	209 Research, development, and testing	--- Litigation (see Litigation and Legal Aid Activities)	535 Racial integration
--- Day care center (use 574)	210 Professional athletic league	--- Combat community deterioration (use 402)	536 Use of intoxicating beverages
033 Faculty group	--- Attracting new industry (use 403)	355 Wildlife sanctuary or refuge	537 Use of drugs or narcotics
034 Alumni association or group	--- Publishing activities (use 120)	356 Garden club	538 Use of tobacco
035 Parent or parent-teachers association	--- Insurance or other benefits for members (see Employee or Membership Benefit Organizations)	379 Other conservation, environmental, or beautification activities	539 Prohibition of erotica
036 Fraternity or sorority	211 Underwriting municipal insurance		540 Sex education in public schools
--- Key club (use 323)	212 Assigned risk insurance activities	Housing Activities	541 Population control
037 Other student society or group	213 Tourist bureau	380 Low-income housing	542 Birth control methods
038 School or college athletic association	219 Other business or professional group	381 Low and moderate income housing	543 Legalized abortion
039 Scholarships for children of employees		382 Housing for the aged (see also 153)	559 Other matters
040 Scholarships (other)	Farming and Related Activities	--- Nursing or convalescent home (use 152)	Other Activities Directed to Individuals
041 Student loans	230 Farming	--- Student housing (use 042)	560 Supplying money, goods, or services to the poor
042 Student housing activities	231 Farm bureau	--- Orphanage (use 326)	561 Gifts or grants to individuals (other than scholarships)
043 Other student aid	232 Agricultural group	398 Instruction and guidance on housing	--- Scholarships for children of employees (use 039)
044 Student exchange with foreign country	233 Horticultural group	399 Other housing activities	--- Scholarships (other) (use 040)
045 Student operated business	234 Farmers cooperative marketing or purchasing		--- Student loans (use 041)
--- Financial support of schools, colleges, etc. (use 602)	235 Financing crop operations	Inner City or Community Activities	562 Other loans to individuals
--- Achievement prizes or awards (use 914)	--- FFA, FHA, 4-H club, etc. (use 322)	400 Area development, redevelopment, or renewal	563 Marriage counseling
--- Student bookstore (use 918)	--- Fair (use 065)	--- Housing (see Housing Activities)	564 Family planning
--- Student travel (use 299)	236 Dairy herd improvement association	401 Homeowners association	565 Credit counseling and assistance
--- Scientific research (see Scientific Research Activities)	237 Breeders association	402 Other activity aimed at combating community deterioration	566 Job training, counseling, or assistance
046 Private school	249 Other farming and related activities	403 Attracting new industry or retaining industry in an area	567 Draft counseling
059 Other school related activities		404 Community promotion	568 Vocational counseling
Cultural, Historical or Other Educational Activities	Mutual Organizations	--- Community recreational facility (use 297)	569 Referral service (social agencies)
060 Museum, zoo, planetarium, etc.	250 Mutual ditch, irrigation, telephone, electric company, or like organization	--- Community center (use 296)	572 Rehabilitating convicts or ex-convicts
061 Library	251 Credit union	405 Loans or grants for minority businesses	573 Rehabilitating alcoholics, drug abusers, compulsive gamblers, etc.
062 Historical site, records, or reenactment	252 Reserve funds or insurance for domestic building and loan association, cooperative bank, or mutual savings bank	--- Job training, counseling, or assistance (use 566)	574 Day care center
063 Monument	253 Mutual insurance company	--- Day care center (use 574)	575 Services for the aged (see also 153 and 382)
064 Commemorative event (centennial, festival, pageant, etc.)	254 Corporation organized under an Act of Congress (see also 904)	--- Referral service (social agencies) (use 569)	--- Training of or aid to the handicapped (see 031 and 160)
065 Fair	--- Farmers cooperative marketing or purchasing (use 234)	--- Legal aid to indigents (use 462)	Activities Directed to Other Organizations
088 Community theatrical group	--- Cooperative hospital service organization (use 157)	406 Crime prevention	600 Community Chest, United Way, etc.
089 Singing society or group	259 Other mutual organization	407 Voluntary firemen's organization or auxiliary	601 Booster club
090 Cultural performances	Employee or Membership Benefit Organizations	--- Rescue squad (use 158)	602 Gifts, grants, or loans to other organizations
091 Art exhibit	260 Fraternal beneficiary society, order, or association	408 Community service organization	603 Nonfinancial services or facilities to other organizations
092 Literary activities	261 Improvement of conditions of workers	409 Other inner city or community benefit activities	Other Purposes and Activities
093 Cultural exchanges with foreign country	262 Association of municipal employees	Civil Rights Activities	900 Cemetery or burial activities
094 Genealogical activities	263 Association of employees	430 Defense of human and civil rights	901 Perpetual care fund (cemetery, columbarium, etc.)
--- Achievement prizes or awards (use 914)	264 Employee or member welfare association	431 Elimination of prejudice and discrimination (race, religion, sex, national origin, etc.)	902 Emergency or disaster aid fund
--- Gifts or grants to individuals (use 561)	265 Sick, accident, death, or similar benefits	432 Lessen neighborhood tensions	903 Community trust or component
--- Financial support of cultural organizations (use 602)	266 Strike benefits	449 Other civil rights activities	904 Government instrumentality or agency (see also 254)
119 Other cultural or historical activities	267 Unemployment benefits	Litigation and Legal Aid Activities	905 Testing products for public safety
Other Instruction and Training Activities	268 Pension or retirement benefits	460 Public interest litigation activities	906 Consumer interest group
120 Publishing activities	269 Vacation benefits	461 Other litigation or support of litigation	907 Veterans activities
121 Radio or television broadcasting	279 Other services or benefits to members or employees	462 Legal aid to indigents	908 Patriotic activities
122 Producing films		463 Providing bail	909 4947(a)(1) trust
123 Discussion groups, forums, panels, lectures, etc.	Sports, Athletic, Recreational, and Social Activities	Legislative and Political Activities	910 Domestic organization with activities outside U.S.
124 Study and research (nonscientific)	280 Country club	480 Propose, support, or oppose legislation	911 Foreign organization
125 Giving information or opinion (see also Advocacy)	281 Hobby club	481 Voter information on issues or candidates	912 Title holding corporation
126 Apprentice training	282 Dinner club	482 Voter education (mechanics of registering, voting, etc.)	913 Prevention of cruelty to animals
--- Travel tours (use 299)	283 Variety club	483 Support, oppose, or rate political candidates	914 Achievement prizes or awards
149 Other instruction and training	284 Dog club	484 Provide facilities or services for political campaign activities	915 Erection or maintenance of public building or works
Health Services and Related Activities	285 Women's club	509 Other legislative and political activities	916 Cafeteria, restaurant, snack bar, food services, etc.
150 Hospital	--- Garden club (use 356)	Advocacy	917 Thrift shop, retail outlet, etc.
151 Hospital auxiliary	286 Hunting or fishing club	Attempt to influence public opinion concerning:	918 Book, gift, or supply store
152 Nursing or convalescent home	287 Swimming or tennis club	510 Firearms control	919 Advertising
153 Care and housing for the aged (see also 382)	288 Other sports club	511 Selective Service System	920 Association of employees
154 Health clinic	--- Boys Club, Little League, etc. (use 321)	512 National defense policy	921 Loans or credit reporting
155 Rural medical facility	296 Community center	513 Weapons systems	922 Endowment fund or financial services
156 Blood bank	297 Community recreational facilities (park, playground, etc.)	514 Government spending	923 Indians (tribes, cultures, etc.)
157 Cooperative hospital service organization	298 Training in sports	515 Taxes or tax exemption	924 Traffic or tariff bureau
158 Rescue and emergency service	299 Travel tours	516 Separation of church and state	925 Section 501(c)(1) with 50% deductibility
159 Nurses register or bureau	300 Amateur athletic association	517 Government aid to parochial schools	926 Government instrumentality other than section 501(c)
160 Aid to the handicapped (see also 031)	--- School or college athletic association (use 038)	518 U.S. foreign policy	927 Fundraising
161 Scientific research (diseases)	301 Fundraising athletic or sports event	519 U.S. military involvement	928 4947(a)(2) trust
162 Other medical research	317 Other sports or athletic activities		931 Withdrawal liability payment fund
163 Health insurance (medical, dental, optical, etc.)	318 Other recreational activities		930 Section 501(k) child care organization
164 Prepared group health plan	319 Other social activities		
165 Community health planning	Youth Activities		
166 Mental health care	320 Boy Scouts, Girl Scouts, etc.		
167 Group medical practice association	321 Boys Club, Little League, etc.		
168 In-facility group practice association			
169 Hospital pharmacy, parking facility, food services, etc.			
179 Other health services			
Scientific Research Activities			
180 Contract or sponsored scientific research for industry			

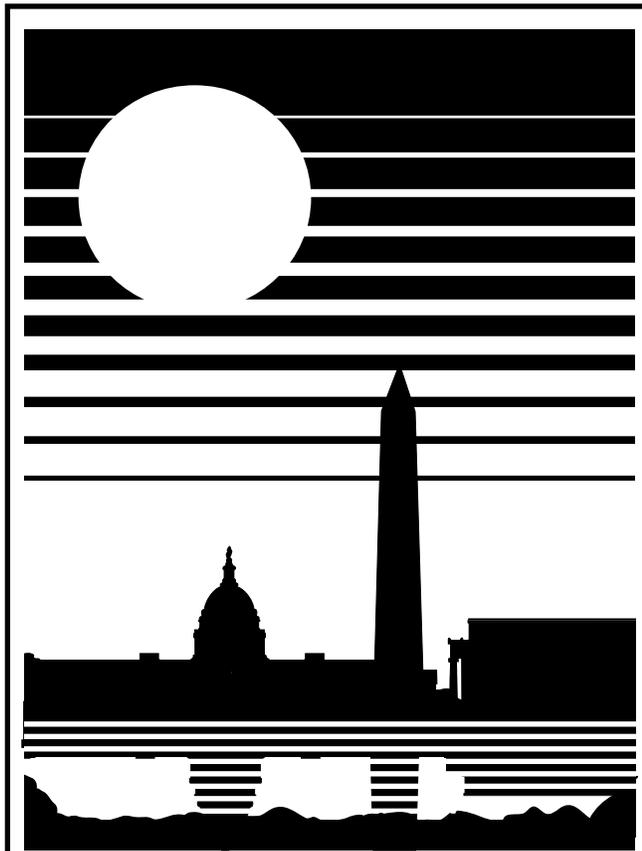


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Tax-Exempt Status for Your Organization



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See *How To Get More Information* in this publication.

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Introduction

This publication discusses the rules and procedures for organizations that seek to obtain recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code (the Code). It explains the procedures you must follow to obtain an appropriate ruling or determination letter recognizing your organization's exemption, as well as certain other information that applies generally to all exempt organizations. To qualify for exemption under the Code, your organization must be organized for one or more of the purposes specifically designated in the Code. Organizations that are exempt under section 501(a) of the Code include those organizations described in section 501(c). Section 501(c) organizations are covered in this publication.

Chapter 1 provides general information about the procedures for obtaining recognition of tax-exempt status.

Chapter 2 contains information about annual filing requirements and other matters that may affect your organization's tax-exempt status.

Chapter 3 contains detailed information on various matters affecting section 501(c)(3)

organizations, including a section on the determination of private foundation status.

Chapter 4 includes separate sections for specific types of organizations described in section 501(c).

Organizations not discussed in this publication. Certain organizations that may qualify for exemption are not discussed in this publication, although they are included in the *Organization Reference Chart* found on page 51 of this publication. These organizations (and the Code sections that apply to them) are as follows:

Corporations organized under Acts of Congress	501(c)(1)
Teachers' retirement fund associations	501(c)(11)
Mutual insurance companies	501(c)(15)
Corporations organized to finance crop operations	501(c)(16)
Employee funded pension trusts (created before June 25, 1959)	501(c)(18)
Withdrawal liability payment fund	501(c)(22)
Veterans organizations (created before 1880)	501(c)(23)
Religious and apostolic associations ...	501(d)
Cooperative hospital service organizations	501(e)
Cooperative service organizations of operating educational organizations	501(f)

Section 501(c)(24) organizations (section 4049 ERISA trusts) are neither discussed in the text nor listed in the *Organization Reference Chart*.

Likewise, farmers' cooperative associations that qualify for exemption under section 521, qualified state tuition programs described in section 529, and pension, profit-sharing, and stock bonus plans described in section 401(a) are not discussed in this publication. If you think your organization falls within one of these categories, contact the Internal Revenue Service for any additional information you need.

Check the Table of Contents at the beginning of this publication to determine whether your organization is described in this publication. If it is, read the chapter (or section) that applies to your type of organization for the specific information you must give when applying for recognition of exemption.

Organization Reference Chart. This chart, located on page 51, enables you to locate at a glance the section of the Code under which your organization might qualify for exemption. It also shows the required application form and, if your organization meets the exemption requirements, the annual return to be filed (if any), and whether or not a contribution to your organization will be deductible by a donor. It also describes each type of qualifying organization and the general nature of its activities.

You may use this chart to determine the Code section that you think applies to your organization. Any correspondence with the IRS (in requesting forms or otherwise) will be greatly expedited if you indicate in your correspondence the appropriate Code section.

1.

Application, Approval, and Appeal Procedures

Introduction

If your organization is one of the organizations described in this publication and is seeking recognition of tax-exempt status from the Internal Revenue Service (IRS), you should follow the procedures described in this chapter and the instructions that accompany the appropriate application forms.

For information on section 501(c)(3) organizations, see chapter 3. If your organization is seeking exemption under one of the other paragraphs of section 501(c), see chapter 4.

Topics

This chapter discusses:

- Application procedures that generally apply to all organizations discussed in this publication, including the application forms
- Rulings and determination letters (approvals/disapprovals)
- Appeal procedures available if an adverse determination letter is proposed
- Group exemption letters

Application Procedures

Oral requests. Oral requests for recognition of exemption will not be considered by the IRS. Your application for tax-exempt status must be in writing using the appropriate forms as discussed below.

Forms Required

Most organizations seeking recognition of exemption from federal income tax must use application forms specifically prescribed by the IRS. Two forms currently prescribed by the IRS are **Form 1023**, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, and **Form 1024**, *Application for Recognition of Exemption Under Section 501(a)*. For information about how to obtain the latest revision, see chapter 5.

Forms 1023 and 1024 contain instructions and checklists to help you provide the information required to process your application. Incomplete applications will not be processed.

Some organizations do not have to use specific application forms. The application your organization must use is specified in the chapter in this publication dealing with your kind of organization. It is also shown in the

Organization Reference Chart on page 51 of this publication.

When no specific application form is prescribed for your organization, application for exemption is by letter to the IRS. Send the application to the appropriate address shown on **Form 8718, User Fee for Exempt Organization Determination Letter Request**. The letter must be signed by an authorized individual such as an officer of the organization or a person authorized by a power of attorney. (See *Power of attorney* on page 4.) Send the power of attorney with the application letter when you file it. The letter should also contain the name and telephone number of the person to contact. The information described below under *Required Inclusions* must be sent with the letter.

User fee. The law now requires the payment of a user fee for determination letter requests such as your application for recognition of tax-exempt status. You should use Form 8718 to figure the amount of your fee and to pay it. Your payment must accompany your request. The IRS will not process a request unless the fee has been paid.

Required Inclusions

Employer identification number. Every exempt organization must have an employer identification number (EIN), whether or not it has any employees.

If your organization does not have an EIN, your application for recognition of exemption should include a completed Form SS-4, *Application for Employer Identification Number*.

Organizing documents. Each application for exemption must be accompanied by a **conformed copy** of your organization's Articles of Incorporation (and the Certificate of Incorporation, if available), Articles of Association, Trust Indenture, Constitution, or other enabling document. If the organization does not have an organizing document, it will not qualify for exempt status.

By-laws. By-laws alone are not organizing documents. However, if your organization has adopted by-laws, include a current copy. The by-laws need not be signed if submitted as an attachment.

If your organization's name has been officially changed by an amendment to your organizing instruments, you should also attach a conformed copy of that amendment to your application.

Conformed copy. A conformed copy is a copy that agrees with the original and all amendments to it. If the original document required a signature, the copy should either be signed by a principal officer or, if not signed, be accompanied by a written declaration signed by an authorized officer of the organization. With either option, the officer must certify that the document is a complete and accurate copy of the original. A certificate of incorporation should be approved and dated by an appropriate state official.

Every attachment should show your organization's name, address, and EIN. It should also state that it is an attachment to your application form and identify the part and line item number that it applies to.

Do not submit original documents because they become part of the IRS file and cannot be returned.

Description of activities. Your application must include a full description of the purposes and the activities of your organization. When describing the activities in which your organization expects to engage, you must include the standards, criteria, procedures, or other means that your organization adopted or planned for carrying out those activities.

To determine the information you need to provide, you should study the chapter (or section) in this publication that applies to your organization. The appropriate chapter will describe the purposes and activities that your organization must pursue, engage in, and include in your application in order to achieve exempt status.

Often your organization's articles of organization (or other organizing instruments) contain descriptions of your organization's purposes and activities.

Financial data. You must include in your application financial statements showing your receipts and expenditures for the current year and the 3 preceding years (or for the number of years your organization was in existence, if less than 4 years). For each accounting period, you must describe the sources of your receipts and the nature of your expenditures. You must also include a balance sheet for the most recent period.

If you have not yet begun operations, or have operated for less than 1 year, a proposed budget for 2 full accounting periods and a current statement of assets and liabilities will be acceptable.

Other information. The IRS may require you to provide additional information necessary to clarify the nature of your organization. Some examples of such additional material are:

- Representative copies of advertising placed,
- Copies of publications, such as magazines,
- Distributed written material used for expressing views on proposed legislation, and
- Copies of leases, contracts, or agreements into which your organization has entered.

Miscellaneous Procedures

For prompt action on your application, be sure to attach all schedules, statements, and other documents required by the application form. If you do not attach them, you may have to resubmit your application or you may otherwise encounter a delay in obtaining recognition of exemption.

Incomplete application. If the application does not contain the required information, it may be returned with a letter of explanation without being considered on its merits. If the completed application is resubmitted within the time period indicated in the letter from the IRS, it will be considered received on the original submission date. In that case, if the original submission was timely, the application will be considered timely filed as discussed in chapter 3, under *Application for Recognition of Exemption*.

Application made under wrong paragraph of section 501(c). Occasionally, an organization may appear to qualify for exemption under a paragraph of section 501(c) that is different from the one for which the organization applied. If the application was made on Form 1024, which applies to more than one paragraph of section 501(c), the organization may be recognized as exempt under any paragraph to which the form applies if the organization has agreed to have its application considered under that paragraph. It must also supply any additional information required for the application under the new paragraph.

Different application form needed. If a different application form is required for your organization, the IRS will so advise your organization and will provide the appropriate application form for your convenience in reapplying under that paragraph, if you wish to do so. Although supporting information previously furnished need not be duplicated, you must provide any necessary additional information required for the application. If your reply is not received within a limited time, your application will be processed only for the paragraph under which you originally applied.

When a specific application form is needed for the paragraph under which your organization qualifies, that form is required before a letter recognizing exemption is issued. This includes cases in which an exemption letter is modified to recognize an organization's exempt status under a paragraph other than the paragraph under which it originally established exemption.

IRS responses. Organizations that submit a complete application will receive an acknowledgment from the IRS. Others will receive a letter requesting more information or returning an incomplete application. Applicants also will be notified if the application is forwarded to the National Office of the IRS for consideration. These letters will be sent out as soon as possible after receipt of the organization's application.

Withdrawal of application. An application may be withdrawn at any time before the issuance of a ruling or determination letter upon the written request of a principal officer or authorized representative of your organization. However, the withdrawal will not prevent the information contained in the application from being used by the IRS in any subsequent examination of your organization's returns. The information forwarded with an application will not be returned to your organization and, generally, when an application is withdrawn, the user fee paid will not be refunded.

Requests for withholding of information from the public. The law requires many exempt organizations to make their application forms and annual information returns available for public inspection. The law also requires the IRS to make available for public inspection, in accordance with section 6104 of the Code and the related regulations, your approved application for recognition of exemption (including any papers submitted in support of the application) and the ruling or determination letter (discussed later, under *Rulings and Determination Letters*).

Any information submitted in the application or in support of it that relates to any trade secret, patent, process, style of work, or apparatus, upon request, may be withheld from

public inspection if the Commissioner determines that the disclosure of such information would adversely affect the organization. Your request must:

- 1) Identify the material to be withheld (the document, page, paragraph, and line) by clearly marking it "**Not Subject To Public Inspection,**"
- 2) Include the reasons for your organization's position that the information is of the type that may be withheld from public inspection, and
- 3) Be filed with the documents in which the material to be withheld is contained.

Where to file. Your application for recognition of tax-exempt status must be filed with the IRS at the address shown on Form 8718.

Your application will be considered by a key District Director who will either issue a favorable determination letter to your organization, issue an adverse determination letter denying the exempt status claimed in the application, or refer the case to the National Office of the IRS for a ruling.



Requests other than applications.

Requests other than applications for recognition of exemption (for example, requests for rulings involving feeder organizations, application of excise taxes to activities of private foundations, taxation of unrelated business income, etc.) should be sent to:

Internal Revenue Service
Assistant Commissioner (Employee Plans
and Exempt Organizations)
Attention: CP:E:EO
P.O. Box 120, Ben Franklin Station
Washington, DC 20044

These requests, like applications for recognition of exemption, must be accompanied by the appropriate user fee.

Referral to the National Office. Key district offices will refer to the National Office any exempt organization issue concerning qualification for exemption or foundation status for which there is no published precedent or for which there is reason to believe that nonuniformity exists. A key district or Appeals Office may request technical advice on any technical or procedural question that cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other published precedent. An organization may request that an issue be referred to the National Office for technical advice if it feels that a lack of uniformity exists as to the disposition of the issue or if an issue is so unusual or complex as to warrant consideration by the National Office. If a determination letter is issued based on technical advice from the National Office regarding qualification for exemption or foundation status, no further administrative appeal is available on the issue that was the subject of technical advice.

Power of attorney. If your organization expects to be represented by an agent or attorney, whether in person or by correspondence, you must file a power of attorney with your exemption application specifically authorizing the agent or attorney to represent your organization. Form 2848, *Power of Attorney and*

Declaration of Representative, may be used for this purpose.

Reminder: The law requires payment of a user fee for determination letter requests. Use Form 8718 to figure the amount and pay the fee. Payment must accompany each request.

Rulings and Determination Letters

A ruling or determination letter will be issued to your organization if its application and supporting documents establish that it meets the particular requirements of the section under which it is claiming exemption. However, the IRS will not ordinarily issue rulings or determination letters recognizing exemption if an issue involving the organization's exempt status is pending in litigation or is under consideration within the IRS.

Advance ruling. A ruling or determination letter may be issued in advance of operations if your organization can describe its proposed operations in enough detail to permit a conclusion that it will clearly meet the particular requirements of the section under which it is claiming exemption. A restatement of the organization's purpose or a statement that it will be operated in furtherance of that purpose will not satisfy this requirement. The organization must describe fully the activities in which it expects to engage. This includes standards, procedures, or other means adopted or planned by the organization for carrying out its activities, expected sources of funds, and the nature of its contemplated expenses.

When an organization does not supply the information previously mentioned under *Application Procedures*, or fails to furnish a sufficiently detailed description of its proposed activities to permit a conclusion that it will clearly be exempt, a record of actual operations may be required before a ruling or determination letter is issued.

Adverse determination. If an organization is unable to describe fully its purposes and activities, resulting in a refusal by the IRS to issue a ruling or determination letter, that refusal is considered an adverse determination, which the organization can appeal. See *Appeal Procedures*, later.

Effective Date of Exemption

A ruling or determination letter recognizing exemption is **effective as of the date of formation of an organization** if, during the period before the date of the ruling or determination letter, its purposes and activities were those required by the law. (See *Application for Recognition of Exemption* in chapter 3 for the special rule for organizations applying for recognition of exemption under section 501(c)(3).) Upon obtaining recognition of exemption, the organization may file a claim for a refund of income taxes paid for the period for which its exempt status is recognized.

If an organization is required to alter its activities or substantially amend its charter to qualify, the ruling or determination letter re-

cognizing exemption will be **effective as of the date specified in the letter**. If a non-substantive amendment is made, such as correction of a clerical error in the enabling instrument or the addition of a dissolution clause, exemption will ordinarily be recognized as of the date of formation if the activities of the organization before the ruling or determination are consistent with the exemption requirements.

A ruling or determination letter recognizing exemption may not be relied upon if there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of the organization.

Revocation or Modification of Exemption

A ruling or determination letter recognizing exemption may be revoked or modified by:

- 1) A notice to the organization to which the ruling or determination letter originally was issued,
- 2) Enactment of legislation or ratification of a tax treaty,
- 3) A decision of the United States Supreme Court,
- 4) Issuance of temporary or final regulations, or
- 5) Issuance of a revenue ruling, a revenue procedure, or other statement published in the *Internal Revenue Bulletin* or *Cumulative Bulletin*.

When revocation takes effect. If the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, with regard to organizations to which section 503 applies, engaged in a prohibited transaction (such as diverting corpus or income from its exempt purpose), the revocation or modification may be retroactive.

Material change in organization. If there is a material change, inconsistent with exemption, in the character, purpose, or method of operation of the organization, revocation or modification will ordinarily take effect as of the date of that material change.

Relief from retroactivity. If a ruling or determination letter was issued in error or is no longer in accord with the holding of the IRS, and if section 7805(b) relief is granted, retroactivity of the revocation or modification ordinarily will be limited to a date not earlier than that on which the original ruling or determination letter was modified or revoked. For more information on requesting section 7805(b) relief, see Revenue Procedure 97-4 (or later update).

Foundations. The determination of the effective date is the same for the revocation or modification of foundation status or operating foundation status unless the effective date is expressly covered by statute or regulations.

Written notice. If a key District Director concludes, as a result of examining an information return or considering information from any other source, that a ruling or determination letter should be revoked or modified, the organization will be advised in writing of the proposed action and the reasons for it.

The organization will also be advised of its right to protest the proposed action by re-

questing Appeals Office consideration. The appeal procedures are discussed next.

Appeal Procedures

If an organization applies for tax-exempt status and receives an adverse determination letter, the organization will be advised of its right to protest the determination by requesting Appeals Office consideration. The organization must send its protest to the key District Director within 30 days from the date of the adverse determination letter and must state whether it wishes an Appeals Office conference.

Representation. A principal officer or trustee may represent an organization at any level of appeal within the IRS. Or, the organization may be represented by an attorney, certified public accountant, or individual enrolled to practice before the IRS.

If the organization's representative attends a conference without a principal officer or trustee, the representative must file a proper power of attorney or a tax information authorization before receiving or inspecting confidential information. Form 2848, *Power of Attorney and Declaration of Representative*, or Form 8821, *Tax Information Authorization*, as appropriate (or any other properly written power of attorney or authorization), may be used for this purpose. These forms may be obtained from the IRS. For more information, get Publication 947, *Practice Before the IRS and Power of Attorney*.

Appeals Office Consideration

The protest to the Appeals Office should be filed with the key district office considering the application and contain the following information:

- 1) The organization's name, address, and employer identification number,
- 2) A statement that the organization wants to protest the determination,
- 3) The date and symbols on the determination letter,
- 4) A statement of facts supporting the organization's position in any contested factual issue,
- 5) A statement outlining the law or other authority the organization is relying on, and
- 6) A statement as to whether a conference at the Appeals Office is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the protest the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this protest and in any accompanying schedules and statements and, to the best of my knowledge and belief, it is true, correct, and complete."
Signature.

If the organization's representative submits the protest, a substitute declaration must be included, stating:

- 1) That the representative prepared the protest and accompanying documents, and
- 2) Whether the representative knows personally that the statements of fact contained in the protest and accompanying documents are true and correct.

Be sure the protest contains all of the information requested. Incomplete protests will be returned for completion.

If a conference is requested, it will be held at the Appeals Office, unless the organization requests that the meeting be held at a district office convenient to both parties.

The Appeals Office, after considering the organization's protest as well as information presented in any conference held, will notify the organization of its decision and issue an appropriate determination letter. An adverse decision may be appealed to the courts (discussed later).

Appeals offices must request **technical advice** from the National Office on any exempt organization issue concerning qualification for exemption or foundation status for which there is no published precedent or for which there is reason to believe that nonuniformity exists. If an organization believes that its case involves such an issue, it should ask the Appeals Office to request technical advice.

Any determination letter issued on the basis of technical advice from the National Office may not be appealed to the Appeals Office for those issues that were the subject of the technical advice.

National Office Consideration

If an application is referred to the National Office for issuance of a ruling and an adverse ruling is issued, the organization will be informed of the basis for the conclusion, its right to file a protest within 30 days, and its right to have a conference at the National Office.

Administrative Remedies

In the case of an application under section 501(c)(3) of the Code, the following actions, called administrative remedies, must be completed by your organization before an unfavorable ruling or determination letter from the IRS can be appealed to the courts:

- 1) The filing of a substantially completed application Form 1023 (described earlier in this chapter) or the filing of a request for a determination of foundation status (see *Private Foundations and Public Charities* in chapter 3);
- 2) In the case of a late-filed application, requesting relief under section 301.9100 of the Regulations regarding applications for extensions of time for making an election or application for relief from tax (see *Application for Recognition of Exemption* in chapter 3);
- 3) The timely submission of all additional information requested to perfect an exemption application or request for determination of private foundation status; and
- 4) Exhaustion of all administrative appeals available within the IRS, including protest of an adverse ruling in National Of-

fice original jurisdiction exemption application cases.

The actions just described will not be considered completed until the IRS has had a reasonable time to act upon the appeal or protest, as the case may be.

An organization will not be considered to have exhausted its administrative remedies before the earlier of:

- 1) The completion of the steps just listed and the sending by certified or registered mail of a notice of final determination, or
- 2) The expiration of the **270-day period** in which the IRS has not issued a notice of final determination and the organization has taken, in a timely manner, all reasonable steps to secure a ruling or determination.

270-day period. The 270-day period will be considered by the IRS to begin on the date a substantially completed Form 1023 is sent to the IRS. See *Application Procedures*, earlier, for information needed to complete Form 1023.

If the application does not contain all of the required items, it will not be further processed and may be returned to the applicant for completion. The 270-day period, in this event, will not be considered as starting until the date the application is remailed to the IRS with the requested information, or, if a postmark is not evident, on the date the IRS receives a substantially completed application.

Appeal to Courts

If the IRS issues an unfavorable determination letter or ruling to your organization and you have exhausted all the administrative remedies just discussed, your organization can seek judicial remedies.

For example, if your organization has paid the tax resulting from the unfavorable determination and met all other statutory prerequisites, it can file suit for a refund in a United States district court or the U.S. Court of Federal Claims. Or, if your organization elected not to pay the tax deficiency resulting from the unfavorable determination and met all other statutory prerequisites, it can file suit for a redetermination of the tax deficiencies in the United States Tax Court. For more information on these types of suits, get Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*.

In certain situations, your organization can file suit for a **declaratory judgment** in the U.S. district court for the District of Columbia, the U.S. Court of Federal Claims, or the U.S. Tax Court. This remedy is available if your organization received an **adverse notice of final determination**, or if the IRS failed to make a timely determination on your initial or continuing qualification or classification as an exempt organization. However, your exempt status claim must be as:

- An organization qualifying under section 501(c)(3),
- An organization to which a deduction for a contribution is allowed under section 170(c)(2),
- An organization other than a private foundation under section 509, or
- A private operating foundation under section 4942(j)(3).

Adverse notice of final determination. The adverse notice of final determination referred to above is a ruling or determination letter sent by certified or registered mail, holding that your organization:

- **Is not** described in section 501(c)(3) or section 170(c)(2) of the Code,
- **Is** a private foundation as defined in section 509(a),
- **Is not** a private operating foundation as defined in section 4942(j)(3), or
- **Is** a public charity described in a part of section 509 or section 170(b)(1)(A) other than the part under which your organization requested classification.

Favorable court rulings - IRS procedure. If a suit results in a final determination that your organization is exempt from tax, the IRS will issue a favorable ruling or determination letter, provided your organization has filed an application for exemption and submitted a statement that the underlying facts and applicable law are the same as in the period considered by the court.

Group Exemption Letter

A group exemption letter is a ruling or determination letter issued to a central organization recognizing on a group basis the exemption under section 501(c) of subordinate organizations on whose behalf the central organization has applied for recognition of exemption.

A **central organization** is an organization that has one or more subordinates under its general supervision or control.

A **subordinate organization** is a chapter, local, post, or unit of a central organization. A central organization may be a subordinate itself, such as a state organization that has subordinate units and is itself affiliated with a national (central) organization.

A subordinate organization may or may not be incorporated, but it must have an organizing document. A subordinate that is organized and operated in a foreign country may not be included in a group exemption letter. A subordinate described in section 501(c)(3) may not be included in a group exemption letter if it is a private foundation described in section 509(a).

If your organization is a subordinate one controlled by a central organization (for example, a church, the Boy Scouts, or a fraternal organization), you should check with the central organization to see if it has been issued a group exemption letter that covers your organization. If it has, you do not have to file a separate application unless your organization no longer wants to be included in the group exemption letter.

If the group exemption letter does not cover your organization, ask your central organization about being included in the next annual group ruling update that it submits to the IRS.

Central Organization Application Procedure

If your organization is a central organization with affiliated subordinates under its control, it may apply for a group exemption letter for its subordinates, provided it has obtained recognition of its own exemption. You should make the application for such subordinates by letter instead of either Form 1023 or 1024.

This procedure relieves each of the subordinates covered by a group exemption letter from filing its own application. A central organization obtains its own recognition of exemption by sending its application to the IRS address shown on Form 8718 for the area in which the central organization's principal place of business or principal office is located.

If the central organization has previously obtained recognition of its own exemption, it must indicate its employer identification number, the date of the letter recognizing its exemption, and the IRS office that issued it. It need not forward documents already submitted. However, if it has not already done so, the central organization must submit a copy of any amendment to its governing instruments or internal regulations as well as any information about changes in its character, purposes, or method of operation.

Employer identification number. If the central organization does not have an employer identification number (EIN), it must send a completed Form SS-4 with its exemption application. Each subordinate must have its own EIN even if it has no employees. The central organization must send with the group exemption application a completed Form SS-4 on behalf of each subordinate not having an EIN.

Information required for subordinate organizations. In addition to the information required to obtain recognition of its own exemption, the central organization must submit information for those subordinates to be included in the group exemption letter. The information should be forwarded in a letter signed by a principal officer of the central organization setting forth or including as attachments the following:

- 1) Information verifying that the subordinates:
 - a) Are affiliated with the central organization,
 - b) Are subject to its general supervision or control,
 - c) Are all eligible to qualify for exemption under the same paragraph of section 501(c), though not necessarily the paragraph under which the central organization is exempt,
 - d) Are not private foundations if the application for a group exemption letter involves section 501(c)(3),
 - e) Are all on the same accounting period as the central organization if they are to be included in group returns, and
 - f) Are organizations that have been formed within the 15-month period preceding the date of submission of the group exemption application if they are claiming section 501(c)(3) status and are subject to the requirements of section 508(a)

and wish to be recognized as exempt from their dates of creation (a group exemption letter may be issued covering subordinates, one or more of which have not been organized within the 15-month period preceding the date of submission, if all subordinates are willing to be recognized as exempt only from the date of application),

- 2) A detailed description of the purposes and activities of the subordinates, including the sources of receipts and the nature of expenditures,
- 3) A sample copy of a uniform governing instrument (such as a charter or articles of association) adopted by the subordinates, or, in its absence, copies of representative instruments,
- 4) An affirmation to the effect that, to the best of the officer's knowledge, the purposes and activities of the subordinates are as stated in (2) and (3), above,
- 5) A statement that each subordinate to be included in the group exemption letter has given written authorization to that effect, signed by an authorized officer of the subordinate, to the central organization (see also *New 501(c)(3) organizations that want to be included*, later in this section),
- 6) A list of subordinates to be included in the group exemption letter to which the IRS has issued an outstanding ruling or determination letter relating to exemption,
- 7) If the application for a group exemption letter involves section 501(c)(3) and is subject to the provisions of the Code requiring that it give timely notice that it is not a private foundation (see *Private Foundations* in chapter 3), an affirmation to the effect that, to the best of the officer's knowledge and belief, no subordinate to be included in the group exemption letter is a private foundation as defined in section 509(a),
- 8) For each subordinate that is a school claiming exemption under section 501(c)(3), the information required by Revenue Ruling 71-447 and Revenue Procedure 75-50 (these requirements are fully described in chapter 3, under *Private Schools*; see also Schedule B, Form 1023),
- 9) For any school affiliated with a church, the information to show that the provisions of Revenue Ruling 75-231 have been met, and
- 10) A list of the names, mailing addresses, actual addresses if different, and EINs of subordinates to be included in the group exemption letter. A current directory of subordinates may be furnished instead of the list if it includes the required information and if the subordinates not to be included in the group exemption letter are identified.

New 501(c)(3) organizations that want to be included. A new organization, described in section 501(c)(3), that wants to be included in a group exemption letter, must submit its authorization (as explained in item number 5 above, under *Information required for subordinate organizations*) to the central organiza-

tion before the end of the 15th month after it was formed in order to satisfy the requirement of section 508(a). The central organization must also include this subordinate in its next annual submission of information as discussed below, under *Information Required Annually*.

Keeping the Group Exemption Letter in Force

Continued effectiveness of a group exemption letter is based on the following conditions:

- 1) The continued existence of the central organization,
- 2) The continued qualification of the central organization for exemption under section 501(c),
- 3) The submission by the central organization of the information required annually (described below under *Information Required Annually*), and
- 4) The annual filing of an information return (Form 990, for example) by the central organization if required.

The continued effectiveness of a group exemption letter **as to a particular subordinate** is based on these four conditions, as well as on the continued conformity by the subordinate to the requirements for inclusion in a group exemption letter, the authorization for inclusion, and the annual filing of any required information return for the subordinate.

Information Required Annually

To maintain a group exemption letter, the central organization must submit annually, at least 90 days before the close of its annual accounting period, the following information:

- 1) Information about all changes in the purposes, character, or method of operation of the subordinates included in the group exemption letter.
- 2) A separate list (that includes the names, mailing addresses, actual addresses if different, and EINs of the affected subordinates) for each of the three following categories—
 - a) Subordinates that have changed their names or addresses during the year,
 - b) Subordinates no longer to be included in the group exemption letter because they no longer exist or have disaffiliated or withdrawn their authorization to the central organization, and
 - c) Subordinates to be added to the group exemption letter because they are newly organized or affiliated or because they have recently authorized the central organization to include them.

An annotated directory of subordinates will not be accepted for this purpose. If there were none of the above changes, the central organization must submit a statement to that effect.

- 3) The information required to be submitted by a central organization on behalf of subordinates to be included in the group exemption letter is required for subordinates to be added to the letter. (This information is listed in items 1 through 9, under *Information required for subordinate organizations*. However, if the information upon which the group exemption letter was based applies in all material respects to these subordinates, a statement to this effect may be submitted instead of the information required by items 1 through 4 of that list.)



The organization should send this information to:

Ogden Service Center
Mail Stop 6271
1000 South 1200 West
Ogden, UT 84404-4749



Submitting the required information annually does not relieve the central organization or any of its subordinates of the duty to submit any other information that may be required by a District Director to determine whether the conditions for continued exemption are being met.

Events Causing Loss of Group Exemption

A group exemption letter no longer has effect, for either a particular subordinate or the group as a whole, when:

- 1) The central organization notifies the IRS that it is going out of existence,
- 2) The central organization notifies the IRS, by its annual submission or otherwise, that any of its subordinates will no longer fulfill the conditions for continued effectiveness, explained earlier, or
- 3) The IRS notifies the central organization or the affected subordinate that the group exemption letter will no longer have effect for some or all of the group because the conditions for continued effectiveness of a group exemption letter have not been fulfilled.

When notice is given under any of these three conditions, the IRS will no longer recognize the exempt status of the affected subordinates until they file separate applications on their own behalf or the central organization files complete supporting information for their reinclusion in the group exemption at the time of its annual submission. However, when the notice is given by the IRS and the withdrawal of recognition is based on the failure of the organization to comply with the requirements for recognition of tax-exempt status under the particular subsection of section 501(c), the revocation will ordinarily take effect as of the date of that failure. The notice, however, will be given only after the appeal procedures described earlier in this chapter are completed.

2.

Filing Requirements and Required Disclosures

Introduction

Most exempt organizations (including private foundations) must file various returns and reports at some time during (or following the close of) their accounting period.

Topics

This chapter discusses:

- Annual information returns that must be filed
- The unrelated business income tax return
- Employment tax returns
- A return to report money spent for political activities
- A return to report the sale of certain donated property
- Information to provide to donors
- A report of cash received
- Public inspection of certain documents
- Certain required disclosures and the penalties for not making them

Useful Items

You may want to see:

Publication

- 15** Circular E, Employer's Tax Guide
- 598** Tax on Unrelated Business Income of Exempt Organizations

Form (and Instructions)

- 990** Return of Organization Exempt From Income Tax
- 990-EZ** Short Form Return of Organization Exempt From Income Tax
- 990-PF** Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation
- 990-T** Exempt Organization Business Income Tax Return
- 1120-POL** U.S. Income Tax Return for Certain Political Organizations
- 8300** Report of Cash Payments Over \$10,000 Received in a Trade or Business

See chapter 5 for information about getting these publications and forms.

Annual Information Returns

Every organization exempt from federal income tax under section 501(a) must file an annual information return **except**:

- 1) A church, an interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church (as defined later under *Religious Organizations* in chapter 3).
- 2) A church-affiliated organization that is exclusively engaged in managing funds or maintaining retirement programs.
- 3) A school below college level affiliated with a church or operated by a religious order, even though it is not an integrated auxiliary of a church.
- 4) A mission society sponsored by or affiliated with one or more churches or church denominations, more than one-half of the activities of which society are conducted in, or directed at persons in, foreign countries.
- 5) An exclusively religious activity of any religious order.
- 6) A state institution, the income of which is excluded from gross income under section 115.
- 7) A corporation described in section 501(c)(1) (a corporation that is organized under an Act of Congress and is:
 - a) an instrumentality of the United States, and
 - b) exempt from Federal income taxes.)
- 8) A black lung benefit trust described in section 501(c)(21). (Required to file Form 990–BL, *Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons*. See chapter 4 for more information.)
- 9) A stock bonus, pension, or profit-sharing trust that qualifies under section 401.
- 10) A religious or apostolic organization described in section 501(d). (Required to file Form 1065, *U.S. Partnership Return of Income*.)
- 11) A foreign organization described in section 501(a) (other than a private foundation) that normally does not have more than \$25,000 in annual gross receipts from sources within the United States and has no significant activity in the United States. For further information, see Revenue Procedure 94-17, 1994-1 C.B. 579.
- 12) A governmental unit or an affiliate of a governmental unit that meets the requirements of Revenue Procedure 95–48, 1995–2 C.B. 418.
- 13) An exempt organization (other than a private foundation, discussed in chapter 3) having gross receipts in each tax year that normally are not more than \$25,000. (See the instructions for Form 990 for more information about what constitutes annual gross receipts that are normally not more than \$25,000.)

Forms 990 and 990–EZ. Exempt organizations, other than private foundations, must file their annual information return on Form 990, *Return of Organization Exempt From Income Tax*, or Form 990–EZ, *Short Form Return of Organization Exempt From Income Tax*.

Form 990–EZ. This is a shortened version of Form 990. It is designed for use by small exempt organizations and nonexempt charitable trusts.

An organization may file Form 990–EZ, instead of Form 990, if it meets **both** of the following requirements.

- 1) Its gross receipts during the year were less than \$100,000.
- 2) Its total assets (line 25, Column (B) of Form 990–EZ) at the end of the year were less than \$250,000.

If your organization does not meet either of these conditions, you cannot file Form 990–EZ. Instead you must file Form 990.

Group return. A group return on Form 990 may be filed by a central, parent, or like organization for two or more local organizations, none of which is a private foundation. This return is in addition to the central organization's separate annual return, if it must file a return. It cannot be included in the group return. See the instructions for Form 990 for the conditions under which this procedure may be used. In any year that an organization is properly included as a subordinate organization on a group return, it should not file its own Form 990.

Schedule A. Organizations, other than private foundations, that are described in section 501(c)(3) and that are otherwise required to file Form 990 must also complete Schedule A of that form.

Form 990–PF. All private foundations exempt under section 501(c)(3) must file Form 990–PF, *Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation*. These organizations are discussed in chapter 3.

Due date. Form 990, 990–EZ, or 990–PF must be filed by the 15th day of the 5th month after the end of your organization's accounting period.

Application for exemption pending. An organization that claims to be exempt under section 501(a) of the Code but has not established its exempt status by the due date for filing an information return should complete and file Form 990 or 990–EZ (or Form 990–PF if it considers itself a private foundation). If the organization's application is pending with the IRS, it must so indicate on Form 990, 990–EZ, or 990–PF (whichever applies) by checking the "application pending" block at the top of page 1 of the return.

For more information on the filing requirements, see the instructions for Forms 990, 990–EZ, and 990–PF.

State reporting requirements. Copies of Form 990, 990–EZ or 990–PF may be used to satisfy state reporting requirements. See the instructions for those forms.

Penalties for failure to file. An exempt organization that fails to file a required return must pay a penalty of \$20 a day for each day the failure continues. The same penalty will apply if the organization does not give all the information required on the return or does not give the correct information.

Maximum penalty. The maximum penalty for any one return is the smaller of \$10,000 or 5% of the organization's gross receipts for the year.

Organization with gross receipts over \$1 million. For an organization that has gross receipts of over \$1 million for the year, the penalty is \$100 a day up to a maximum of \$50,000.

Managers. If the organization is subject to this penalty, the IRS may specify a date by which the return or correct information must be supplied by the organization. Failure to comply with this demand will result in a penalty imposed upon the manager of the organization, or upon any other person responsible for filing a correct return. The penalty is \$10 a day for each day that a return is not filed after the period given for filing. The maximum penalty imposed on all persons with respect to any one return is \$5,000.

Exception for reasonable cause. No penalty will be imposed if reasonable cause for failure to file timely can be shown.

Unrelated Business Income Tax Return

Form 990–T. Even though an organization is recognized as tax exempt, it still may be liable for tax on its unrelated business income. Unrelated business income is income from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis for the organization's exemption. An exempt organization that has \$1,000 or more gross income from an unrelated business must file Form 990–T, *Exempt Organization Business Income Tax Return*.

The obligation to file Form 990–T is in addition to the obligation to file the annual information return, Form 990, 990–EZ or 990–PF.

Estimated tax. Exempt organizations must make quarterly payments of estimated tax on unrelated business income. An organization must make estimated tax payments if it expects its tax for the year to be \$500 or more.

For additional information see Publication 598, *Tax on Unrelated Business Income of Exempt Organizations*.

Employment Tax Returns

Every employer, including an organization exempt from federal income tax, who pays wages to employees is responsible for withholding, depositing, paying, and reporting federal income tax, social security and Medicare (FICA) taxes, and federal unemployment tax (FUTA), unless that employer is specifically exempted by law from those requirements or if the taxes clearly do not apply.

For more information, get a copy of Publication 15, Circular E, *Employer's Tax Guide*, which summarizes the responsibilities of an employer, Publication 15–A, *Employer's Supplemental Tax Guide*, and Form 941, *Employer's Quarterly Federal Tax Return*.

Penalty. If any person required to collect, truthfully account for, and pay over any of these taxes willfully fails to satisfy any of these requirements or willfully tries in any way to evade or defeat any of them, that person will be subject to a penalty. The penalty, often called the “100% penalty,” is equal to the tax evaded, not collected, or not accounted for and paid over. The term **person** includes:

- An officer or employee of a corporation, or
- A member or employee of a partnership.

Exception. The penalty is not imposed on any unpaid volunteer director or member of a board of trustees of an exempt organization if the unpaid volunteer serves solely in an honorary capacity, does not participate in the day-to-day or financial operations of the organization, and does not have actual knowledge of the failure on which the penalty is imposed.

This exception does not apply if it results in no one being liable for the penalty.

FICA and FUTA tax exceptions. Payments for services performed by a minister of a church or a member of a religious order are not subject to FICA or FUTA taxes.

FUTA tax exception. Payments for services performed by an employee of a religious, charitable, educational, or other organization described in section 501(c)(3) that are generally subject to FICA taxes if the payments are \$100 or more for the year, are not subject to FUTA taxes.

FICA tax exemption election. Churches and qualified church-controlled organizations can elect exemption from employer FICA taxes by filing **Form 8274, Certification by Churches and Qualified Church-Controlled Organizations Electing Exemption from Employer Social Security and Medicare Taxes.**

To elect exemption, Form 8274 must be filed before the first date on which a quarterly employment tax return would otherwise be due from the electing organization. The organization may make the election only if it is opposed for religious reasons to the payment of FICA taxes.

The election applies to payments for services of current and future employees other than services performed in an unrelated trade or business.

Revoking the election. The election can be revoked by the IRS if the organization fails to file Form W-2, *Wage and Tax Statement*, for 2 years and fails to furnish the information upon request by the IRS. Such revocation will apply retroactively to the beginning of the 2-year period.

Definitions. For purposes of this election, the term **church** means a church, a convention or association of churches, or an elementary or secondary school that is controlled, operated, or principally supported by a church or by a convention or association of churches.

The term **qualified church-controlled organization** means any church-controlled section 501(c)(3) tax-exempt organization, other than an organization that both:

- 1) Offers goods, services, or facilities for sale, other than on an incidental basis,

to the general public at other than a nominal charge that is substantially less than the cost of providing such goods, services, or facilities, **and**

- 2) Normally receives more than 25% of its support from the sum of governmental sources and receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in activities that are not unrelated trades or businesses.

Effect on employees. If a church or qualified church-controlled organization has made an election, payment for services performed for that church or organization, other than in an unrelated trade or business, will not be subject to FICA taxes. However, the employee, unless otherwise exempt, will be subject to self-employment tax on the income. The tax applies to income of \$108.28 or more for the tax year from that church or organization, and no deductions for trade or business expenses are allowed against this “self-employment” income.

Schedule SE (Form 1040), *Self-Employment Tax*, should be attached to the employee's income tax return.

Return for Political Activity

Form 1120-POL. An organization exempt under section 501(c) of the Code must file Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*, for any year in which it:

- 1) Expends any amount to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors (whether or not those individuals or electors are selected, nominated, elected, or appointed), and
- 2) Has net investment income.

Due date. Form 1120-POL is due by the 15th day of the 3rd month after the end of the exempt organization's tax year. However, Form 1120-POL is **not required** of an exempt organization that makes expenditures for political purposes if either the amount of the expenditures or the organization's net investment income is not more than \$100 for the tax year. For more information about filing Form 1120-POL, refer to the instructions accompanying the form.

Separate fund. If the political activities, described in (1), above, are carried out by a separate segregated fund, which is treated as a separate organization from the exempt organization maintaining the fund, the exempt organization is not liable for a tax on the expenditures.



Section 501(c)(3) organizations are precluded from, and suffer loss of exemption for, engaging in any political campaign on behalf of, or in opposition to, any candidate for public office.

Donee Information Return

Dispositions of donated property. If an organization receives a contribution of **charitable deduction property** and sells, exchanges, or otherwise disposes of the property within 2 years after its receipt, the organization must file **Form 8282, Donee Information Return (Sale, Exchange, or Other Disposition of Donated Property)**. It must be filed within 125 days after the disposition. A copy of Form 8282 is to be given to the donor. Penalties apply if the organization does not file the return.

Charitable deduction property. This is any property (other than money or **publicly traded securities**) for which the organization signed, as donee, an **appraisal summary**.

Publicly traded securities. These are securities for which market quotations for the contribution date are readily available on an established securities market.

Appraisal summary. The donor must get a qualified appraisal for contributions of property (other than money or publicly traded securities), the claimed value of which is more than \$5,000. The donee organization is not a qualified appraiser for the purpose of making a qualified appraisal. For more information, get Publication 561, *Determining the Value of Donated Property*.

Form 8283. The donor must attach Form 8283, *Noncash Charitable Contributions*, to the return on which the deduction is shown. The donee must sign Part IV of Section B, Form 8283. The person who signs for the donee must be an official authorized to sign the donee's tax or information returns, or a person specifically authorized to sign by that official. The signature does not represent concurrence in the appraised value of the contributed property. It represents receipt of the property described on Form 8283 on the date specified on the form. The signature also indicates knowledge of the information reporting requirements on dispositions, as previously discussed. A copy of Form 8283 must be given to the donee.

Information Provided to Donors

A charitable organization must give a donor a disclosure statement for a quid pro quo contribution over \$75. A donor cannot deduct a charitable contribution of \$250 or more unless the donor has a written acknowledgment from the charitable organization.

In certain circumstances, an organization may be able to meet both of these requirements with the same written document.

Disclosure of Quid Pro Quo Contributions

A charitable organization must provide a written **disclosure statement** to donors of a quid pro quo contribution over \$75.

Quid pro quo contribution. This is a payment a donor makes to a charity partly as a contribution and partly for goods or services. For example, if a donor gives a charity \$100 and receives a concert ticket valued at \$40, the donor has made a quid pro quo contribution. In this example, the charitable contribution part of the payment is \$60. Even though the deductible part of the payment is not more than \$75, a disclosure statement must be filed because the donor's payment (quid pro quo contribution) is more than \$75.

Disclosure statement. The required written disclosure statement must:

- 1) Inform the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of any money (and the value of any property other than money) contributed by the donor over the fair market value of goods or services provided by the charity, and
- 2) Provide the donor with a **good faith estimate** of the fair market value of the goods or services that the donor received.

The charity must furnish the statement in connection with either the solicitation or the receipt of the quid pro quo contribution. If the disclosure statement is furnished in connection with a particular solicitation, it is not necessary for the organization to provide another statement when it actually receives the contribution.

No disclosure statement is required if **any** of the following are true.

- 1) The goods or services given to a donor have "insubstantial value" as described in Revenue Procedure 90-12, in Cumulative Bulletin 1990-1, and Revenue Procedure 92-49, in Cumulative Bulletin 1992-1.
- 2) There is no donative element involved in a particular transaction with a charity (for example, there is generally no donative element involved in a visitor's purchase from a museum gift shop).
- 3) There is only an intangible religious benefit provided to the donor. The intangible religious benefit must be provided to the donor by an organization organized exclusively for religious purposes, and must be of a type that generally is not sold in a commercial transaction outside the donative context. For example, a donor who for a payment is granted admission to a religious ceremony for which there is no admission charge is provided an intangible religious benefit. A donor is not provided intangible religious benefits for payments made for tuition for education leading to a recognized degree, travel services, or consumer goods.
- 4) The donor makes a payment of \$75 or less per year and receives only annual membership benefits that consist of:
 - a) Any rights or privileges (other than the right to purchase tickets for college athletic events) that the taxpayer can exercise often during the membership period, such as free or discounted admissions or parking or preferred access to goods or services, or

- b) Admission to events that are open only to members and the cost per person of which is within the limits for low cost articles described in Revenue Procedure 90-12 (as adjusted for inflation).

Good faith estimate of fair market value. An organization may use any reasonable method to estimate the fair market value (FMV) of goods or services it provided to a donor, as long as it applies the method in good faith.

The organization may estimate the FMV of goods or services that generally are not commercially available by using the FMV of similar or comparable goods or services. Goods or services may be similar or comparable even if they do not have the unique qualities of the goods or services being valued.

Example 1. A charity provides a one-hour tennis lesson with a tennis professional for the first \$500 payment it receives. The tennis professional provides one-hour lessons on a commercial basis for \$100. A good faith estimate of the lesson's FMV is \$100.

Example 2. For a payment of \$50,000, a museum allows a donor to hold a private event in a room of the museum. A good faith estimate of the FMV of the right to hold the event in the museum can be made by using the cost of renting a hotel ballroom with a capacity, amenities, and atmosphere comparable to the museum room, even though the hotel ballroom lacks the unique art displayed in the museum room. If the hotel ballroom rents for \$2,500, a good faith estimate of the FMV of the right to hold the event in the museum is \$2,500.

Example 3. For a payment of \$1,000, a charity provides an evening tour of a museum conducted by a well-known artist. The artist does not provide tours on a commercial basis. Tours of the museum normally are free to the public. A good faith estimate of the FMV of the evening museum tour is \$0 even though it is conducted by the artist.

Penalty for failure to disclose. A penalty is imposed on a charity that does not make the required disclosure of a quid pro quo contribution of more than \$75. The penalty is \$10 per contribution, not to exceed \$5,000 per fund-raising event or mailing. The charity can avoid the penalty if it can show that the failure was due to reasonable cause.

Acknowledgement of Charitable Contributions Over \$250

A donor can deduct a charitable contribution of \$250 or more only if the donor has a written acknowledgement from the charitable organization. The donor must get the acknowledgement by the earlier of:

- 1) The date the donor files the original return for the year the contribution is made, or
- 2) The due date, including extensions, for filing the return.

The donor is responsible for requesting and obtaining the written acknowledgement from the donee.

Quid pro quo contribution. If the donee provides goods or services to the donor in exchange for the contribution (a quid pro quo contribution), the acknowledgement must include a good faith estimate of the value of the goods or services. See *Disclosure of Quid Pro Quo Contributions*, earlier.

Form of acknowledgement. Although there is no prescribed format for the written acknowledgement, it must provide enough information to substantiate the amount of the contribution. For more information, get IRS Publication 1771, *Charitable Contributions – Substantiation and Disclosure Requirements*.

Report of Cash Received

An exempt organization that receives, in the course of its activities, more than \$10,000 cash in one transaction (or 2 or more related transactions) that is not a charitable contribution, must report the transaction to the IRS on **Form 8300**, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*.

Public Inspection of Exemption Applications and Annual Returns

The following rules do not apply to private foundations. Section 6104(d) describes the public inspection rules for private foundations.

Annual return. An exempt organization must make available for inspection, upon request, a copy of its return (Form 990 or 990-EZ) for the 3-year period starting with the filing date. The organization need not disclose the names of its contributors.

Exemption application. An exempt organization must also make available for public inspection its application for tax-exempt status (generally, Form 1023 or Form 1024). It must also make available a copy of any papers submitted in support of the application (with certain exceptions) and any letter or other document issued by the IRS with respect to the application. This applies for applications submitted on or after July 16, 1987, or before that date if the organization had a copy of the application on July 15, 1987.

Place and time. The annual returns and exemption applications must be made available at the organization's principal office during regular business hours. If the organization has one or more regional or district offices with three or more employees, the annual return and exemption application must be available for inspection at these offices.

Furnishing of copies. An exempt organization must provide a copy of its three most recent annual returns and exemption application to any individual who requests one in person or in writing. If the individual made the request in person, the copy must be provided immediately. If the individual made the re-

quest in writing, the copy must be provided within 30 days. The organization can charge only a reasonable fee for copying and mailing.

The organization does not have to provide copies of these documents if, under regulations:

- 1) It has made the documents widely available, or
- 2) The Secretary of the Treasury has found, upon the organization's request, that the request for documents is part of a harassment campaign and that compliance with the request is not in the public interest.

This requirement to provide copies applies to requests made on or after the 60th day after the regulations referred to in section 6104(e)(3) are issued. At the time this publication was being prepared for print, the regulations had not been issued. But organizations may voluntarily furnish copies before then.

Penalty. The penalty for willful failure to allow public inspection of a return or exemption application is \$1,000 for each return or application. For requests made on or after the 60th day after the regulations referred to in section 6104(e)(3) are issued, the penalty increases to \$5,000 and also applies to a willful failure to provide copies.

Required Disclosures

Certain exempt organizations must disclose to the IRS or the public certain information about their activities. Generally, an organization discloses this information by entering it on the appropriate lines of its annual return. In addition, there are disclosure requirements for:

- Solicitation of nondeductible contributions,
- Sales of information or services that are available free from the government, and
- Dues paid to the organization that are not deductible because used for lobbying or political activities.

Solicitation of Nondeductible Contributions

Solicitations for contributions or other payments by certain exempt organizations (including lobbying groups and political action committees) must include a statement that payments to those organizations are not deductible as charitable contributions for federal income tax purposes. The statement must be included in the fund-raising solicitation and be conspicuous and easily recognizable.

Organizations subject to requirements. An organization must follow these disclosure requirements if it is exempt under section 501(c), other than section 501(c)(1), or under section 501(d), unless the organization is eligible to receive tax deductible charitable

contributions under section 170(c). These requirements must be followed by, among others:

- 1) Social welfare organizations (section 501(c)(4)),
- 2) Labor unions (section 501(c)(5)),
- 3) Trade associations (section 501(c)(6)),
- 4) Social clubs (section 501(c)(7)),
- 5) Fraternal organizations (section 501(c)(8) and (10)) (however, fraternal organizations described in section 170(c)(4) must follow these requirements only for solicitations for funds that are to be used for noncharitable purposes not described in section 170(c)(4)),
- 6) Any political organization described in section 527(e), including political campaign committees and political action committees, and
- 7) Any organization not eligible to receive tax-deductible contributions if the organization or a predecessor organization was, at any time during the 5-year period ending on the date of the fund-raising solicitation, an organization of the type to which this disclosure requirement applies.

Fund-raising solicitation. This disclosure requirement applies to a fund-raising solicitation if all of the following are true.

- 1) The organization soliciting the funds normally has gross receipts over \$100,000 per year.
- 2) The solicitation is part of a coordinated fund-raising campaign that is soliciting more than 10 persons during the year.
- 3) The solicitation is made in written form, by television or radio, or by telephone.

Penalties. Failure by an organization to make the required statement will result in a penalty of \$1,000 for each day the failure occurred, up to a maximum penalty of \$10,000 for a calendar year. No penalty will be imposed if it is shown that the failure was due to reasonable cause. If the failure was due to intentional disregard of the requirements, the penalty may be higher and is not subject to a maximum amount.

Sales of Information or Services Available Free From Government

Certain organizations that sell to individuals information or routine services that could be readily obtained free (or for a nominal fee) from the federal government must include a statement that the information or service can be so obtained. The statement must be made in a conspicuous and easily recognized format when the organization makes an offer or solicitation to sell the information or service. Organizations affected are those exempt under section 501(c) or (d) and political organizations defined in section 527(e).

Penalty. A penalty is provided for failure to comply with this requirement if the failure is due to intentional disregard of the requirement. The penalty is the greater of \$1,000 for each day the failure occurred, or 50% of the

total cost of all solicitations that were made by the organization the same day that it fails to meet the requirement.

Dues Used for Lobbying or Political Activities

Certain exempt organizations must notify anyone paying dues to the organization whether any part of the dues is not deductible because it is related to lobbying or political activities.

An organization must provide the notice if it is exempt from tax under section 501(a) and is one of the following:

- 1) A social welfare organization described in section 501(c)(4) that is not a veterans organization,
- 2) An agricultural or horticultural organization described in section 501(c)(5), or
- 3) A business league, chamber of commerce, real estate board, or other organization described in section 501(c)(6).

However, an organization described in (1), (2), or (3) does not have to provide the notice if it establishes that substantially all the dues paid to it are not deductible anyway or if certain other conditions are met. For more information, see Revenue Procedure 95-35 in Internal Revenue Cumulative Bulletin 1995-2.

If the organization does not provide the required notice, it may have to pay a tax that is reported on Form 990-T. But the tax does not apply to any amount on which the section 527 tax has been paid on Form 1120-POL. See *Return for Political Activity*, earlier.

For more information about nondeductible dues, see *Deduction not allowed for dues used for political or legislative activities* on page 41.

Miscellaneous Rules

Organizational changes and exempt status. If your exempt organization *changes its legal structure*, such as from a trust to a corporation, you must file a new exemption application to establish that the new legal entity qualifies for exemption. If your organization becomes *inactive* for a period of time but does not cease being an entity under the laws of the state in which it was formed, its exemption will not be terminated. However, unless you are covered by one of the filing exceptions, you will have to continue to file an annual information return during the period of inactivity. If your organization has been *liquidated, dissolved, terminated, or substantially contracted*, you should file your annual return of information by the 15th day of the 5th month after the change and follow the applicable instructions to the form.

If your organization amends its articles of organization or its internal regulations (by-laws), you should send a conformed copy of these changes to the appropriate key District Director. (An organization that is covered by a group exemption letter should send two copies of these changes.) If you did not give the IRS a copy of the amendments previously, you may include it when you file Form 990 (or 990-EZ or Form 990-PF), if that return is required.

Change in accounting period. The procedures that an organization must follow to change its accounting period differ for an individual organization and for a central organization that seeks a group change for its subordinate organizations.

Individual organizations that wish to change annual accounting periods generally need only file an information return for the short period indicating that a change is being made. However, if the organization has changed its accounting period within the previous 10 years, it must file Form 1128, *Application to Adopt, Change, or Retain a Tax Year*. Form 1128 is attached to the short period return. See Revenue Procedure 85–58.

Central organizations may obtain approval for a group change in annual accounting period for their subordinate organizations on a group basis only by filing Form 1128 with the Ogden Service Center. The address is given on page 7 under *Information Required Annually*. For more information, see Revenue Procedure 76–10, as modified by Revenue Procedure 79–3.

Form 1128 must be filed by the 15th day of the 5th month following the close of the short period.

3.

Section 501(c)(3) Organizations

Introduction

An organization may qualify for exemption from federal income tax if it is organized and operated exclusively for one or more of the following purposes:

Charitable,
Religious,
Educational,
Scientific,
Literary,
Testing for public safety,

Fostering national or international amateur sports competition (but only if none of its activities involve providing athletic facilities or equipment; however, see *Amateur Athletic Organizations*, later in this chapter), or

The prevention of cruelty to children or animals.

To qualify, the organization must be a corporation, community chest, fund, or foundation. A trust is a fund or foundation and will qualify. However, an individual or a partnership will not qualify.

Examples. Qualifying organizations include:

Nonprofit old age homes,
Parent-teacher associations,

Charitable hospitals or other charitable organizations,

Alumni associations,

Schools,

Chapters of the Red Cross or Salvation Army,

Boys' clubs, and

Churches.

Child care organizations. The term “educational purposes” includes the providing of care of children away from their homes if substantially all the care provided is to enable individuals (the parents) to be gainfully employed and the services are available to the general public.

Instrumentalities. A state or municipal instrumentality may qualify under section 501(c)(3) if it is organized as a separate entity from the governmental unit that created it and if it otherwise meets the organizational and operational tests of section 501(c)(3). Examples of a qualifying instrumentality might include state schools, universities, or hospitals. However, if an organization is an integral part of the local government or possesses governmental powers, it does not qualify for exemption. A state or municipality itself does not qualify for exemption.

Topics

This chapter discusses:

- Contributions to 501(c)(3) organizations
- Applications for recognition of exemption
- Educational organizations and certain other 501(c)(3) organizations
- Private foundations and public charities
- Lobbying expenditures

Useful Items

You may want to see:

Publications

- 1391** Deductibility of Payments Made to Charities Conducting Fund-Raising Events
- 578** Tax Information for Private Foundations and Foundation Managers

Forms (and Instructions)

- 1023** Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code
- 8718** User Fee for Exempt Organization Determination Letter Request

See chapter 5 for information about getting these publications and forms.

Contributions

Contributions to domestic organizations described in this chapter, except organizations testing for public safety, are deductible as charitable contributions on the donor's federal income tax return.

Fund-raising events. If the donor receives something of value in return for the contribution, a common occurrence with fund-raising efforts, part or all of the contribution may not be deductible. This may apply to fund-raising activities such as charity balls, bazaars, banquets, auctions, concerts, athletic events, and solicitations for membership

or contributions when merchandise or benefits are given in return for payment of a specified minimum contribution.

If the donor receives or expects to receive goods or services in return for a contribution to your organization, the donor cannot deduct any part of the contribution unless the donor intends to, and does, make a payment greater than the fair market value of the goods or services. If a deduction is allowed, the donor can deduct only the part of the contribution, if any, that is more than the fair market value of the goods or services received. You should determine in advance the fair market value of any goods or services to be given to contributors and tell them when you publicize the fund-raising event or solicit their contributions how much is deductible and how much is for the goods or services. See *Disclosure of Quid Pro Quo Contributions* in chapter 2.

This topic is discussed in more detail in Publication 1391, *Deductibility of Payments Made to Charities Conducting Fund-Raising Events*. You can ask the IRS to send you a copy. See chapter 5.

Exemption application not filed. Donors may not deduct any charitable contribution to an organization that is required to apply for recognition of exemption but has not done so.

Separate fund—contributions to which are deductible.

An organization that is exempt from federal income tax other than as an organization described in section 501(c)(3) may, if it desires, establish a fund, separate and apart from its other funds, exclusively for religious, charitable, scientific, literary, or educational purposes, fostering national or international amateur sports competition, or for the prevention of cruelty to children or animals.

If the fund is organized and operated exclusively for these purposes, it may qualify for exemption as an organization described in section 501(c)(3), and contributions made to it will be deductible as provided by section 170. A fund with these characteristics must be organized in such a manner as to prohibit the use of its funds upon dissolution, or otherwise, for the general purposes of the organization creating it.

Application for Recognition of Exemption

This discussion describes certain information to be provided upon application for recognition of exemption by all organizations created for any of the purposes described earlier in this chapter. For example, the application must include a conformed copy of the organization's articles of incorporation, as discussed under *Articles of Organization* later in this chapter. See the organization headings that follow for specific information your organization may need to provide.

Form 1023. Your organization must file its application for recognition of exemption on Form 1023. See chapter 1 and the instructions accompanying Form 1023 for the procedures to follow in applying. Some organizations are not required to file Form 1023. These are discussed later in this section.

Form 1023 and accompanying statements must show that all of the following are true.

- 1) The organization is organized exclusively for, and will be operated exclusively for, one or more of the purposes (charitable, religious, etc.) specified in the introduction to this chapter.
- 2) No part of the organization's net earnings will inure to the benefit of private shareholders or individuals. You must establish that your organization will not be organized or operated for the benefit of private interests, such as the creator or the creator's family, shareholders of the organization, other designated individuals, or persons controlled directly or indirectly by such private interests.
- 3) The organization will not, as a substantial part of its activities, attempt to influence legislation (unless it elects to come under the provisions allowing certain lobbying expenditures) or participate to any extent in a political campaign for or against any candidate for public office. See *Political activity*, next, and *Lobbying Expenditures*, near the end of this chapter.

Political activity. If any of the activities (whether or not substantial) of your organization consist of participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office, your organization will not qualify for tax-exempt status under section 501(c)(3). Such participation or intervention includes the publishing or distributing of statements.

Whether your organization is participating or intervening, directly or indirectly, in any political campaign on behalf of (or in opposition to) any candidate for public office depends upon all of the facts and circumstances of each case. Certain voter education activities or public forums conducted in a non-partisan manner may not be prohibited political activity under section 501(c)(3), while other so-called voter education activities may be prohibited.



If your organization is uncertain as to the effect of its voter education activities, you should request a letter ruling from the Internal Revenue Service. Send the request to:

Internal Revenue Service
Assistant Commissioner (Employee Plans and Exempt Organizations)
Attention: CP:E:EO
P.O. Box 120, Ben Franklin Station
Washington, DC 20044

Effective date of exemption. Most organizations described in this chapter that were organized after October 9, 1969, will not be treated as tax exempt unless they apply for recognition of exemption by filing Form 1023. These organizations will not be treated as tax exempt for any period before they file Form 1023, unless they file the form within 15 months from the end of the month in which they were organized. If the organization files the application within this 15-month period, the organization's exemption will be recognized retroactively to the date it was organized. Otherwise, exemption will be recognized only for the period after the IRS receives the application. The date of receipt is the date of

the U.S. postmark on the cover in which an exemption application is mailed or, if no postmark appears on the cover, the date the application is stamped as received by the IRS.

Private delivery service. If a private delivery service designated by the IRS, rather than the U.S. Postal Service, is used to deliver the application, the date of receipt is the date recorded or marked by the private delivery service. At the time this publication was printed, the following private delivery services had been designated by the IRS:

- Airborne Express (Airborne): Overnight Air Express Service, Next Afternoon Service, and Second Day Service
- DHL Worldwide Express (DHL): DHL "Same Day" Service and DHL USA Overnight
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, and FedEx 2Day
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, and UPS 2nd Day Air A.M.

Amendments to enabling instrument required. If an organization is required to alter its activities or to make **substantive amendments** to its enabling instrument, the ruling or determination letter recognizing its exempt status will be effective as of the date the changes are made. If only a **nonsubstantive amendment** is made, exempt status will be effective as of the date it was organized, if the application was filed within the 15-month period, or the date the application was filed.

Extensions of time for filing. There are two ways organizations seeking exemption can receive an extension of time for filing Form 1023.

- 1) **Automatic 12-month extension.** Organizations will receive an automatic 12-month extension if they file an application for recognition of exemption with the IRS within 12 months of the original deadline. To get this extension, an organization must add the following statement at the top of its application: "Filed Pursuant to Section 301.9100-2T."
- 2) **Discretionary extensions.** An organization that fails to file a Form 1023 within the extended 12-month period will be granted an extension to file if it submits evidence to establish that:
 - a) It acted reasonably and in good faith, and
 - b) Granting a discretionary extension will not prejudice the interests of the government.

How to show reasonable action and good faith. An organization acted reasonably and showed good faith if at least one of the following is true.

- 1) The organization filed its application before the IRS discovered its failure to file.
- 2) The organization inadvertently failed to file because of events beyond its control.
- 3) The organization exercised reasonable diligence but was not aware of the filing requirement. To determine whether the organization exercised reasonable dilii-

gence, it is necessary to take into account the complexity of filing and the organization's experience in these matters.

- 4) The organization reasonably relied upon the written advice of the IRS.
- 5) The organization relied upon the advice of a qualified tax professional who failed to file or advise the organization to file Form 1023. An organization cannot rely on the advice of a tax professional if it knows or should know that he or she is not competent to render advice on filing exemption applications or is not aware of all the relevant facts.

Not acting reasonably and in good faith. An organization has not acted reasonably and in good faith if it chose not to file after being informed of the requirement to file and the consequences of failure to do so. Furthermore, an organization has not acted reasonably and in good faith if it used hindsight to request an extension of time to file. That is, if after the original deadline to file passes, filing an application becomes advantageous to an organization, the IRS will not ordinarily grant an extension. To qualify for an extension in this situation, the organization must prove that its decision to file did not involve hindsight.

Prejudicing the interest of the government. Prejudice to the interest of the government results if granting an extension of time to file to an organization results in a lower total tax liability for the years to which the filing applies than would have been the case if the organization had filed on time. Before granting an extension, the IRS may require the organization requesting it to submit a statement from an independent auditor certifying that no prejudice will result if the extension is granted.

Procedure for requesting extension. To request a discretionary extension, an organization must submit (to the IRS address shown on Form 8718) the following:

- A statement showing the date Form 1023 should have been filed and the date it was actually filed.
- An affidavit describing in detail the events that led to the failure to apply and to the discovery of that failure. If the organization relied on a tax professional's advice, the affidavit must describe the engagement and responsibilities of the professional and the extent to which the organization relied on him or her.
- All documents relevant to the election application.
- A dated declaration, signed by an individual authorized to act for the organization, that includes the following statement: "Under penalties of perjury, I declare that, to the best of my knowledge and belief, the facts presented herein are true, correct, and complete." The individual who signs for the organization must have personal knowledge of the facts and circumstances at issue.
- A detailed affidavit from individuals having knowledge or information about the events that led to the failure to make the application and to the discovery of that failure. These individuals include accountants or attorneys knowledgeable in tax matters who advised the organization concerning the application. Any affidavit

from a tax professional must describe the engagement and responsibilities of the professional as well as the advice that the professional provided to the organization. The affidavit must also include the name, current address, and taxpayer identification number of the individual making the affidavit (the affiant). The affiant must also forward with the affidavit a dated and signed declaration that states: "Under the penalties of perjury, I declare that, to the best of my knowledge and belief, the facts presented herein are true, correct, and complete."

More information. For more information about these procedures, see sections 301.9100-1T, 2T, and 3T of the regulations.

Notification from IRS. Organizations filing Form 1023 and satisfying all requirements of section 501(c)(3) will be notified of their exempt status in writing.

Organizations Not Required To File Form 1023

Some organizations are not required to file Form 1023.

These include:

- Churches, interchurch organizations of local units of a church, conventions or associations of churches, or integrated auxiliaries of a church, such as a men's or women's organization, religious school, mission society, or youth group.
- Any organization (other than a private foundation) normally having annual gross receipts of not more than \$5,000 (see *Gross receipts test*, later).

These organizations are exempt automatically if they meet the requirements of section 501(c)(3).

Filing Form 1023 to establish exemption.

If the organization wants to establish its exemption with the IRS and receive a ruling or determination letter recognizing its exempt status, it should file Form 1023. By establishing its exemption, potential contributors are assured by the IRS that contributions will be deductible. A subordinate organization covered by a group exemption letter does not have to submit a Form 1023 for itself.

Private foundations. See *Private Foundations and Public Charities*, later in this chapter, for more information about the additional notice required from an organization in order for it not to be presumed to be a private foundation and for the additional information required from a private foundation claiming to be an operating foundation.

Gross receipts test. For purposes of the gross receipts test, an organization normally does not have more than \$5,000 annually in gross receipts if:

- 1) During its first tax year the organization received gross receipts of \$7,500 or less,
- 2) During its first 2 years the organization had a total of \$12,000 or less in gross receipts, and
- 3) In the case of an organization that has been in existence for at least 3 years, the total gross receipts received by the organization during the immediately preceding 2 years, plus the current year, are \$15,000 or less.

An organization with gross receipts more than the amounts in the gross receipts test, unless otherwise exempt from filing Form 1023, must file a Form 1023 within 90 days after the end of the period in which the amounts are exceeded. For example, an organization's gross receipts for its first tax year were less than \$7,500, but at the end of its second tax year its gross receipts for the 2-year period were more than \$12,000. The organization must file Form 1023 within 90 days after the end of its second tax year.

If the organization had existed for at least 3 tax years and had met the gross receipts test for all prior tax years but fails to meet the requirement for the current tax year, its tax-exempt status for the prior years will not be lost even if Form 1023 is not filed within 90 days after the close of the current tax year. However, the organization will not be treated as a section 501(c)(3) organization for the period beginning with the current tax year and ending with the filing of Form 1023.

Example. An organization is organized and operated exclusively for charitable purposes and is not a private foundation. It was incorporated on January 1, 1993, and files returns on a calendar year basis. It did not file a Form 1023. The organization's gross receipts during the years 1993 through 1996 were as follows:

1993	\$3,600
1994	2,900
1995	400
1996	12,600

The organization's total gross receipts for 1993, 1994, and 1995 were \$6,900. Therefore, it did not have to file Form 1023 and is exempt for those years. However, for 1994, 1995, and 1996 the total gross receipts were \$15,900. Therefore, the organization must file Form 1023 within 90 days after the end of its 1996 tax year. If it does not file within this time period, it will not be exempt under section 501(c)(3) for the period beginning with tax year 1996 and ending when the Form 1023 is received by the IRS. The organization, however, will not lose its exempt status for the tax years ending before January 1, 1996.

The IRS will consider applying the Commissioner's discretionary authority to extend the time for filing Form 1023. See the procedures for this extension discussed earlier.

Articles of Organization

Your organization must include a conformed copy of its articles of organization with the application for recognition of exemption. This may be its trust instrument, corporate charter, articles of association, or any other written instrument by which it is created.

Organizational Test

The articles of organization **must** limit the organization's purposes to one or more of those described at the beginning of this chapter and **must not** expressly empower it to engage, other than as an insubstantial part of its activities, in activities that do not further one or more of those purposes. These conditions for exemption are referred to as the **organizational test**.

Section 501(c)(3) is the provision of law that grants exemption to the organizations

described in this chapter. Therefore, the organizational test may be met if the purposes stated in the articles of organization are limited in some way by reference to section 501(c)(3).

The requirement that your organization's purposes and powers must be limited by the articles of organization is **not satisfied** if the limit is contained only in the bylaws or other rules or regulations. Moreover, the organizational test is **not satisfied** by statements of your organization's officers that you intend to operate only for exempt purposes. Also, the test is not satisfied by the fact that your actual operations are for exempt purposes.

In interpreting an organization's articles, the law of the state where the organization was created is controlling. If an organization contends that the terms of its articles have a different meaning under state law than their generally accepted meaning, such meaning must be established by a clear and convincing reference to relevant court decisions, opinions of the state attorney general, or other appropriate state authorities.

The following are **examples** illustrating the organizational test.

Example 1. Articles of organization state that an organization is formed exclusively for literary and scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. These articles appropriately limit the organization's purposes. The organization meets the organizational test.

Example 2. An organization, by the terms of its articles, is formed to engage in research without any further description or limitation. The organization will not be properly limited as to its purposes since all research is not scientific. The organization does not meet the organizational test.

Example 3. An organization's articles state that its purpose is to receive contributions and pay them over to organizations that are described in section 501(c)(3) and exempt from taxation under section 501(a). The organization meets the organizational test.

Example 4. If a stated purpose in the articles is the conduct of a school of adult education and its manner of operation is described in detail, such a purpose will be satisfactorily limited.

Example 5. If the articles state the organization is formed for charitable purposes, without any further description, such language ordinarily will be sufficient since the term charitable has a generally accepted legal meaning. On the other hand, if the purposes are stated to be charitable, philanthropic, and benevolent, the organizational requirement will **not** be met since the terms philanthropic and benevolent have no generally accepted legal meaning and, therefore, the stated purposes may, under the laws of the state, permit activities that are broader than those intended by the exemption law.

Example 6. If the articles state an organization is formed to promote American ideals, or to foster the best interests of the people, or to further the common welfare and well-being of the community, without any limitation or provision restricting such purposes to accomplishment only in a charitable manner, the purposes will **not** be sufficiently limited. Such purposes are vague and may be accomplished other than in an exempt manner.

Example 7. A stated purpose to operate a hospital does not meet the organizational test since it is not necessarily charitable. A hospital may or may not be exempt depending on the manner in which it is operated.

Example 8. An organization that is expressly empowered by its articles to carry on social activities will **not** be sufficiently limited as to its power, even if its articles state that it is organized and will be operated exclusively for charitable purposes.

Dedication and Distribution of Assets

Assets of an organization must be permanently **dedicated** to an exempt purpose. This means that should an organization dissolve, its assets must be **distributed** for an exempt purpose described in this chapter, or to the federal government or to a state or local government for a public purpose. If the assets could be distributed to members or private individuals or for any other purpose, the organizational test is not met.

Dedication. To establish that your organization's assets will be permanently dedicated to an exempt purpose, the articles of organization should contain a provision insuring their distribution for an exempt purpose in the event of dissolution. Although reliance may be placed upon state law to establish permanent dedication of assets for exempt purposes, your organization's application probably can be processed much more rapidly if its articles of organization include a provision insuring permanent dedication of assets for exempt purposes.

Distribution. Revenue Procedure 82-2, 1982-1 C.B. 367, identifies the states and circumstances in which the IRS will not require an express provision for the distribution of assets upon dissolution in the articles of organization. The procedure also provides a sample of an acceptable dissolution provision for organizations required to have one.

If a **named beneficiary** is to be the distributee, it must be one that would qualify and would be exempt within the meaning of section 501(c)(3) at the time the dissolution takes place. Since the named beneficiary at the time of dissolution may not be qualified, may not be in existence, or may be unwilling or unable to accept the assets of the dissolving organization, a provision should be made for distribution of the assets for one or more of the purposes specified in this chapter in the event of any such contingency.

Sample Articles of Organization

The following are examples of a charter (Draft A) and a declaration of trust (Draft B) that contain the required information as to purposes and powers of an organization and disposition of its assets upon dissolution. You should bear in mind that requirements for these instruments may vary under applicable state law.

See page 22 for the special provisions required in a private foundation's governing instrument in order for it to qualify for exemption.

Draft A

Articles of Incorporation of the undersigned, a majority of whom are citizens of the United States, desiring to form a Non-Profit Corporation under the Non-Profit Corporation Law of _____, do hereby certify:

First: The name of the Corporation shall be _____.

Second: The place in this state where the principal office of the Corporation is to be located is the City of _____, _____ County.

Third: Said corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Fourth: The names and addresses of the persons who are the initial trustees of the corporation are as follows:

Name _____ Address _____

Fifth: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Third hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

If reference to federal law in articles of incorporation imposes a limitation that is invalid in your state, you may wish to substitute the following for the last sentence of the preceding paragraph: "Notwithstanding any other provision of these articles, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation."

Sixth: Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

In witness whereof, we have hereunto subscribed our names this ____ day of _____ 19____.

Draft B

The _____ Charitable Trust. Declaration of Trust made as of the ____ day of _____, 19____, by _____, of _____, and _____, of _____, who hereby declare and agree that they have received this day from _____, as Donor, the sum of Ten Dollars (\$10) and that they will hold and manage the same, and any additions to it, in trust, as follows:

First: This trust shall be called "The _____ Charitable Trust."

Second: The trustees may receive and accept property, whether real, personal, or mixed, by way of gift, bequest, or devise, from any person, firm, trust, or corporation, to be held, administered, and disposed of in accordance with and pursuant to the provisions of this Declaration of Trust; but no gift, bequest or devise of any such property shall be received and accepted if it is conditioned or limited in such manner as to require the disposition of the income or its principal to any person or organization other than a "charitable organization" or for other than "charitable purposes" within the meaning of such terms as defined in Article Third of this Declaration of Trust, or as shall in the opinion of the trustees, jeopardize the federal income tax exemption of this trust pursuant to section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Third: A. The principal and income of all property received and accepted by the trustees to be administered under this Declaration of Trust shall be held in trust by them, and the trustees may make payments or distributions from income or principal, or both, to or for the use of such charitable organizations, within the meaning of that term as defined in paragraph C, in such amounts and for such charitable purposes of the trust as the trustees shall from time to time select and determine; and the trustees may make payments or distributions from income or principal, or both, directly for such charitable purposes, within the meaning of that term as defined in paragraph D, in such amounts as the trustees shall from time to time select and determine without making use of any other charitable organization. The trustees may also make payments or distributions of all or any part of the income or principal to states, territories, or possessions of the United States, any political subdivision of any of the foregoing, or to the United States or the District of Columbia but only for charitable purposes within the meaning of that term as defined in paragraph D. Income or principal derived from contributions by corporations shall be distributed by the trustees for use solely within the United States or its possessions. No part of the net earnings of this trust shall inure or be payable to or for the benefit of any private shareholder or individual, and no substantial part of the activities of this trust shall be the carrying on of propaganda, or otherwise attempting, to influence legislation. No part of the activities of this trust shall be the participation in, or intervention in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

B. The trust shall continue forever unless the trustees terminate it and distribute all of

the principal and income, which action may be taken by the trustees in their discretion at any time. On such termination, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. The donor authorizes and empowers the trustees to form and organize a nonprofit corporation limited to the uses and purposes provided for in this Declaration of Trust, such corporation to be organized under the laws of any state or under the laws of the United States as may be determined by the trustees; such corporation when organized to have power to administer and control the affairs and property and to carry out the uses, objects, and purposes of this trust. Upon the creation and organization of such corporation, the trustees are authorized and empowered to convey, transfer, and deliver to such corporation all the property and assets to which this trust may be or become entitled. The charter, bylaws, and other provisions for the organization and management of such corporation and its affairs and property shall be such as the trustees shall determine, consistent with the provisions of this paragraph.

C. In this Declaration of Trust and in any amendments to it, references to "charitable organizations" or "charitable organization" mean corporations, trusts, funds, foundations, or community chests created or organized in the United States or in any of its possessions, whether under the laws of the United States, any state or territory, the District of Columbia, or any possession of the United States, organized and operated exclusively for charitable purposes, no part of the net earnings of which inures or is payable to or for the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which do not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office. It is intended that the organization described in this paragraph C shall be entitled to exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

D. In this Declaration of Trust and in any amendments to it, the term "charitable purposes" shall be limited to and shall include only religious, charitable, scientific, literary, or educational purposes within the meaning of those terms as used in section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, but only such purposes as also constitute public charitable purposes under the law of trusts of the State of _____.

Fourth: This Declaration of Trust may be amended at any time or times by written instrument or instruments signed and sealed by the trustees, and acknowledged by any of the trustees, provided that no amendment shall authorize the trustees to conduct the affairs of this trust in any manner or for any purpose contrary to the provisions of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code. An amendment of the provisions of this Article Fourth (or any amend-

ment to it) shall be valid only if and to the extent that such amendment further restricts the trustees' amending power. All instruments amending this Declaration of Trust shall be noted upon or kept attached to the executed original of this Declaration of Trust held by the trustees.

Fifth: Any trustee under this Declaration of Trust may, by written instrument, signed and acknowledged, resign his office. The number of trustees shall be at all times not less than two, and whenever for any reason the number is reduced to one, there shall be, and at any other time there may be, appointed one or more additional trustees. Appointments shall be made by the trustee or trustees for the time in office by written instruments signed and acknowledged. Any succeeding or additional trustee shall, upon his acceptance of the office by written instrument signed and acknowledged, have the same powers, rights and duties, and the same title to the trust estate jointly with the surviving or remaining trustee or trustees as if originally appointed.

None of the trustees shall be required to furnish any bond or surety. None of them shall be responsible or liable for the acts of omissions of any other of the trustees or of any predecessor or of a custodian, agent, depository or counsel selected with reasonable care.

The one or more trustees, whether original or successor, for the time being in office, shall have full authority to act even though one or more vacancies may exist. A trustee may, by appropriate written instrument, delegate all or any part of his powers to another or others of the trustees for such periods and subject to such conditions as such delegating trustee may determine.

The trustees serving under this Declaration of Trust are authorized to pay to themselves amounts for reasonable expenses incurred and reasonable compensation for services rendered in the administration of this trust, but in no event shall any trustee who has made a contribution to this trust ever receive any compensation thereafter.

Sixth: In extension and not in limitation of the common law and statutory powers of trustees and other powers granted in this Declaration of Trust, the trustees shall have the following discretionary powers:

a) To invest and reinvest the principal and income of the trust in such property, real, personal, or mixed, and in such manner as they shall deem proper, and from time to time to change investments as they shall deem advisable; to invest in or retain any stocks, shares, bonds, notes, obligations, or personal or real property (including without limitation any interests in or obligations of any corporation, association, business trust, investment trust, common trust fund, or investment company) although some or all of the property so acquired or retained is of a kind or size which but for this express authority would not be considered proper and although all of the trust funds are invested in the securities of one company. No principal or income, however, shall be loaned, directly or indirectly, to any trustee or to anyone else, corporate or otherwise, who has at any time made a contribution to this trust, nor to anyone except on the basis of an adequate interest charge and with adequate security.

b) To sell, lease, or exchange any personal, mixed, or real property, at public auction or by private contract, for such consider-

ation and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relating to the trust property, as they consider advisable, whether or not such leases or contracts may extend beyond the duration of the trust.

c) To borrow money for such periods, at such rates of interest, and upon such terms as the trustees consider advisable, and as security for such loans to mortgage or pledge any real or personal property with or without power of sale; to acquire or hold any real or personal property, subject to any mortgage or pledge on or of property acquired or held by this trust.

d) To execute and deliver deeds, assignments, transfers, mortgages, pledges, leases, covenants, contracts, promissory notes, releases, and other instruments, sealed or unsealed, incident to any transaction in which they engage.

e) To vote, to give proxies, to participate in the reorganization, merger or consolidation of any concern, or in the sale, lease, disposition, or distribution of its assets; to join with other security holders in acting through a committee, depository, voting trustees, or otherwise, and in this connection to delegate authority to such committee, depository, or trustees and to deposit securities with them or transfer securities to them; to pay assessments levied on securities or to exercise subscription rights in respect of securities.

f) To employ a bank or trust company as custodian of any funds or securities and to delegate to it such powers as they deem appropriate; to hold trust property without indication of fiduciary capacity but only in the name of a registered nominee, provided the trust property is at all times identified as such on the books of the trust; to keep any or all of the trust property or funds in any place or places in the United States of America; to employ clerks, accountants, investment counsel, investment agents, and any special services, and to pay the reasonable compensation and expenses of all such services in addition to the compensation of the trustees.

Seventh: The trustees' powers are exercisable solely in the fiduciary capacity consistent with and in furtherance of the charitable purposes of this trust as specified in Article Third and not otherwise.

Eighth: In this Declaration of Trust and in any amendment to it, references to "trustees" mean the one or more trustees, whether original or successor, for the time being in office.

Ninth: Any person may rely on a copy, certified by a notary public, of the executed original of this Declaration of Trust held by the trustees, and of any of the notations on it and writings attached to it, as fully as he might rely on the original documents themselves. Any such person may rely fully on any statements of fact certified by anyone who appears from such original documents or from such certified copy to be a trustee under this Declaration of Trust. No one dealing with the trustees need inquire concerning the validity of anything the trustees purport to do. No one dealing with the trustees need see to the application of anything paid or transferred to or upon the order of the trustees of the trust.

Tenth: This Declaration of Trust is to be governed in all respects by the laws of the State of _____.

Trustee —
Trustee —

Educational Organizations and Private Schools

If your organization wants to obtain recognition of exemption as an educational organization, you must submit complete information as to how your organization carries on or plans to carry on its educational activities, such as by conducting a school, by panels, discussions, lectures, forums, radio and television programs, or through various cultural media such as museums, symphony orchestras, or art exhibits. In each instance, you must explain by whom and where these activities are or will be conducted and the amount of admission fees, if any. You must submit a copy of the pertinent contracts, agreements, publications, programs, etc.

If you are organized to conduct a school, you must submit full information regarding your tuition charges, number of faculty members, number of full-time and part-time students enrolled, courses of study and degrees conferred, together with a copy of your school catalog. See also *Private Schools*, discussed later.

Educational Organizations

The term "educational" relates to:

- 1) The instruction or training of individuals for the purpose of improving or developing their capabilities, or
- 2) The instruction of the public on subjects useful to individuals and beneficial to the community.

Advocacy of a position. Advocacy of a particular position or viewpoint may be educational if there is a sufficiently full and fair exposition of pertinent facts to permit an individual or the public to form an independent opinion or conclusion. The mere presentation of unsupported opinion is not educational.

Method not educational. The method used by an organization to develop and present its views is a factor in determining if an organization qualifies as educational within the meaning of section 501(c)(3). The following factors may indicate that the method is not educational:

- 1) The presentation of viewpoints unsupported by facts is a significant part of the organization's communications.
- 2) The facts that purport to support the viewpoint are distorted.
- 3) The organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of emotion than of objective evaluations.
- 4) The approach used is not aimed at developing an understanding on the part of the audience because it does not consider their background or training.

Exceptional circumstances, however, may exist where an organization's advocacy may be educational even if one or more of the factors listed above are present.

Qualifying organizations. The following types of organizations may qualify as educational:

- 1) An organization, such as a primary or secondary school, a college, or a professional or trade school, that has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled student body in attendance at a place where the educational activities are regularly carried on,
- 2) An organization whose activities consist of conducting public discussion groups, forums, panels, lectures, or other similar programs,
- 3) An organization that presents a course of instruction by correspondence or through the use of television or radio,
- 4) A museum, zoo, planetarium, symphony orchestra, or other similar organization, and
- 5) A nonprofit day-care center.

College book stores, restaurants, etc.

These and other on-campus organizations should submit information to show that they are controlled by and operate for the convenience of the faculty and student body or by whom they are controlled and whom they service.

Alumni association. An alumni association should establish that it is organized to promote the welfare of the university with which it is affiliated, is subject to the control of the university as to its policies and destination of funds, and is operated as an integral part of the university or is otherwise organized to promote the welfare of the college or university. If your association does not have these characteristics, it may still be exempt as a social club if it meets the requirements described in chapter 4, under 501(c)(7)—*Social and Recreation Clubs*.

Athletic organization. This type of organization must submit evidence that it is engaged in activities such as directing and controlling interscholastic athletic competitions, conducting tournaments, and prescribing eligibility rules for contestants. If it is not so engaged, your organization may be exempt as a social club described in chapter 4. Raising funds to be used for travel and other activities to interview and persuade prospective students with outstanding athletic ability to attend a particular university does not show an exempt purpose. If your organization is not exempt as an educational organization, see *Amateur Athletic Organizations*, later in this chapter.

Private Schools

Every private school filing an application for recognition of tax-exempt status must supply the IRS (on Schedule B, Form 1023) with the following information:

- 1) The racial composition of the student body, and of the faculty and administrative staff, as of the current academic year. (This information also must be projected, so far as may be feasible, for the next academic year.)
- 2) The amount of scholarship and loan funds, if any, awarded to students enrolled and the racial composition of students who have received the awards.

- 3) A list of the school's incorporators, founders, board members, and donors of land or buildings, whether individuals or organizations.
- 4) A statement indicating whether any of the organizations described in item (3) above have an objective of maintaining segregated public or private school education at the time the application is filed and, if so, whether any of the individuals described in item (3) are officers or active members of those organizations at the time the application is filed.
- 5) The public school district and county in which the school is located.

How to determine racial composition. The racial composition of the student body, faculty, and administrative staff may be an estimate based on the best information readily available to the school, without requiring student applicants, students, faculty, or administrative staff to submit to the school information that the school otherwise does not require. Nevertheless, a statement of the method by which the racial composition was determined must be supplied. The identity of individual students or members of the faculty and administrative staff should not be included with this information.

A school that is a state or municipal instrumentality (see *Instrumentalities*, near the beginning of this chapter), whether or not it qualifies for exemption under section 501(c)(3), is not considered to be a private school for purposes of the following discussion.

Racially Nondiscriminatory Policy

To qualify as an organization exempt from federal income tax, a private school must include a statement in its charter, bylaws, or other governing instrument, or in a resolution of its governing body, that it has a racially nondiscriminatory policy as to students and that it does not discriminate against applicants and students on the basis of race, color, or national or ethnic origin. Also, the school must circulate information that clearly states the school's admission policies. A racially nondiscriminatory policy toward students means that the school admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administering its educational policies, admission policies, scholarship and loan programs, and athletic and other school-administered programs.

The IRS considers discrimination on the basis of race to include discrimination on the basis of color or national or ethnic origin.

The existence of a racially discriminatory policy with respect to the **employment of faculty and administrative staff** is indicative of a racially discriminatory policy as to students. Conversely, the absence of racial discrimination in the employment of faculty and administrative staff is indicative of a racially nondiscriminatory policy as to students.

A policy of a school that favors **racial minority groups** with respect to admissions, facilities and programs, and financial assistance is not discrimination on the basis of race when the purpose and effect of this policy is

to promote establishing and maintaining the school's nondiscriminatory policy.

A school that selects students on the basis of **membership in a religious denomination or unit** is not discriminating if membership in the denomination or unit is open to all on a racially nondiscriminatory basis.

Policy statement. The school must include a statement of its racially nondiscriminatory policy in all its brochures and catalogs dealing with student admissions, programs, and scholarships. Also, the school must include a reference to its racially nondiscriminatory policy in other written advertising that it uses to inform prospective students of its programs.

Publicity requirement. The school must make its racially nondiscriminatory policy known to all segments of the general community served by the school. Selective communication of a racially nondiscriminatory policy that a school provides solely to leaders of racial groups will not be considered an effective means of communication to make the policy known to all segments of the community. To satisfy this requirement, the school must use one of the following two methods.

Method one. The school may publish a notice of its racially nondiscriminatory policy in a **newspaper** of general circulation that serves all racial segments of the community. Such publication must be repeated at least once annually during the period of the school's solicitation for students or, in the absence of a solicitation program, during the school's registration period. When more than one community is served by a school, the school may publish the notice in those newspapers that are reasonably likely to be read by all racial segments in the communities that the school serves.

If this method is used, the notice must meet the following printing requirements:

- 1) It must appear in a section of the newspaper likely to be read by prospective students and their families.
- 2) It must occupy at least 3 column inches.
- 3) It must have its title printed in at least 12 point bold face type.
- 4) It must have the remaining text printed in at least 8 point type.

The following is an acceptable example of the notice:

**NOTICE OF
NONDISCRIMINATORY POLICY
AS TO STUDENTS**

The M School admits students of any race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of race, color, national and ethnic origin in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

Method two. The school may use the **broadcast media** to publicize its racially nondiscriminatory policy if this use makes the policy known to all segments of the general community the school serves. If the school uses this method, it must provide documentation showing that the means by which this policy was communicated to all segments of the general community was reasonably expected to be effective. In this case, appropri-

ate documentation would include copies of the tapes or scripts used and records showing that there was an adequate number of announcements. The documentation also would include proof that these announcements were made during hours when they were likely to be communicated to all segments of the general community, that they were long enough to convey the message clearly, and that they were broadcast on radio or television stations likely to be listened to by substantial numbers of members of all racial segments of the general community. Announcements must be made during the period of the school's solicitation for students or, in the absence of a solicitation program, during the school's registration period.

Exceptions. The publicity requirements will not apply in the following situations:

First, if for the preceding 3 years the enrollment of a parochial or other church-related school consists of students at least 75% of whom are members of the sponsoring religious denomination or unit, the school may make known its racially nondiscriminatory policy in whatever newspapers or circulars the religious denomination or unit uses in the communities from which the students are drawn. These newspapers and circulars may be distributed by a particular religious denomination or unit or by an association that represents a number of religious organizations of the same denomination. If, however, the school advertises in newspapers of general circulation in the community or communities from which its students are drawn and the second exception (discussed next) does not apply to the school, then it must comply with either of the publicity requirements explained earlier.

Second, if a school customarily draws a substantial percentage of its students nationwide, worldwide, from a large geographic section or sections of the United States, or from local communities, and if the school follows a racially nondiscriminatory policy as to its students, the school may satisfy the publicity requirement by complying with the instructions explained earlier under *Policy statement*.

The school may demonstrate that it follows a racially nondiscriminatory policy either by showing that it currently enrolls students of racial minority groups in meaningful numbers or, except for local community schools, when minority students are not enrolled in meaningful numbers, that its promotional activities and recruiting efforts in each geographic area were reasonably designed to inform students of all racial segments in the general communities within the area of the availability of the school. The question as to whether a school demonstrates such a policy satisfactorily will be determined on the basis of the facts and circumstances of each case.

The IRS recognizes that the failure by a school drawing its students from local communities to enroll racial minority group students may not necessarily indicate the absence of a racially nondiscriminatory policy when there are relatively few or no such students in these communities. Actual enrollment is, however, a meaningful indication of a racially nondiscriminatory policy in a community in which a public school or schools became subject to a desegregation order of a federal court or are otherwise expressly obligated to implement a desegregation plan under the terms of any written contract or other commitment to which any federal agency was a party.

The IRS encourages schools to satisfy the publicity requirement by using either of the methods described earlier, even though a school considers itself to be within one of the *Exceptions*. The IRS believes that these publicity requirements are the most effective methods to make known a school's racially nondiscriminatory policy. In this regard, it is each school's responsibility to determine whether either of the exceptions apply. Such responsibility will prepare the school, if it is audited by the IRS, to demonstrate that the failure to publish its racially nondiscriminatory policy in accordance with either one of the publicity requirements was justified by one of the exceptions. Also, a school must be prepared to demonstrate that it has publicly disavowed or repudiated any statements purported to have been made on its behalf (after November 6, 1975) that are contrary to its publicity of a racially nondiscriminatory policy as to students, to the extent that the school or its principal official was aware of these statements.

Facilities and programs. A school must be able to show that all of its programs and facilities are operated in a racially nondiscriminatory manner.

Scholarship and loan programs. As a general rule, all scholarship or other comparable benefits obtainable at the school must be offered on a racially nondiscriminatory basis. This must be known throughout the general community being served by the school and should be referred to in its publicity. Financial assistance programs, as well as scholarships and loans made under financial assistance programs, that favor members of one or more racial minority groups and that do not significantly detract from or are designed to promote a school's racially nondiscriminatory policy will not adversely affect the school's exempt status.

Certification. An individual authorized to take official action on behalf of a school that claims to be racially nondiscriminatory as to students must certify **annually**, under penalties of perjury, on Schedule A (Form 990) or Form 5578, *Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax*, whichever applies, that to the best of his or her knowledge and belief the school has satisfied all requirements that apply, as previously explained.

Failure to comply with the guidelines ordinarily will result in the proposed revocation of the exempt status of a school.



Recordkeeping requirements. With certain exceptions, given later, each exempt private school must maintain the following records for a minimum period of 3 years, beginning with the year after the year of compilation or acquisition:

- 1) Records indicating the racial composition of the student body, faculty, and administrative staff for each academic year,
- 2) Records sufficient to document that scholarship and other financial assistance is awarded on a racially nondiscriminatory basis,
- 3) Copies of all materials used by or on behalf of the school to solicit contributions, and
- 4) Copies of all brochures, catalogs, and advertising dealing with student admis-

sions, programs, and scholarships. (Schools advertising nationally or in a large geographic segment or segments of the United States need only maintain a record sufficient to indicate when and in what publications their advertisements were placed.)

The racial composition of the student body, faculty, and administrative staff may be determined in the same manner as that described at the beginning of this section. However, a school may not discontinue maintaining a system of records that reflects the racial composition of its students, faculty, and administrative staff used on November 6, 1975, unless it substitutes a different system that compiles substantially the same information, without advance approval of the IRS.

The IRS does not require that a school release any personally identifiable records or personal information except in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974. Similarly, the IRS does not require a school to keep records prohibited under state or federal law.

Exceptions. The school does not have to independently maintain these records for IRS use if both of the following are true.

- 1) Substantially the same information has been included in a report or reports filed with an agency or agencies of federal, state, or local governments, and this information is current within 1 year.
- 2) The school maintains copies of these reports from which this information is readily obtainable.

If these reports do not include all of the information required, as discussed earlier, records providing such remaining information must be maintained by the school for IRS use.

Failure to maintain records. Failure to maintain or to produce the required records and information, upon proper request, will create a presumption that the organization has failed to comply with these guidelines.

Organizations Providing Insurance

An organization described in section 501(c)(3) or (4) may be exempt from tax only if no substantial part of its activities consist of providing commercial-type insurance.

However, this rule does not apply to state-sponsored organizations described in sections 501(c)(26) or 501(c)(27), which are discussed in chapter 4, or to charitable risk pools, discussed next.

Charitable Risk Pools

A charitable risk pool is treated as organized and operated exclusively for charitable purposes.

A charitable risk pool is an organization that:

- 1) Is organized and operated only to pool insurable risks of its members (not including risks related to medical mal-

practice) and to provide information to its members about loss control and risk management,

- 2) Consists only of members that are section 501(c)(3) organizations exempt from tax under section 501(a),
- 3) Is organized under state law authorizing this type of risk pooling,
- 4) Is exempt from state income tax (or will be after qualifying as a section 501(c)(3) organization),
- 5) Has obtained at least \$1,000,000 in startup capital from nonmember charitable organizations,
- 6) Is controlled by a board of directors elected by its members, and
- 7) Is organized under documents requiring that:
 - a) Each member be a section 501(c)(3) organization exempt from tax under section 501(a),
 - b) Each member that receives a final determination that it no longer qualifies under section 501(c)(3) notify the pool immediately, and
 - c) Each insurance policy issued by the pool provide that it will not cover events occurring after a final determination described in (b).

Other 501(c)(3) Organizations

In addition to the information required for all organizations, as described earlier, you should include any other information described in this section.

Charitable Organizations

If your organization is applying for recognition of exemption as a charitable organization, it must show that it is organized and operated for purposes that are beneficial to the public interest. Some examples of this type of organization are those organized for:

- Relief of the poor, the distressed, or the underprivileged,
- Advancement of religion,
- Advancement of education or science,
- Erection or maintenance of public buildings, monuments, or works,
- Lessening the burdens of government,
- Lessening of neighborhood tensions,
- Elimination of prejudice and discrimination,
- Defense of human and civil rights secured by law, and
- Combating community deterioration and juvenile delinquency.

The rest of this section contains a description of the information to be provided by certain specific organizations. This information is in addition to the "required inclusions" described in chapter 1, and other statements requested on Form 1023. Each of the following organizations must submit the information described.

Charitable organization supporting education. Submit information showing how your organization supports education — for example, contributes to an existing educational institution, endows a professorial chair, contributes toward paying teachers' salaries, or contributes to an educational institution to enable it to carry on research.

Scholarships. If the organization awards or plans to award scholarships, complete Schedule H of Form 1023. Submit the following:

- 1) Criteria used for selecting recipients, including the rules of eligibility,
- 2) How and by whom the recipients are or will be selected,
- 3) If awards are or will be made directly to individuals, whether information is required assuring that the student remains in school,
- 4) If awards are or will be made to recipients of a particular class, for example, children of employees of a particular employer—
 - a) Whether any preference is or will be accorded an applicant by reason of the parent's position, length of employment, or salary,
 - b) Whether as a condition of the award the recipient must upon graduation accept employment with the company, and
 - c) Whether the award will be continued even if the parent's employment ends, and
- 5) A copy of the scholarship application form and any brochures or literature describing the scholarship program.

Hospital. If you are organized to operate a charitable hospital, complete and attach Section I of Schedule C, Form 1023.

If your hospital was transferred to you from proprietary ownership, complete and attach Schedule I of Form 1023. You must attach a list showing:

- 1) The names of the active and courtesy staff members of the proprietary hospital, as well as the names of your medical staff members after the transfer to nonprofit ownership, and
- 2) The names of any doctors who continued to lease office space in the hospital after its transfer to nonprofit ownership and the amount of rent paid. Submit an appraisal showing the fair rental value of the rented space.

Clinic. If you are organized to operate a clinic, attach a statement including:

- 1) A description of the facilities and services,
- 2) To whom the services are offered, such as the public at large or a specific group,
- 3) How charges are determined, such as on a profit basis, to recover costs, or at less than cost,
- 4) By whom administered and controlled,
- 5) Whether any of the professional staff (that is, those who perform or will perform the clinical services) also serve or

will serve in an administrative capacity, and

- 6) How compensation paid the professional staff is or will be determined.

Home for the aged. If you are organized to operate a home for the aged, complete and attach Schedule F of Form 1023. Explain on Schedule F:

- 1) How charges are or will be determined, such as on a profit basis, to recover costs, or at less than cost, and whether the charges are based on providing service at the lowest feasible cost to the residents,
- 2) Whether all residents are or will be required to pay fees,
- 3) Whether any residents are or will be accepted at lower rates or entirely without pay and, if so, how many, and
- 4) Whether federal mortgage financing has been applied for and if so, the type.

Community nursing bureau. If you provide a nursing register or community nursing bureau, provide information showing that your organization will be operated as a community project and will receive its primary support from public contributions to maintain a nonprofit register of qualified nursing personnel, including graduate nurses, unregistered nursing school graduates, licensed attendants and practical nurses for the benefit of hospitals, health agencies, doctors, and individuals.

Organization providing loans. If you make or will make loans for charitable and educational purposes, submit the following information:

- 1) An explanation of the circumstances under which such loans are or will be made,
- 2) Criteria for selection, including the rules of eligibility,
- 3) How and by whom the recipients are or will be selected,
- 4) Manner of repayment of the loan,
- 5) Security required, if any,
- 6) Interest charged, if any, and when payable, and
- 7) Copies in duplicate of the loan application and any brochures or literature describing the loan program.

Public interest law firms. If your organization was formed to litigate in the public interest (as opposed to providing legal services to the poor), such as in the area of protection of the environment, you should submit the following information:

- 1) How the litigation can reasonably be said to be representative of a broad public interest rather than a private one,
- 2) Whether the organization will accept fees for its services,
- 3) A description of the cases litigated or to be litigated and how they benefit the public generally,
- 4) Whether the policies and program of the organization are the responsibility of a

board or committee representative of the public interest, which is not controlled by employees or persons who litigate on behalf of the organization nor by any organization that is not itself an organization described in this chapter,

- 5) Whether the organization is operated, through sharing of office space or otherwise, in a way to create identification or confusion with a particular private law firm, and
- 6) Whether there is an arrangement to provide, directly or indirectly, a deduction for the cost of litigation that is for the private benefit of the donor.

Acceptance of attorneys' fees. A nonprofit public interest law firm can accept attorneys' fees in public interest cases if the fees are paid directly by its clients and the fees are not more than the actual costs incurred in the case. Once undertaking a representation, the organization cannot withdraw from the case because the litigant is unable to pay the fee.

Firms can accept **fees awarded or approved by a court or an administrative agency** and paid by an opposing party if the firms do not use the likelihood or probability of fee awards as a consideration in the selection of cases. All fee awards must be paid to the organization and not to its individual staff attorneys. Instead, a public interest law firm can reasonably compensate its staff attorneys, but only on a straight salary basis. Private attorneys, whose services are retained by the firm to assist it in particular cases, can be compensated by the firm, but only on a fixed fee or salary basis.

The total amount of all attorneys' fees (court awarded and those received from clients) must not be more than 50% of the total cost of operations of the organization's legal functions, calculated over a 5-year period.

If, in order to carry out its program, an organization violates applicable canons of ethics, disrupts the judicial system, or engages in any illegal action, the organization will jeopardize its exemption.

Religious Organizations

To determine whether an organization meets the religious purposes test of section 501(c)(3), the IRS maintains two basic guidelines:

- 1) That the particular religious beliefs of the organization are truly and sincerely held, and
- 2) That the practices and rituals associated with the organization's religious belief or creed are not illegal or contrary to clearly defined public policy.

Hence, your group (or organization) may not qualify for treatment as an exempt religious organization for tax purposes if its actions, as contrasted with its beliefs, are contrary to well established and clearly defined public policy. If there is a clear showing that the beliefs (or doctrines) are sincerely held by those professing them, the IRS will not question the religious nature of those beliefs.

Churches. Although a church, its integrated auxiliaries, or a convention or association of churches is not required to file Form 1023 to be exempt from federal income tax or to receive tax deductible contributions, the organ-

ization may find it advantageous to obtain recognition of exemption. In this event, you should submit information showing that your organization is a church, synagogue, association or convention of churches, religious order, or religious organization that is an integral part of a church, and that it is engaged in carrying out the function of a church.

In determining whether an admittedly religious organization is also a church, the IRS does not accept any and every assertion that the organization is a church. Because beliefs and practices vary so widely, there is no single definition of the word "church" for tax purposes. The IRS considers the facts and circumstances of each organization applying for church status.

Integrated auxiliaries. An organization is an integrated auxiliary of a church if all the following are true.

- 1) The organization is described both in sections 501(c)(3) and 509(a)(1), (2), or (3).
- 2) It is affiliated with a church or a convention or association of churches.
- 3) It is internally supported. An organization is internally supported unless both of the following are true.
 - a) It offers admissions, goods, services or facilities for sale, other than on an incidental basis, to the general public (except goods, services, or facilities sold at a nominal charge or for a small part of the cost), and
 - b) It normally gets more than 50% of its support from a combination of governmental sources, public solicitation of contributions, and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities in activities that are not unrelated trades or businesses.

Special rule. Men's and women's organizations, seminaries, mission societies, and youth groups that satisfy (1) and (2) above are integrated auxiliaries of a church even if they are not internally supported.

Note. In order for an organization (including a church and religious organization) to qualify for tax exemption, no part of its net earnings may inure to the benefit of any individual.

Although an individual is entitled to a charitable deduction for contributions to a church, the assignment or similar transfer of compensation for personal services to a church generally does not relieve a taxpayer of federal income tax liability on the compensation, regardless of the motivation behind the transfer.

Scientific Organizations

You must show that your organization's research will be carried on in the public interest. Scientific research will be considered to be in the public interest if the results of the research (including any patents, copyrights, processes, or formulas) are made available to the public on a nondiscriminatory basis; if the research is performed for the United States or a state, county, or municipal government; or if the research is carried on for one of the following purposes:

- 1) Aiding in the scientific education of college or university students,
- 2) Obtaining scientific information that is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public,
- 3) Discovering a cure for a disease, or
- 4) Aiding a community or geographical area by attracting new industry to the community or area, or by encouraging the development or retention of an industry in the community or area.

Scientific research, for exemption purposes, does not include activities of a type ordinarily incidental to commercial or industrial operations as, for example, the ordinary inspection or testing of materials or products, or the designing or constructing of equipment, buildings, etc.

If you engage or plan to engage in research, submit the following:

- 1) An explanation of the nature of the research,
- 2) A brief description of research projects completed or presently being engaged in,
- 3) How and by whom research projects are determined and selected,
- 4) Whether you have, or contemplate, contracted or sponsored research and, if so, names of past sponsors or grantors, terms of grants or contracts, together with copies of any executed contracts or grants,
- 5) Disposition made or to be made of the results of your research, including whether preference has been or will be given to any organization or individual either as to results or time of release,
- 6) Who will retain ownership or control of any patents, copyrights, processes or formulas resulting from your research, and
- 7) A copy of publications or other media showing reports of your research activities. Only reports of your research activities or those conducted in your behalf, as distinguished from those of your creators or members conducted in their individual capacities, should be submitted.

Literary Organizations

If your organization is established to operate a book store or engage in publishing activities of any nature (printing, publication, or distribution of your own material or that printed or published by others and distributed by you), explain fully the nature of the operations, including whether sales are or will be made to the general public, the type of literature involved, and how these activities are related to your stated purposes.

Amateur Athletic Organizations

There are two types of amateur athletic organizations that can qualify for tax-exempt status. The first type is an organization that fosters national or international amateur

sports competition but only if none of its activities involve providing athletic facilities or equipment. The second type is a *Qualified amateur sports organization* (discussed below). The difference is that a qualified amateur sports organization may provide athletic facilities and equipment.

Donations to either amateur athletic organization are deductible as charitable contributions on the donor's federal income tax return. However, no deduction is allowed if there is a direct personal benefit to the donor or any other person other than the organization.

Qualified amateur sports organization. An organization will be a qualified amateur sports organization if it is organized and operated—

- 1) Exclusively to foster national or international amateur sports competition, and
- 2) Primarily to conduct national or international competition in sports or to support and develop amateur athletes for that competition.

The organization's membership may be local or regional in nature.

Prevention of Cruelty to Children or Animals

Examples of activities that may qualify this type of organization for exempt status are:

- 1) Preventing children from working in hazardous trades or occupations,
- 2) Promoting high standards of care for laboratory animals, and
- 3) Providing funds to pet owners to have their pets spayed or neutered to prevent overbreeding.

Private Foundations and Public Charities

It is important that you determine if your organization is a private foundation. Most organizations exempt from income tax (as organizations described in section 501(c)(3)) are presumed to be private foundations unless they notify the Internal Revenue Service within a specified period of time that they are not. This notice requirement applies to most section 501(c)(3) organizations regardless of when they were formed.

Private Foundations

Every organization that qualifies for tax exemption as an organization described in section 501(c)(3) is a private foundation unless it falls into one of the categories specifically excluded from the definition of that term (referred to in section 509(a)(1), (2), (3), or (4)). In effect, the definition divides these organizations into two classes namely, *private foundations* and *public charities*. Public charities are discussed later.

Organizations that fall into the excluded categories are generally those that either have broad public support or actively function in a supporting relationship to those organizations. Organizations that test for public safety also are excluded.

Notice to IRS. Even if an organization falls within one of the categories excluded from the definition of private foundation, it will be presumed to be a private foundation, with some exceptions, unless it gives timely notice to the IRS that it is not a private foundation. This notice requirement applies to an organization regardless of when it was organized. The only exceptions to this requirement are those organizations that are excepted from the requirement of filing Form 1023 as discussed earlier under *Organizations Not Required To File Form 1023*.

When to file notice. If an organization has to file the notice, it must do so within 15 months from the end of the month in which it was organized.

If your organization is newly applying for recognition of exemption as an organization described in this chapter (a section 501(c)(3) organization) and you wish to establish that your organization is a public charity rather than a private foundation, you must complete the applicable lines of Part III of your exemption application (Form 1023). An extension of time for filing this application may be granted by the IRS if your request is timely and you demonstrate that additional time is needed. See *Application for Recognition of Exemption*, earlier in this chapter, for more information.

In determining the date on which a corporation is organized for purposes of applying for recognition of section 501(c)(3) status, the IRS looks to the date the corporation came into existence under the law of the state in which it is incorporated. For example, where state law provides that existence of a corporation begins on the date its articles are filed by a certain state official in the appropriate state office, the corporation is considered organized on that date. Later nonsubstantive amendments to the enabling instrument will not change the date of organization, for purposes of the notice requirement.

Notice filed late. An organization that states it is a *private foundation* when it files its application for recognition of exemption after the 15-month period will be treated as a section 501(c)(3) organization and as a private foundation only from the date it files its application.

An organization that states it is a *publicly supported charity* when it files its application for recognition of exemption after the 15-month period cannot be treated as a section 501(c)(3) organization before the date it files the application. Financial support received before that date may not be used for purposes of determining whether the organization is publicly supported. However, an organization that can reasonably be expected to meet the support requirements (discussed later under *Public Charities*) can obtain an advance ruling from the IRS that it is a publicly supported organization.

Excise taxes on private foundations. There is an excise tax on the net investment income of most domestic private foundations. This tax must be reported on Form 990-PF and must be paid annually at the time for filing that return or in quarterly estimated tax payments if the total tax for the year is \$500 or more. In addition, there are several other rules that apply. These include:

- 1) Restrictions on self-dealing between private foundations and their substantial contributors and other disqualified persons,

- 2) Requirements that the foundation annually distribute income for charitable purposes,
- 3) Limits on their holdings in private businesses,
- 4) Provisions that investments must not jeopardize the carrying out of exempt purposes, and
- 5) Provisions to assure that expenditures further exempt purposes.

Violations of these provisions give rise to taxes and penalties against the private foundation and, in some cases, its managers, its substantial contributors, and certain related persons.

Governing instrument. A private foundation cannot be tax exempt nor will contributions to it be deductible as charitable contributions unless its governing instrument contains special provisions in addition to those that apply to all organizations described in section 501(c)(3).

Sample governing instruments. The following samples of governing instrument provisions illustrate the special charter requirements that apply to private foundations. Draft A is a sample of provisions in articles of incorporation; Draft B, a trust indenture.

Draft A

General

- 1) The corporation will distribute its income for each tax year at a time and in a manner as not to become subject to the tax on undistributed income imposed by section 4942 of the Internal Revenue Code, or the corresponding section of any future federal tax code.
- 2) The corporation will not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code, or the corresponding section of any future federal tax code.
- 3) The corporation will not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code, or the corresponding section of any future federal tax code.
- 4) The corporation will not make any investments in a manner as to subject it to tax under section 4944 of the Internal Revenue Code, or the corresponding section of any future federal tax code.
- 5) The corporation will not make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Draft B

Any other provisions of this instrument notwithstanding, the trustees shall distribute its income for each tax year at a time and in a manner as not to become subject to the tax on undistributed income imposed by section 4942 of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Any other provisions of this instrument notwithstanding, the trustees will not engage

in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code, or the corresponding section of any future federal tax code; nor retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code, or the corresponding section of any future federal tax code; nor make any investments in a manner as to incur tax liability under section 4944 of the Internal Revenue Code, or the corresponding section of any future federal tax code; nor make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Effect of state law. A private foundation's governing instrument will be considered to meet these charter requirements if valid provisions of state law have been enacted that:

- 1) Require it to act or refrain from acting so as not to subject the foundation to the taxes imposed on prohibited transactions, or
- 2) Treat the required provisions as contained in the foundation's governing instrument.

The IRS has published a list of states with this type of law. The list is in Revenue Ruling 75-38 (or later update).

Public Charities

A private foundation is any organization described in section 501(c)(3), unless it falls into one of the categories specifically excluded from the definition of that term in section 509(a), which lists four basic categories of exclusions. These categories are discussed under the "Section 509(a)" headings that follow this introduction.

If your organization falls into one of these categories, it is not a private foundation and you should state this in Part III of your application for recognition of exemption (Form 1023).

If your organization does not fall into one of these categories, it is a private foundation and is subject to the applicable rules and restrictions until it terminates its private foundation status. Some private foundations also qualify as private operating foundations; these are discussed near the end of this chapter.

Generally speaking, a large class of organizations excluded under section 509(a)(1) and all organizations excluded under section 509(a)(2) depend upon a **support test**. This test is used to assure a minimum percentage of broad-based public support in the organization's total support pattern. Thus, in the following discussions, when the **one-third support test** (see *Qualifying As Publicly Supported* later) is referred to, it means the following fraction normally must equal at least one-third:

$$\frac{\text{Qualifying support}}{\text{Total support}}$$

Including items of support in qualifying support (the numerator of the fraction) or excluding items of support from total support (the denominator of the fraction) may decide whether an organization is excluded from the definition of a private foundation, and thus

from the liability for certain excise taxes. So it is very important to classify items of support correctly.

Excise tax on excess benefits. A person who receives a benefit from a section 501(c)(3) or 501(c)(4) organization may have to pay an excise tax. A manager of the organization may also have to pay an excise tax. These taxes are reported on **Form 4720**.

The excise taxes are imposed if all of the following are true.

- 1) The organization provides an **excess benefit** to a **disqualified person**.
- 2) The organization is not a private foundation.
- 3) The organization either:
 - a) Is an exempt organization that (without regard to any excess benefit) would be described in section 501(c)(3) or 501(c)(4), or
 - b) Was an organization described in (a) at any time during the 5-year period ending on the date of the excess benefit transaction.

Excess benefit. An excess benefit is an economic benefit that has more value than the value of the consideration, including services, received by the organization providing the benefit. An economic benefit is not treated as consideration for services unless the organization clearly showed its intent to treat the benefit in that way.

Disqualified person. A disqualified person is any of the following:

- 1) A person who was in a position to exercise substantial influence over the affairs of the organization at any time during the 5-year period ending on the date of the excess benefit transaction,
- 2) A member of the family of an individual described in (1), or
- 3) Certain organizations controlled by persons described in (1) or (2).

More information. For more information, see the instructions to Forms 990 and 4720.

Organizations that are not private foundations. The following kinds of organizations are excluded from the definition of a private foundation.

Section 509(a)(1) Organizations

Section 509(a)(1) organizations include:

- 1) A church or a convention or association of churches,
- 2) An educational organization such as a school or college,
- 3) A hospital or medical research organization operated in conjunction with a hospital,
- 4) Endowment funds operated for the benefit of certain state and municipal colleges and universities,
- 5) A governmental unit, and
- 6) A publicly supported organization.

Church. The characteristics of a church are discussed earlier in this chapter under *Religious Organizations*.

Educational organizations. An educational organization is one whose primary function is to present formal instruction, that normally maintains a regular faculty and curriculum, and that normally has a regularly enrolled body of pupils or students in attendance at the place where it regularly carries on its educational activities. The term includes institutions such as primary, secondary, preparatory, or high schools, and colleges and universities. It includes federal, state, and other publicly supported schools that otherwise come within the definition. It does not include organizations engaged in both educational and non-educational activities, unless the latter are merely incidental to the educational activities. A recognized university that incidentally operates a museum or sponsors concerts is an educational organization. However, the operation of a school by a museum does not necessarily qualify the museum as an educational organization.

An exempt organization that operates a tutoring service for students on a one-to-one basis in their homes, maintains a small center to test students to determine their need for tutoring, and employs tutors on a part-time basis is not an educational organization for these purposes. Nor is an exempt organization that conducts an internship program by placing college and university students with cooperating government agencies an educational organization.

Hospitals and medical research organizations. A hospital is an organization whose principal purpose or function is to provide hospital or medical care or either medical education or medical research. A rehabilitation institution, outpatient clinic, or community mental health or drug treatment center may qualify as a hospital if its principal purpose or function is providing hospital or medical care. If the accommodations of an organization qualify as being part of an **extended care facility**, that organization may qualify as a hospital if its principal purpose or function is providing hospital or medical care. A **cooperative hospital service organization** that meets the requirements of section 501(e) will qualify as a hospital.

The term "hospital" does not include convalescent homes, homes for children or the aged, or institutions whose principal purpose or function is to train handicapped individuals to pursue a vocation. An organization that mainly provides medical education or medical research will not be considered a hospital, unless it is also actively engaged in providing medical or hospital care to patients on its premises or in its facilities, on an in-patient or out-patient basis, as an integral part of its medical education or medical research functions.

Medical research organization. A medical research organization must be directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and that activity must be the organization's principal purpose or function.

Publicly supported. A hospital or medical research organization that wants the additional classification of a publicly supported organization (described later in this chapter under *Qualifying As Publicly Supported*) may

specifically request that classification. The organization must establish that it meets the public support requirements of section 170(b)(1)(A)(vi).

Endowment funds. Organizations operated for the benefit of certain state and municipal colleges and universities are endowment funds. They are organized and operated exclusively to:

- 1) Receive, hold, invest in, and administer property for a college or university, and
- 2) Make expenditures to or for the benefit of a college or university.

The college or university must be:

- 1) An agency or instrumentality of a state or political subdivision, or
- 2) Owned or operated by:
 - a) A state or political subdivision, or
 - b) An agency or instrumentality of one or more states or political subdivisions.

The phrase "expenditures to or for the benefit of a college or university" includes expenditures made for any one or more of the normal functions of a college or university. These expenditures include those for:

- 1) Acquiring and maintaining real property comprising part of the campus area,
- 2) Erecting (or participating in erecting) college or university buildings,
- 3) Acquiring and maintaining equipment and furnishings used for, or in conjunction with, normal functions of colleges and universities,
- 4) Libraries,
- 5) Scholarships, and
- 6) Student loans.

The organization must normally receive a substantial part of its support from the United States or any state or political subdivision, or from direct or indirect contributions from the general public, or from a combination of these sources.

Support. Support does not include income received in the exercise or performance by the organization of its charitable, educational, or other purpose or function constituting the basis for exemption.

In determining the amount of support received by an organization for a contribution of property when the value of the contribution by the donor is subject to reduction for certain ordinary income and capital gain property, the fair market value of the property is taken into account. For more information, see the discussion of *Support* on page 25.

Indirect contribution. An example of an indirect contribution from the public is the receipt by the organization of its share of the proceeds of an annual collection campaign of a community chest, community fund, or united fund.

Governmental units. A governmental unit includes a state, a possession of the United States, or a political subdivision of either of the foregoing, or the United States or the District of Columbia.

Publicly supported organizations. An organization is a publicly supported organization if it is one that normally receives a substantial part of its support from a governmental unit or from the general public.

Types of organizations that generally qualify are:

- Museums of history, art, or science,
- Libraries,
- Community centers to promote the arts,
- Organizations providing facilities for the support of an opera, symphony orchestra, ballet, or repertory drama, or for some other direct service to the general public, and
- Organizations such as the American Red Cross or the United Way.

Qualifying As Publicly Supported

An organization will qualify as publicly supported if it passes the **one-third support test**. If it fails that test, it may qualify under the **facts and circumstances test**.

One-third support test. An organization will qualify as publicly supported if it **normally** receives at least one-third of its total support from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources. For a definition of support, see *Support*, later.

Definition of "normally" for one-third support test. An organization will be considered as normally meeting the one-third support test for its current tax year and the next tax year if, for the 4 tax years immediately before the current tax year, the organization meets the one-third support test on an aggregate basis. See also *Special computation period for new organizations*, later in this discussion.

Facts and circumstances test. The facts and circumstances test is for organizations failing to meet the one-third support test. If your organization fails to meet the one-third support test, it may still be treated as a publicly supported organization if it normally receives a substantial part of its support from governmental units, from direct or indirect contributions from the general public, or from a combination of these sources. To qualify, an organization must meet the **ten-percent-of-support requirement** and the **attraction of public support requirement**. These requirements establish, under all the facts and circumstances, that an organization normally receives a substantial part of its support from governmental units or from direct or indirect contributions from the general public. The organization also must be in the nature of a publicly supported organization, taking into account five different factors. See *Additional requirements (the five public support factors)*, on page 24.

Ten-percent-of-support requirement. The percentage of support normally received by an organization from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources must be "substantial." An organization will not be treated as normally receiving a substantial amount of governmental or public support unless the total amount of governmental and public support normally received is at least 10% of the total support normally received by that organiza-

tion. For a definition of support, see *Support*, later.

Attraction of public support requirement. An organization must be organized and operated in a manner to attract new and additional public or governmental support on a continuous basis. An organization will meet this requirement if it maintains a continuous and bona fide program for solicitation of funds from the general public, community, or membership group involved, or if it carries on activities designed to attract support from governmental units or other charitable organizations described in section 509(a)(1). In determining whether an organization maintains a continuous and bona fide program for solicitation of funds from the general public or community, consideration will be given to whether the scope of its fund raising activities is reasonable in light of its charitable activities. Consideration also will be given to the fact that an organization may, in its early years of existence, limit the scope of its solicitation to persons who would be most likely to provide seed money sufficient to enable it to begin its charitable activities and expand its solicitation program.

Definition of "normally" for facts and circumstances test. An organization will normally meet the requirements of the facts and circumstances test for its current tax year and the next tax year if, for the 4 tax years immediately before the current tax year, the organization meets the ten-percent-of-support and the attraction of public support requirements on an aggregate basis and satisfies a sufficient combination of the factors discussed later. The combination of factors that an organization normally must meet does not have to be the same for each 4-year period as long as a sufficient combination of factors exists to show compliance. See also *Special computation period for new organizations*, later in this discussion.

Special rule. The fact that an organization has normally met the one-third support test requirements for a current tax year, but is unable normally to meet the requirements for a later tax year, will not in itself prevent the organization from meeting the requirements of the facts and circumstances test for the later tax year.

Example. X organization meets the one-third support test in its 1996 tax year on the basis of support received during 1992, 1993, 1994, and 1995. It therefore normally meets the requirements for both 1996 and 1997. For the 1997 tax year, X is unable to meet the one-third support test on the basis of support received during 1993, 1994, 1995, and 1996. If X can meet the facts and circumstances test on the basis of those years, X will normally meet the requirements for 1998 (the tax year immediately after 1997). However, if on the basis of both 4-year periods (1993 through 1996 and 1994 through 1997), X fails to meet both the one-third and the facts and circumstances tests, X will not be a publicly supported organization for 1998.

However, X will not be disqualified as a publicly supported organization for the 1997 tax year, because it normally met the one-third support test requirements on the basis of the tax years 1992 through 1995 unless the provisions governing the *Exception for material changes in sources of support* (discussed later) become applicable.

Additional requirements (the five public support factors). In addition to the two requirements of the facts and circumstances test, the following **five public support factors** will be considered in determining whether an organization is publicly supported. However, an organization generally does not have to satisfy all of the factors. The factors relevant to each case and the weight accorded to any one of them may differ depending upon the nature and purpose of the organization and the length of time it has existed. The combination of factors that an organization normally must meet does not have to be the same for each 4-year period as long as a sufficient combination of factors exists to show that the organization is publicly supported.

1) Percentage of financial support factor. When an organization normally receives at least 10% but less than one-third of its total support from public or governmental sources, the percentage of support received from those sources will be considered in determining whether the organization is publicly supported. As the percentage of support from public or governmental sources increases, the burden of establishing the publicly supported nature of the organization through other factors decreases; while the lower the percentage, the greater the burden.

If the percentage of the organization's support from the general public or governmental sources is low because it receives a high percentage of its total support from investment income on its endowment funds, the organization will be treated as complying with this factor if the endowment fund was originally contributed by a governmental unit or by the general public. However, if the endowment funds were originally contributed by a few individuals or members of their families, this fact will increase the burden on the organization of establishing compliance with other factors. Facts pertinent to years before the 4 tax years immediately before the current tax year also may be considered.

2) Sources of support factor. If an organization normally receives at least 10% but less than one-third of its total support from public or governmental sources, the fact that it receives the support from governmental units or directly or indirectly from a representative number of persons, rather than receiving almost all of its support from the members of a single family, will be considered in determining whether the organization is publicly supported. In determining what is a representative number of persons, consideration will be given to the type of organization involved, the length of time it has existed, and whether it limits its activities to a particular community or region or to a special field that can be expected to appeal to a limited number of persons. Facts pertinent to years before the 4 tax years immediately before the current tax year also may be considered.

3) Representative governing body factor. The fact that an organization has a governing body that represents the broad interests of the public rather than the personal or private interest of a limited number of donors will be considered in determining whether the organization is publicly supported.

An organization will meet this requirement if it has a governing body composed of:

- 1) Public officials acting in their public capacities,

- 2) Individuals selected by public officials acting in their public capacities,
- 3) Persons having special knowledge or expertise in the particular field or discipline in which the organization is operating, and
- 4) Community leaders, such as elected or appointed officials, members of the clergy, educators, civic leaders, or other such persons representing a broad cross-section of the views and interests of the community.

In a **membership organization**, the governing body also should include individuals elected by a broadly based membership according to the organization's governing instrument or bylaws.

4) Availability of public facilities or services factor. If an organization generally provides facilities or services directly for the benefit of the general public on a continuing basis, that is evidence that the organization is publicly supported. Examples are:

- A museum that is open to the public,
- A symphony orchestra that gives public performances,
- A conservation organization that provides educational services to the public through the distribution of educational materials, or
- An old age home that provides domiciliary or nursing services for members of the general public.

The fact that an educational or research institution regularly publishes scholarly studies widely used by colleges and universities or by members of the general public is also evidence that the organization is publicly supported.

Similarly, the following factors are also evidence that an organization is publicly supported:

- 1) Participating in, or sponsoring of, the programs of the organization by members of the public having special knowledge or expertise, public officials, or civic or community leaders,
- 2) Maintaining a definitive program by the organization to accomplish its charitable work in the community, such as slum clearance or developing employment opportunities, and
- 3) Receiving a significant part of its funds from a public charity or governmental agency to which it is in some way held accountable as a condition of the grant, contract, or contribution.

5) Additional factors pertinent to membership organizations. The following are additional factors in determining whether a membership organization is publicly supported:

- 1) Whether the solicitation for dues-paying members is designed to enroll a substantial number of persons in the community or area, or in a particular profession or field of special interest (taking into account the size of the area and the nature of the organization's activities),
- 2) Whether membership dues for individual (rather than institutional) members have been fixed at rates designed to make

membership available to a broad cross section of the interested public, rather than to restrict membership to a limited number of persons, and

- 3) Whether the activities of the organization will be likely to appeal to persons having some broad common interest or purpose, such as educational activities in the case of alumni associations, musical activities in the case of symphony societies, or civic affairs in the case of parent-teacher associations.

Exception for material changes in sources of support. If for the current tax year substantial and material changes occur in an organization's sources of support other than changes arising from unusual grants (discussed later under *Unusual grants*), then in applying either the one-third or the facts and circumstances test, the 4-year computation period applicable to that year, either as an immediately following tax year or as a current tax year, will not apply. Instead of using these computation periods, a computation period of 5 years will apply. The 5-year period consists of the current tax year and the 4 tax years immediately before that year.

For example, if substantial and material changes occur in an organization's sources of support for the 1996 tax year, then, even though the organization meets the one-third or the facts and circumstances test using a computation period of tax years 1991–1994 or 1992–1995, the organization will not meet either test unless it meets the test using a computation period of tax years 1992–1996 (substituted period).

Substantial and material change. An example of a substantial and material change is the receipt of an unusually large contribution or bequest that does not qualify as an unusual grant.

Effect on grantor or contributor. If as a result of this substituted period, an organization is not able to meet either the one-third support or the facts and circumstances test for its current tax year, its status with respect to a grantor or contributor will not be affected until notice of change of status is made to the public (such as by publication in the *Internal Revenue Bulletin*). This does not apply, however, if the grantor or contributor was responsible for or was aware of the substantial and material change or acquired knowledge that the IRS had given notice to the organization that it would be deleted from classification as a publicly supported organization.

A grantor or contributor (other than one of the organization's founders, creators, or foundation managers) will not be considered responsible for, or aware of, the substantial and material change, if the grantor or contributor made the grant or contribution relying upon a written statement by the grantee organization that the grant or contribution would not result in the loss of the organization's classification as a publicly supported organization. The statement must be signed by a responsible officer of the grantee organization and must give enough information, including a summary of the pertinent financial data for the 4 preceding years, to assure a reasonably prudent person that the grant or contribution would not result in the loss of the grantee organization's classification as a publicly supported organization. If a reasonable doubt exists as to the effect of the grant or contribution, or, if the grantor or contributor is one of the organization's founders, creators, or

foundation managers, the grantee organization may request a ruling from the key District Director before accepting the grant or contribution for the protection of the grantor or contributor.

If there is no written statement, a grantor or contributor will not be considered responsible for a substantial and material change if the total gifts, grants, or contributions received from that grantor or contributor for a tax year are 25% or less of the total support received by the organization from all sources for the 4 tax years immediately before the tax year. (If the organization has not qualified as "publicly supported" for those 5 years, see *Special computation period for new organizations*, next.) For this purpose, total support does not include support received from that particular grantor or contributor. The grantor or contributor cannot be a person who is in a position of authority, such as a foundation manager, or who obtains a position of authority or the ability to exercise control over the organization because of the grant or contribution.

Special computation period for new organizations. Organizations that have been in existence for at least 1 tax year consisting of at least 8 months, but for fewer than 5 tax years, can substitute the number of tax years they have been in existence before their current tax year to determine whether they meet the one-third support test or the facts and circumstances test, discussed earlier.

First tax year at least 8 months. The initial status determination of a newly created organization whose first tax year is at least 8 months is based on a computation period of either the first tax year or the first and second tax years.

First tax year shorter than 8 months. The initial status determination of a newly created organization whose first tax year is less than 8 months is based on a computation period of either the first and second tax years or the first, second, and third tax years.

5-year advance ruling period. If an organization has received an advance ruling, the computation is based on all the years in the 5-year advance ruling period. Advance rulings are described later, under *Advance rulings to newly created organizations - Initial determination of status*.

However, if the advance ruling period is terminated by the IRS, the computation period will be based on the period described above under *First tax year at least 8 months* and *First tax year shorter than 8 months*, or if the period is greater, the number of years to which the advance ruling applies.

Support. For purposes of publicly supported organizations, the term "support" includes (but is not limited to):

- 1) Gifts, grants, contributions, or membership fees,
- 2) Net income from unrelated business activities, whether or not those activities are carried on regularly as a trade or business,
- 3) Gross investment income,
- 4) Tax revenues levied for the benefit of an organization and either paid to or spent on behalf of the organization, and
- 5) The value of services or facilities furnished by a governmental unit to an organization without charge (except ser-

vices or facilities generally furnished to the public without charge).

Amounts that are not support. The term "support" does not include:

- 1) Any gain on the sale or disposition of a capital asset,
- 2) The value of exemption from any federal, state, or local tax or any similar benefit,
- 3) Any amount received from the exercise or performance by an organization of the purpose or function constituting the basis for its exemption (in general, these amounts include amounts received from any activity the conduct of which is substantially related to the furtherance of the exempt purpose or function, other than through the production of income), or
- 4) Contributions of services for which a deduction is not allowed.

These amounts are excluded from both the numerator and the denominator of the fractions in determining compliance with the one-third support test and ten-percent-of-support requirement. The following discusses an exception to this general rule.

Organizations dependent primarily on gross receipts from related activities. Organizations will not satisfy the one-third support test or the ten-percent-of-support requirement if they receive:

- 1) Almost all support from gross receipts from related activities, and
- 2) An insignificant amount of support from governmental units (without regard to amounts referred to in (3) in the preceding list) and contributions made directly or indirectly by the general public.

Example. X, an organization described in section 501(c)(3), is controlled by Thomas Blue, its president. X received \$500,000 during the 4 tax years immediately before its current tax year under a contract with the Department of Transportation, under which X engaged in research to improve a particular vehicle used primarily by the federal government. During the same period, the only other support received by X was \$5,000 in small contributions primarily from X's employees and business associates. The \$500,000 is support under (1) above. Under these circumstances, X meets the conditions of (1) and (2) above and so does not meet the one-third support test or the ten-percent-of-support requirement.

For the rules that apply to organizations that fail to qualify as section 509(a)(1) publicly supported organizations because of these provisions, see *Section 509(a)(2) Organizations*, later. See also *Gross receipts from a related activity* in the discussion on section 509(a)(2) organizations.

Membership fees. Membership fees are included in the term support if they are paid to provide support for the organization rather than to buy admissions, merchandise, services, or the use of facilities.

Support from a governmental unit. For purposes of the one-third support test and the ten-percent-of-support requirement, the term "support from a governmental unit" includes any amounts received from a governmental unit, including donations or contributions and amounts received on a contract entered into

with a governmental unit for the performance of services, or from a government research grant. However, these amounts are not support from a governmental unit for these purposes if they constitute amounts received from the exercise or performance of the organization's exempt functions.

Any amount paid by a governmental unit to an organization will not be treated as received from the exercise or performance of its exempt function if the purpose of the payment is primarily to enable the organization to provide a service to, or maintain a facility for, the direct benefit of the public (regardless of whether part of the expense of providing the service or facility is paid for by the public), rather than to serve the direct and immediate needs of the payor. This includes:

- 1) Amounts paid to maintain library facilities that are open to the public,
- 2) Amounts paid under government programs to nursing homes or homes for the aged to provide health care or domiciliary services to residents of these facilities, and
- 3) Amounts paid to child placement or child guidance organizations under government programs for services rendered to children in the community.

These payments are mainly to enable the recipient organization to provide a service or maintain a facility for the direct benefit of the public, rather than to serve the direct and immediate needs of the payor. Furthermore, any amount received from a governmental unit under circumstances in which the amount would be treated as a grant will generally constitute support from a governmental unit. See the discussion of *Grants* on page 32.

Medicare and Medicaid payments.

Medicare and Medicaid payments are received from contracts entered into with state and federal governmental units. However, payments are made for services already provided to eligible individuals, rather than to encourage or enable an organization to provide services to the public. The individual patient, not a governmental unit, actually controls the ultimate recipient of these payments by selecting the health care organization. As a result, these payments are not considered support from a governmental unit. Medicare and Medicaid payments are gross receipts derived from the exercise or performance of exempt activities and, therefore, are not included in the term "support."

Support from the general public. In determining whether the one-third support test or the ten-percent-of-support requirement is met, include in your computation support from direct or indirect contributions from the general public. This includes contributions from an individual, trust, or corporation but only to the extent that the total contributions from the individual, trust, or corporation, during the 4-year period immediately before the current tax year (or substituted computation period) are not more than 2% of the organization's total support for the same period.

Thus, a contribution by any one individual will be included in full in the denominator of the fraction used in the one-third support test or the ten-percent-of-support requirement. However, the contribution will be included in the numerator only to the extent that it is not more than 2% of the denominator. In applying the 2% limit, all contributions made by a donor

and by any person in a special relationship to the donor (certain *Disqualified persons* discussed on page 34 under *Section 509(a)(3) Organizations*) are considered made by one person. The 2% limit does not apply to support received from governmental units or to contributions from other publicly supported charities, except as provided under *Grants from public charities*, later.

Indirect contributions. The term "indirect contributions from the general public" includes contributions received by the organization from organizations (such as publicly supported organizations) that normally receive a substantial part of their support from direct contributions from the general public, except as provided under *Grants from public charities*, next.

Grants from public charities. Contributions received from a governmental unit or from a publicly supported organization (including a church that meets the requirements for being publicly supported) are not subject to the 2% limit unless the contributions represent amounts either expressly or impliedly earmarked by a donor to the governmental unit or publicly supported organization as being for, or for the benefit of, the particular organization claiming a publicly supported status.

Example 1. M, a national foundation for the encouragement of the musical arts, is a publicly supported organization. George Spruce gives M a donation of \$5,000 without imposing any restrictions or conditions upon the gift. M later makes a \$5,000 grant to X, an organization devoted to giving public performances of chamber music. Since the grant to X is treated as being received from M, it is fully includible in the numerator of X's support fraction for the tax year of receipt.

Example 2. Assume M is the same organization described in example (1). Tom Grove gives M a donation of \$10,000, but requires that M spend the money to support organizations devoted to the advancement of contemporary American music. M has complete discretion as to the organizations of the type described to which it will make a grant. M decides to make grants of \$5,000 each to Y and Z, both being organizations described in section 501(c)(3) and devoted to furthering contemporary American music. Since the grants to Y and Z are treated as having been received from M, Y and Z each may include one of the \$5,000 grants in the numerator of its support fraction. Although the donation to M was conditioned upon the use of the funds for a particular purpose, M was free to select the ultimate recipient.

Example 3. N is a national foundation for the encouragement of art and is a publicly supported organization. Grants to N are permitted to be earmarked for particular purposes. O, which is an art workshop devoted to training young artists and is claiming status as a publicly supported organization, persuades C, a private foundation, to make a grant of \$25,000 to N. C is a disqualified person with respect to O. C makes the grant to N with the understanding that N would be bound to make a grant to O in the sum of \$25,000, in addition to a matching grant of N's funds to O in the sum of \$25,000. Only the \$25,000 received directly from N is considered a grant from N. The other \$25,000 is an indirect contribution from C to O and is to be excluded from the numerator of O's sup-

port fraction to the extent it exceeds the 2% limit.

Unusual grants. In applying the 2% limit to determine whether the one-third support test or the ten-percent-of-support requirement is met, exclude contributions that are considered unusual grants from both the numerator and denominator of the appropriate percent-of-support fraction. Generally, unusual grants are substantial contributions or bequests from disinterested parties if the contributions:

- 1) Are attracted by the publicly supported nature of the organization,
- 2) Are unusual or unexpected in amount, and
- 3) Would adversely affect, because of the size, the status of the organization as normally being publicly supported. (The organization must otherwise meet the support test in that year without benefit of the grant or contribution.)

For a grant (see the description of *Grants* on page 32) that meets the requirements for exclusion, if the terms of the granting instrument require that the funds be paid to the recipient organization over a period of years, the amount received by the organization each year under the terms of the grant may be excluded for that year. However, no item of gross investment income (defined under *Section 509(a)(2) Organizations*, later) may be excluded under this rule. These provisions allow exclusion of unusual grants made during any of the applicable periods previously discussed under *Special computation period for new organizations*, and to periods described in *Advance rulings to newly created organizations - Initial determination of status*, later.

Characteristics of an unusual grant. A grant or contribution will be considered an unusual grant if the above three factors apply and if it has all of the following characteristics. If these factors and characteristics apply, then even without the benefit of an advance ruling, grantors or contributors have assurance that they will not be considered responsible for substantial and material changes in the organization's sources of support.

- 1) The grant or contribution is not made by a person (or related person) who created the organization or was a substantial contributor to the organization before the grant or contribution.
- 2) The grant or contribution is not made by a person (or related person) who is in a position of authority, such as a foundation manager, or who otherwise has the ability to exercise control over the organization. Similarly, the grant or contribution is not made by a person (or related person) who, because of the grant or contribution, obtains a position of authority or the ability to otherwise exercise control over the organization.
- 3) The grant or contribution is in the form of cash, readily marketable securities, or assets that directly further the organization's exempt purposes, such as a gift of a painting to a museum.
- 4) The donee-organization has received either an advance or final ruling or determination letter classifying it as a publicly supported organization and, except for an organization operating under an

advance ruling or determination letter, the organization is actively engaged in a program of activities in furtherance of its exempt purpose.

- 5) No material restrictions or conditions have been imposed by the grantor or contributor upon the organization in connection with the grant or contribution.
- 6) If the grant or contribution is intended for operating expenses, rather than capital items, the terms and amount of the grant or contribution are expressly limited to one year's operating expenses.

Ruling request. Before any grant or contribution is made, a potential grantee organization may request a ruling as to whether the grant or contribution may be excluded. This request may be filed by the grantee organization with the key District Director for its area. The organization must submit all information necessary to make a determination, including information relating to the factors and characteristics listed in the preceding paragraphs. If a favorable ruling is issued, the ruling may be relied upon by the grantor or contributor of the particular contribution in question. The issuance of the ruling will be at the sole discretion of the IRS. The potential grantee organization should follow the procedures set out in Revenue Procedure 97-4 (or later update) to request a ruling.

Grants and contributions that result in substantial and material changes in the organization and that fail to qualify for exclusion will affect the way the support tests are applied. See *Exception for material changes in sources of support*, earlier.

If a ruling is requested, in addition to the characteristics listed earlier under *Characteristics of an unusual grant*, the following factors may be considered by the IRS in determining if the grant or contribution is an unusual grant.

- 1) Whether the contribution was a bequest or a transfer while living. A bequest will be given more favorable consideration than a transfer while living.
- 2) Whether, before the receipt of the contribution, the organization has carried on an active program of public solicitation and exempt activities and has been able to attract a significant amount of public support.
- 3) Whether, before the year of contribution, the organization met the one-third support test or the ten-percent-of-support requirement without benefit of any exclusions of unusual grants.
- 4) Whether the organization may reasonably be expected to attract a significant amount of public support after the contribution. Continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization cannot reasonably be expected to attract future support from the general public.
- 5) Whether the organization has a representative governing body.

Advance rulings to newly created organizations - Initial determination of status. Because they have not been in existence long enough, many newly created organizations cannot meet either the 4-year normally pub-

licly supported provisions or the provisions for newly created organizations to qualify as normally publicly supported. However, a newly created organization may qualify for an advance ruling that it will be treated as an organization described in section 170(b)(1)(A)(vi) during an advance ruling period long enough to enable it to develop an adequate support history on which to base an initial determination as to foundation status.

Generally, the type of newly created organization that would qualify for an advance ruling is one that can show that its organizational structure, proposed programs and activities, and intended method of operation are likely to attract the type of broadly based support from the general public, public charities, and governmental units that is necessary to meet the public support requirements discussed earlier under *Qualifying As Publicly Supported*.

An advance ruling or determination will provide that an organization will be treated as an organization described in section 170(b)(1)(A)(vi) for an advance ruling period of 5 years.

5-year advance ruling period. A newly created organization may request a ruling or determination letter that it will be treated as a section 170(b)(1)(A)(vi) organization for its first 5 tax years. The request must be accompanied by a consent to extend the statute (on Form 872-C) that, in effect, states the organization will be subject to the taxes imposed under section 4940 if it fails to qualify as **not** a private foundation during the 5-year advance ruling period. The organization's first tax year, regardless of length, will count as the first year in the 5-year period. The advance ruling period will end on the last day of the organization's 5th tax year.

Between 30 and 45 days before the end of the advance ruling period, the District Director will contact the organization and request the financial support information necessary to make a final determination of foundation status. In general, this is the information requested in Part IV, A of Form 1023.

Failure to obtain advance ruling. If a newly created organization has not obtained an advance ruling or determination letter, it cannot rely upon the possibility that it will meet the public support requirements discussed earlier. Thus, in order to avoid the risk of being classified as a private foundation, the organization may comply with the rules governing private foundations by paying any applicable private foundation taxes. If the organization later meets the public support requirements for the applicable period, it will be treated as a section 170(b)(1)(A)(vi) organization from its inception and any private foundation tax that was imposed may be refunded.

Reliance period. The newly created organization will be treated as a publicly supported organization for all purposes other than sections 507(d) (relating to total tax benefit resulting from exempt status) and 4940 (relating to tax on net investment income) for the period beginning with its inception and ending 90 days after its advance ruling period expires. The period will be extended until a final determination is made of an organization's status only if the organization submits, within the 90-day period, information needed to determine whether it meets either of the support tests for its advance ruling period (even if the organization fails to

meet either test). However, this reliance period does not apply to the excise tax imposed on net investment income. If it is later determined that the organization was a private foundation from its inception, that excise tax will be due without regard to the advance ruling or determination letter. Consequently, if any amount of the tax is not paid on or before the last date prescribed for payment, the organization is liable for interest on the tax due for years in the advance ruling period. However, since any failure to pay the tax during the period is due to reasonable cause, the penalty imposed for failure to pay the tax will not apply.

If an advance ruling or determination letter is terminated by the IRS before the expiration of the reliance period, the status of grants or contributions with respect to grantors or contributors to the organization will not be affected until notice of change of status of the organization is made to the public (such as by publication in the *Internal Revenue Bulletin*). However, this will not apply if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of classification as a publicly supported organization.

Also, it will not apply if the grantor or contributor knew that the IRS had given notice to the organization that it would be deleted from this classification. Before any grant or contribution is made, **a potential grantee organization may request a ruling** on whether the grant or contribution may be made without loss of classification as a publicly supported organization.

The ruling request may be filed by the grantee organization with the key District Director. The issuance of the ruling will be at the sole discretion of the IRS. The organization must submit all information necessary to make a determination on the support factors previously discussed. If a favorable ruling is issued, the ruling may be relied upon by the grantor or contributor of the particular contribution in question. The grantee organization also may rely on the ruling for excluding unusual grants.

Comprehensive Examples

Example 1. For the years 1992 through 1995, M organization received support of \$600,000 from the following sources.

Investment Income	\$300,000
City Y	40,000
United Way	40,000
Contributions	220,000
Total support	<u>\$600,000</u>

For 1996, on the basis of the above support, M is considered to have normally received more than one-third of its support from a governmental unit and from direct and indirect contributions from the general public computed as follows.

One-third of total support	<u>\$200,000</u>
Support from a governmental unit	\$40,000
Indirect contributions from the general public (United Way)	40,000
Contributions by various donors (no one having made contributions that total more than \$12,000—2% of total support)	50,000
Six contributions (each in excess of \$12,000 —2% of total support) 6 × \$12,000	<u>72,000</u>
	<u>\$202,000</u>

Since M's support from governmental units and from direct and indirect contributions from the general public normally is more than

one-third of M's total support for the applicable period (1992-1995), M meets the one-third support test and satisfies the requirements for classification as a publicly supported organization for 1996 and 1997. (This remains in effect if no substantial and material changes took place in the organization's character, purposes, methods of operation, or sources of support in these years.)

Example 2. N organization was created to maintain public gardens containing plant specimens and displaying works of art. The facilities, art, and a large endowment were all contributed by a single contributor. The members of the governing body of the organization are unrelated to its creator. The gardens are open to the public without charge and attract many visitors each year. For the 4 tax years immediately before the current tax year, 95% of the organization's total support was received from investment income from its original endowment. N also maintains a membership society that is supported by members of the general public who wish to contribute to the upkeep of the gardens by paying a small annual membership fee. Over the 4-year period in question, these fees from the general public constituted the remaining 5% of the organization's total support. Under these circumstances, N does not meet the one-third support test for its current tax year. Furthermore, since only 5% was received from the general public, N does not satisfy the ten-percent-of-support requirement of the facts and circumstances test. For its current tax year, N therefore is not a publicly supported organization. Since N failed to satisfy the ten-percent-of-support requirement, none of the other requirements or factors can be considered in determining whether N qualifies as a publicly supported organization.

Example 3. In 1960, O organization was founded in Y City by the members of a single family to collect, preserve, interpret, and display to the public important works of art. O is governed by a Board of Trustees that originally consisted almost entirely of members of the founding family.

However, since 1975, members of the founding family or persons related to members of the family have annually been less than 20% of the Board of Trustees. The remaining board members are citizens of Y City from a variety of professions and occupations who represent the interests and views of the people of Y City in the activities carried on by the organization rather than the personal or private interests of the founding family.

O solicits contributions from the general public and for each of its 4 most recent tax years has received total contributions (in small sums of less than \$100, none of which is more than 2% of O's total support for the period) of more than \$10,000. These contributions from the general public are 25% of the organization's total support for the 4-year period. For this same period, investment income from several large endowment funds has been 75% of its total support. O spends substantially all of its annual income for its exempt purposes and thus depends upon the funds it annually solicits from the public as well as its investment income to carry out its activities on a normal and continuing basis and to acquire new works of art. For the entire period of its existence, O has been open to the public and more than 300,000 people (from Y City and elsewhere) have visited the

museum in each of its 4 most recent tax years.

Under these circumstances, O does not meet the one-third support test for its current year since it has received only 25% of its total support for the applicable 4-year period from the general public. However, O has met the ten-percent-of-support requirement as well as the attraction of public support requirement and the factors to be considered, under the facts and circumstances test, in determining whether an organization is publicly supported. Therefore, O is classified as a publicly supported organization for its current tax year and the next tax year.

Example 4. In 1970, the P Philharmonic Orchestra was organized in Z City by a local music society and a local women's club to present to the public a wide variety of musical programs intended to foster music appreciation in the community. The orchestra is composed of professional musicians who are paid by the association. Twelve performances, open to the public, are scheduled each year. A small admission charge is made for each of these performances. In addition, several performances are staged annually without charge.

During its 4 most recent tax years, P received separate contributions of \$200,000 each from Amanda Green and Jackie White (not members of a single family) and support of \$120,000 from the Z Community Chest, a public federated fund-raising organization operating in Z City. P depends on these funds to carry out its activities and will continue to depend on contributions of this type to be made in the future. P has also begun a fund-raising campaign in an attempt to expand its activities for the coming years.

P is governed by a Board of Directors composed of five individuals. A faculty member of a local college, the president of a local music society, the head of a local bank, a prominent doctor, and a member of the governing body of the local Chamber of Commerce currently serve on the Board and represent the interests and views of the community in the activities carried on by P.

For P's current tax year, its sources of support are computed on the basis of the 4 immediately preceding years, as follows.

Contributions	\$520,000
Receipts from performances	<u>100,000</u>
	\$620,000
Less:	
Receipts from performances (excluded, see <i>Support</i>)	<u>100,000</u>
Total support	<u>\$520,000</u>
Z Community Chest (indirect support from the general public)	\$120,000
Two contributions (each over \$10,400—2% of total support) 2 × \$10,400	<u>20,800</u>
Total support from general public	<u>\$140,800</u>

P's support from the general public, directly and indirectly, does not meet the one-third support test (\$140,800/\$520,000 = 27% of total support). However, it meets the ten-percent-of-support requirement. P also meets the requirement of the attraction of public support. As a result of satisfying these requirements and the public support factors, P is considered to be a publicly supported organization.

If P were a newly created organization, it could obtain a ruling that it is a publicly supported organization by reason of its purposes, organizational structure, and proposed method of operation. Even if P had initially been founded by the contributions of a few

individuals, this would not, in and of itself, disqualify P from receiving the ruling.

Example 5. Q is a philanthropic organization founded in 1985 by Anne Elm for the purpose of making annual contributions to worthy charities. Anne created Q as a charitable trust by transferring \$500,000 worth of appreciated securities to Q.

Under the trust agreement, Anne and two other family members are the sole trustees and are vested with the right to appoint successor trustees. In each of its 4 most recent tax years, Q received \$15,000 in investment income from its original endowment. Each year Q solicits funds by operating a charity ball at Anne's home. Guests are invited and asked to make contributions of \$100 per couple. During the 4-year period involved, \$15,000 was received from the proceeds of these events. Anne and the family have also made contributions to Q of \$25,000 over the course of the organization's 4 most recent tax years. Q makes disbursements each year of substantially all of its net income to the public charities chosen by the trustees.

For Q's current tax year, Q's sources of support are computed on the basis of the 4 immediately preceding years as follows.

Investment income	\$60,000
Contributions	<u>40,000</u>
Total support	<u>\$100,000</u>
Contributions from the general public	\$15,000
One contribution (over \$2,000 — 2% of total support) 1 × \$2,000	<u>2,000</u>
Total support from general public	<u>\$17,000</u>

Q's support from the general public does not meet the one-third support test (\$17,000/\$100,000 = 17% of total support). Even though it does meet the ten-percent-of-support requirement, its method of solicitation makes it questionable whether Q satisfies the attraction of public support requirement. Because of its method of operating, Q also has a greater burden of establishing its publicly supported nature under the percentage of financial support factor. Based on these facts and on Q's failure to receive favorable consideration under the remaining factors, Q does not qualify as a publicly supported organization.

Community Trusts

Community trusts are often established to attract large contributions of a capital or endowment nature for the benefit of a particular community or area. Often these contributions come initially from a small number of donors. While the community trust generally has a governing body composed of representatives of the particular community or area, its contributions are often received and maintained in the form of separate trusts or funds that are subject to varying degrees of control by the governing body.

To qualify as a publicly supported organization, a community trust must meet the one-third support test, explained earlier under *Qualifying As Publicly Supported*. If it cannot meet that test, it must be organized and operated so as to attract new and additional public or governmental support on a continuous basis sufficient to meet the facts and circumstances test, also explained earlier. Community trusts are generally able to satisfy the attraction of public support requirement (as contained in the facts and circumstances test) if they seek gifts and bequests from a wide range of potential donors in the community or area served, through banks or trust

companies, through attorneys or other professional persons, or in other appropriate ways that call attention to the community trust as a potential recipient of gifts and bequests made for the benefit of the community or area served. A community trust, however, does not have to engage in periodic, community-wide, fund-raising campaigns directed toward attracting a large number of small contributions in a manner similar to campaigns conducted by a community chest or a united fund.

Separate trusts or funds. Any community trust may be treated as a single entity, rather than as an aggregation of separate funds, in which case all qualifying funds associated with that organization (whether a trust, not-for-profit corporation, unincorporated association, or a combination thereof) will be treated as component parts of the organization.

Single entity. To be treated as a single entity, a community trust must meet all the following requirements.

- 1) The organization must be commonly known as a community trust, fund, foundation, or other similar name conveying the concept of a capital or endowment fund to support charitable activities in the community or area it serves.
- 2) The organization must prepare periodic financial reports treating all of the funds that are held by the community trust, either directly or in component parts, as funds of the organization.
- 3) All funds of the organization must be subject to a common governing instrument (or a master trust or agency agreement) that may be embodied in a single (or several) document(s) containing common language.
- 4) The organization must have a common governing body (or distribution committee) that either directs or, in the case of a fund designated for specified beneficiaries, monitors the distribution of all funds exclusively for charitable purposes. The governing body must have the power in the governing instrument, the instrument of transfer, the resolutions or bylaws of the governing body, a written agreement, or otherwise—
 - a) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the sole judgment of the governing body (without the necessity of the approval of any participating trustee, custodian, or agent), the restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served,
 - b) To replace any participating trustee, custodian, or agent for breach of fiduciary duty under state law, and
 - c) To replace any participating trustee, etc., for failure to produce a reasonable return of net income over a reasonable period of time. (The governing body will determine what is “reasonable.”)

A community trust can meet the requirement in (4) above even if its exercise of the

powers in (4)(a), (b), or (c) is reviewable by an appropriate state authority.

Component part. To be treated as a component part of a community trust (rather than as a separate trust or a not-for-profit corporation), a trust or fund:

- 1) Must be created by gift, bequest, legacy, devise, or other transfer to a community trust that is treated as a single entity (described above), and
- 2) May not be directly subjected by the transferor to any material restriction or condition with respect to the transferred assets.

Grantors and contributors. Grantors, contributors, or distributors to a community trust may rely on the public charity status, which the organization has claimed in a timely filed notice, on or before the date the IRS informs the public (through such means as publication in the *Internal Revenue Bulletin*) that such reliance has expired. However, if the grantor, contributor, or distributor acquires knowledge that the IRS has notified the community trust that it has failed to establish that it is a public charity, then reliance on the claimed status expires at the time such knowledge is acquired.

Section 509(a)(2) Organizations

Section 509(a)(2) excludes certain types of broadly, publicly supported organizations from private foundation treatment. Generally, an organization described in section 509(a)(2) may also fit the description of a publicly supported organization under section 509(a)(1). There are, however, two basic differences.

- 1) For section 509(a)(2) organizations, the term support includes items of support discussed earlier (under *Support*, in the discussion of *Section 509(a)(1) Organizations*) and income from activities directly related to their exempt function. This income is not included in meeting the support test for a publicly supported organization under section 509(a)(1).
- 2) Section 509(a)(2) places a limit on the total gross investment income and unrelated business taxable income (in excess of the unrelated business tax) an organization may have, while section 509(a)(1) does not.

To be excluded from private foundation treatment under section 509(a)(2), an organization must meet two support tests:

- 1) The one-third support test, and
- 2) The not-more-than-one-third support test.

Both these tests are designed to insure that an organization that is excluded from private foundation treatment is responsive to the general public, rather than to the private interests of a limited number of donors or other persons.

One-third support test. The one-third support test will be met if an organization *normally* receives *more than* one-third of its support in each tax year from any combination of:

- 1) Gifts, grants, contributions, or membership fees, and

- 2) Gross receipts from admissions, sales of merchandise, performance of services, or furnishing facilities in an activity that is not an unrelated trade or business, subject to certain limits, discussed below under *Limit on gross receipts*.

For this purpose, the support must be from permitted sources, which include:

- Section 509(a)(1) organizations, described earlier,
- Governmental units, described on page 23 under *Section 509(a)(1) Organizations*, and
- Persons other than *Disqualified persons* (defined on page 34 under *Section 509(a)(3) Organizations*).

Limit on gross receipts. In computing the amount of support received from gross receipts under (2) above, gross receipts from related activities received from any person or from any bureau or similar agency of a governmental unit are includible in any tax year only to the extent the gross receipts are not more than the greater of \$5,000 or 1% of the organization's total support in that year.

Not-more-than-one-third support test. This test will be met if an organization *normally* receives no more than one-third of its support in each tax year from the sum of:

- 1) Gross investment income, and
- 2) The excess (if any) of unrelated business taxable income from unrelated trades or businesses acquired after June 30, 1975 over the tax imposed on that income.

Gross investment income. Gross investment income means the gross amount of income from interest, dividends, payments with respect to securities loans, rents, and royalties, but it does not include any income that would be included in computing tax on unrelated business income from trades or businesses.

Definition of “normally.” Both support tests are computed on the basis of the nature of the organization's normal sources of support. An organization will be considered to have normally met both tests for its current tax year and the tax year immediately following, if it meets those tests on the basis of the total support received for the 4 tax years immediately before the current tax year.

Exception for material changes in sources of support. If during the current tax year there are substantial and material changes in an organization's sources of support other than changes arising from unusual grants (discussed later under *Unusual grants*), neither the 4-year computation period for the current year as an immediately following tax year, nor the 4-year computation period for that year as a current tax year applies. Instead, the normal sources of support will be determined on the basis of a 5-year period consisting of the current tax year and the 4 preceding tax years.

For example, if material changes occur in support for the year 1996, then even though the organization meets the requirements of the support tests based on the years 1991—1994 or 1992—1995, it does not meet these tests unless it meets the requirements based on the 5-year computation period of 1992—1996. An example of a substantial and material change is the receipt of an unusually

large contribution that does not qualify as an unusual grant.

Effect on grantor or contributor. If an organization is not able to meet either of the support tests because of a substantial or material change in the sources of support, its status with respect to a grantor or contributor will not be affected until notice of a change in status is made to the public (such as by publication in the *Internal Revenue Bulletin*).

However, this rule does not apply to any grantor or contributor who:

- 1) Was responsible for the substantial or material change,
- 2) Was aware of it, or
- 3) Has acquired knowledge that the IRS gave notice to the organization that it would no longer be classified as a section 509(a)(2) organization.

A grantor or contributor (other than one of the organization's founders, creators, or foundation managers) is not considered responsible for, or aware of, the substantial and material change if the grantor or contributor made the grant or contribution relying upon a written statement by the grantee organization that the grant or contribution would not result in the loss of the organization's classification as an organization that is not a private foundation. The statement must be signed by a responsible officer of the grantee organization and must give enough information, including a summary of the pertinent financial data for the 4 preceding years, to assure a reasonably prudent person that the grant or contribution would not result in the loss of the grantee organization's classification as not a private foundation. If a reasonable doubt exists as to the effect of the grant or contribution, or if the grantor or contributor is one of the organization's founders, creators, or foundation managers, the grantee organization may request a ruling from its key District Director for the protection of the grantor or contributor.

If there is no written statement, a grantor or contributor will not be considered responsible for a substantial and material change if the total gifts, grants, or contributions received from that grantor or contributor for a tax year are 25% or less of the total support received by the organization from all sources for the 4 tax years immediately before the tax year. (If the organization has not qualified as "publicly supported" for those 5 years, see *Special computation period for new organizations*, next.) For this purpose, total support does not include support received from that particular grantor or contributor. The grantor or contributor cannot be a person who is in a position of authority, such as a foundation manager, or who obtains a position of authority or the ability to exercise control over the organization because of the grant or contribution.

Special computation period for new organizations. A newly created organization may need several years to establish its normal sources of support. Organizations generally are allowed a 5-year period to establish that they meet the section 509(a)(2) support test. This is called the advance ruling period. If an organization can reasonably be expected to meet the support test by the end of its advance ruling period, the IRS may issue it an advance ruling or determination letter. See *Advance rulings for newly created*

organizations, later. This will permit the organization to be treated as a section 509(a)(2) organization for its advance ruling period.

An advance ruling or determination is *not* a ruling that the organization will meet the requirements of section 509(a)(2) during the advance ruling period. An organization that receives an advance ruling or determination letter must, at the expiration of the advance ruling period, establish that it satisfies the section 509(a)(2) support requirements for the years covered by the advance ruling, or the organization will be presumed to be a private foundation under section 508(b).

Unusual grants. An unusual grant may be excluded from the support test computation if it:

- 1) Was attracted by the publicly supported nature of the organization,
- 2) Was unusual or unexpected in amount, and
- 3) Would, because of its size, adversely affect the status of the organization as normally meeting the one-third support test. (The organization must otherwise meet the test in that year without benefit of the grant or contribution.)

Characteristics of an unusual grant. A grant or contribution will be considered an unusual grant if the above 3 factors apply and it has all of the following characteristics. If these factors and characteristics apply, then even without the benefit of an advance ruling, grantors or contributors have assurance that they will not be considered responsible for substantial and material changes in the organization's sources of support.

- 1) The grant or contribution is not made by a person (or related person) who created the organization or was a substantial contributor to the organization before the grant or contribution.
- 2) The grant or contribution is not made by a person (or related person) who is in a position of authority, such as a foundation manager, or who otherwise has the ability to exercise control over the organization. Similarly, the grant or contribution is not made by a person (or related person) who, because of the grant or contribution, obtains a position of authority or the ability to otherwise exercise control over the organization.
- 3) The grant or contribution is in the form of cash, readily marketable securities, or assets that directly further the organization's exempt purposes, such as a gift of a painting to a museum.
- 4) The donee organization has received either an advance or final ruling or determination letter classifying it as a publicly supported organization and, except for an organization operating under an advance ruling or determination letter, the organization is actively engaged in a program of activities in furtherance of its exempt purpose.
- 5) No material restrictions or conditions have been imposed by the grantor or contributor upon the organization in connection with the grant or contribution.
- 6) If the grant or contribution is intended for operating expenses, rather than capital

items, the terms and amount of the grant or contribution are expressly limited to one year's operating expenses.

Ruling request. If there is any doubt that a grant or contribution may be excluded as an unusual grant, the grantee organization may request a ruling, submitting all of the necessary information for making a determination to its key District Director. The IRS has the sole discretion of issuing a ruling, but if a favorable ruling is issued, it may be relied on by the grantor or contributor for purposes of a charitable contributions deduction and by the organization for purposes of the exclusion for unusual grants. The organization should follow the procedures set out in Revenue Procedure 97-4 (or later update).

In addition to the characteristics listed above, the following factors may be considered by the IRS in determining if the grant or contribution is an unusual grant.

- 1) Whether the contribution was a bequest or a transfer while living. A bequest will ordinarily be given more favorable consideration than a transfer while living.
- 2) Whether, before the contribution, the organization carried on an actual program of public solicitation and exempt activities and was able to attract a significant amount of public support.
- 3) Whether the organization met the one-third support test in the past without the benefit of any exclusions of unusual grants.
- 4) Whether the organization may reasonably be expected to attract a significant amount of public support after the contribution. Continued reliance on unusual grants to fund an organization's current operating expenses may be evidence that the organization cannot attract future support from the general public.
- 5) Whether the organization has a representative governing body.

Example 1. In 1992, Y, an organization described in section 501(c)(3), was created by Marshall Pine, the holder of all the common stock in M corporation, Lisa, Marshall's wife, and Edward Forest, Marshall's business associate. Each of the three creators made small cash contributions to Y to enable it to begin operations. The purpose of Y was to sponsor and equip athletic teams composed of underprivileged children of the community. Between 1992 and 1995, Y was able to raise small amounts of contributions through fundraising drives and selling admission to some of the sponsored sporting events.

For its first year of operations, it was determined that Y was excluded from the definition of private foundation under the provisions of section 509(a)(2). Marshall made small contributions to Y from time to time. At all times, the operations of Y were carried out on a small scale, usually being restricted to the sponsorship of two to four baseball teams composed of underprivileged children.

In 1996, M recapitalized and created a first and second class of 6% nonvoting preferred stock, most of which was held by Marshall and Lisa. Marshall then contributed 49% of his common stock in M to Y. Marshall, Lisa, and Edward continued to be active participants in the affairs of Y from its creation through 1996. Marshall's contribution of M's common stock was 90% of Y's total support

for 1996. Although Y could satisfy the one-third support test on the basis of the 4 tax years before 1996, a combination of the facts and circumstances preclude Marshall's contribution of M's common stock in 1996 from being excluded as an unusual grant. Marshall's contribution in 1996 was a substantial and material change in Y's sources of support and on the basis of the 5-year period (1992 to 1996), Y would not be considered as *normally* meeting the one-third support test for the tax years 1996 (the current tax year) and 1997 (the immediately following tax year).

Example 2. M, an organization described in section 501(c)(3), was organized to promote the appreciation of ballet in a particular region of the United States. Its principal activities will consist of erecting a theater for the performance of ballet and the organization and operation of a ballet company. The governing body of M consists of nine prominent unrelated citizens living in the region who have either an expertise in ballet or a strong interest in encouraging appreciation of ballet. To provide sufficient capital for M to begin its activities, X, a private foundation, makes a grant of \$500,000 in cash to M. Although Albert Cedar, the creator of X, is one of the nine members of M's governing body, was one of M's original founders, and continues to lend his prestige to M's activities and fund-raising efforts, Albert does not, directly or indirectly, exercise any control over M. By the close of its first tax year, M also has received a significant amount of support from a number of smaller contributions and pledges from members of the general public. Upon the opening of its first season of ballet performances, M expects to charge admission to the general public. Under these circumstances, the grant by X to M may be excluded as an unusual grant.

Advance rulings for newly created organizations. Newly created organizations generally are allowed an advance ruling period of 5 years.

An organization that is claiming on its Form 1023 (or other section 508(b) notice) to be described under section 509(a)(2) must have operated for at least 1 tax year consisting of at least 8 months before the IRS will make a final determination of its status. However, if an organization can show that it can reasonably be expected to qualify under section 509(a)(2), the IRS will issue an advance ruling or determination letter on the organization's private foundation status. Generally, an advance ruling or determination provides that an organization will be treated as an organization described in section 509(a)(2) for an advance ruling period of 5 years.

A newly created organization may request a ruling or determination that it will be treated as a section 509(a)(2) organization for its first 5 tax years. This request must be filed with a consent to extend the statute (Form 872-C) that in effect states the organization will be subject to private foundation taxes (under section 4940) if it fails to qualify as *not* a private foundation during the 5 year advance ruling period.

In determining whether an organization can meet the support tests, the basic consideration is whether its organizational structure, proposed programs or activities, and intended method of operation will attract the type of broadly based support from the general pub-

lic, public charities, and governmental units that is necessary to meet the tests. The facts that are relevant to this determination and the weight accorded each fact may differ from case to case. A favorable determination will not be made when the facts indicate that an organization is likely to receive less than one-third of its support from permitted sources or to receive more than one-third of its support from gross investment income and unrelated business taxable income.

All pertinent facts and circumstances are taken into account in determining whether the organizational structure, programs or activities, and method of operation of an organization will enable it to meet the tests for its advance ruling period (discussed earlier). Some pertinent factors considered are:

- 1) Whether the organization has or will have a governing body that is composed of persons having special knowledge in the particular field in which the organization is operating or of community leaders, such as elected officials, members of the clergy, and educators, or, in the case of a membership organization, of individuals elected under the organization's governing instrument or bylaws by a broadly based membership.
- 2) Whether a substantial part of the organization's initial funding is to be provided by the general public, by public charities, or by government grants rather than by a limited number of grantors or contributors who are disqualified persons with respect to the organization.
- 3) Whether a substantial proportion of the organization's initial funds are placed, or will remain, in an endowment and whether the investment of those funds is unlikely to result in more than one-third of its total support being received from gross investment income and from unrelated business taxable income in excess of the tax imposed on that income.
- 4) Whether an organization that carries on fund-raising activities has developed a concrete plan for solicitation of funds on a community or area-wide basis.
- 5) Whether an organization that carries on community service activities has a concrete program to carry out its work in the community.
- 6) Whether membership dues for individual (rather than institutional) members of an organization that carries on education or other exempt activities for or on behalf of members have been fixed at rates designed to make membership available to a broad cross section of the public rather than to restrict membership to a limited number of persons.
- 7) Whether an organization that provides goods, services, or facilities is or will be required to make its services, facilities, performances, or products available (regardless of whether a fee is charged) to the general public, public charities, or governmental units rather than to a limited number of persons or organizations.

Reliance period. The reliance period for a ruling or determination letter begins with the inception of the organization and ends 90 days after the advance ruling period. The reliance period will be extended until a final determination is made of the organization's

status only if the organization submits, within the 90-day period, the necessary information to determine whether it meets the requirements for a section 509(a)(2) organization.

However, this reliance period does not apply to the section 4940 excise tax on net investment income. Therefore, if it is later determined that the organization was a private foundation from its inception, the tax on net investment income will be due without regard to the ruling or determination letter.

Grantors or contributors. If a ruling or determination letter is terminated before the expiration of the reliance period, the status of a charitable contribution deduction of a grantor or contributor will not be affected until notice of change of status is made public (such as by publication in the *Internal Revenue Bulletin*).

However, this rule will *not* apply if the grantor or contributor is responsible for, or aware of, the act or failure to act that resulted in the organization's loss of section 509(a)(2) status, or if a grantor or contributor acquires knowledge that the IRS had given notice of the loss of status to the organization.

Failure to obtain advance ruling. See the corresponding discussion under *Failure to obtain advance ruling* on page 27 of the discussion of *Section 509(a)(1) Organizations*.

Gifts, contributions, and grants distinguished from gross receipts. In determining whether an organization normally receives more than one-third of its support from permitted sources, include all gifts, contributions, and grants received from permitted sources in the numerator of the support fraction in each tax year. However, gross receipts from admissions, sales of merchandise, performance of services, or furnishing facilities, in an activity that is not an unrelated trade or business, are includible in the numerator of the support fraction in any tax year only to the extent that the amounts received from any person or from any bureau or similar agency of a governmental unit are not more than the greater of \$5,000 or 1% of support.

Gifts and contributions. Any payment of money or transfer of property without adequate consideration is considered a gift or contribution. When payment is made or property is transferred as consideration for admissions, sales of merchandise, performance of services, or furnishing facilities to the donor, the status of the payment or transfer under section 170(c) determines whether and to what extent the payment or transfer is a gift or contribution as distinguished from gross receipts from related activities.

The amount includible in computing support from gifts, grants, or contributions of property or use of property is the fair market or rental value of the property at the date of the gift or contribution.

Example. P is a local agricultural club and is an organization described in section 501(c)(3). It makes awards at its annual fair for outstanding specimens of produce and livestock to encourage interest and proficiency by young people in farming and raising livestock. Most of these awards are cash or other property donated by local businessmen. When the awards are made, the donors are given recognition for their donations by being identified as the donor of the award. The recognition given to donors is merely incidental to the making of the award to worthy youngsters. For these reasons, the donations

are contributions. The amount includible in computing support is equal to the cash contributed or the fair market value of other property on the dates contributed.

Grants. Grants often contain certain terms and conditions imposed by the grantor. Because of the imposition of terms and conditions, the frequent similarity of public purposes of grantor and grantee, and the possibility of benefit to the grantor, amounts received as grants *for* carrying on exempt activities are sometimes difficult to distinguish from amounts received as gross receipts *from* carrying on exempt activities.

In distinguishing the term **gross receipts** from the term **grants**, the term gross receipts means amounts received from an activity that is not an unrelated trade or business, if a specific service, facility, or product is provided to serve the direct and immediate needs of the payor rather than primarily to confer a direct benefit on the general public. In general, payments made primarily to enable the payor to realize or receive some economic or physical benefit as a result of the service, facility, or product obtained will be treated as gross receipts by the payee.

For example, a profit-making organization, primarily for its own betterment, contracts with a nonprofit organization for a service from that organization. Any payments received by the nonprofit organization (whether from the profit-making organization or from another nonprofit) for similar services are primarily for the benefit of the payor and are therefore gross receipts, rather than grants.

Research leading to the development of tangible products for the use or benefit of a payor generally will be treated as a service provided to serve the direct and immediate needs of the payor, while basic research or studies carried on in the physical or social sciences generally will be treated as primarily to confer a direct benefit upon the general public.

Medicare and Medicaid payments are gross receipts from the exercise or performance of an exempt function. The individual patient, not a governmental unit, actually controls the ultimate recipient of these payments. Therefore, Medicare and Medicaid receipts for services provided each patient are included as gross receipts to the extent they are not more than the greater of \$5,000 or 1% of the organization's total support for the tax year.

Membership fees distinguished from gross receipts. The fact that a membership organization provides services, admissions, facilities, or merchandise to its members as part of its overall activities will not, in itself, result in the classification of fees received from members as gross receipts subject to the \$5,000 or 1% limit rather than membership fees. However, if an organization uses membership fees as a means of selling admissions, merchandise, services, or the use of facilities to members of the general public who have no common goal or interest (other than the desire to buy the admissions, merchandise, services, or use of facilities), the fees are not membership fees but are gross receipts.

On the other hand, to the extent the basic purpose of the payment is to provide support for the organization rather than to buy ad-

missions, merchandise, services, or the use of facilities, the payment is a membership fee.

Bureau defined. The term **any bureau or similar agency of a governmental unit** for determining amounts subject to the \$5,000 or 1% limit, means a specialized operating unit of the executive, judicial, or legislative branch of government in which business is conducted under certain rules and regulations. Since the term bureau refers to a unit functioning at the operating, as distinct from the policy-making, level of government, it normally means a subdivision of a department of government. The term would not usually include those levels of government that are basically policy-making or administrative, such as the office of the Secretary or Assistant Secretary of a department, but would consist of the highest operational level under the policy-making or administrative levels.

Amounts received from a unit functioning at the policy-making or administrative level of government are treated as received from one bureau or similar agency of the unit. Units of a governmental agency above the operating level are combined and considered a separate bureau for this purpose. Thus, an organization that has gross receipts from both a policy-making or administrative unit and an operational unit of a department will be treated as having gross receipts from two bureaus. For this purpose, the Departments of Air Force, Army, and Navy are separate departments and each has its own policy-making, administrative, and operating units.

Example 1. The Bureau for Africa and the Bureau for Latin America are considered separate bureaus. Each is an operating unit under the Administrator of the Agency for International Development, a policy-making official. If an organization had gross receipts from both of these bureaus, the amount of gross receipts from each would be subject to the greater of \$5,000 or the 1% limit.

Example 2. A bureau is an operating unit under the administrative office of the Executive Director. The subdivisions of the bureau are Geographic Areas and Project Development Staff. If an organization had gross receipts from these subdivisions, the total gross receipts from these subdivisions would be considered gross receipts from the same bureau and would be subject to the greater of \$5,000 or the 1% limit.

Grants from public charities. For purposes of the one-third support test, grants received from a section 509(a)(1) organization (public charity) are generally includible in full in computing the numerator of the support fraction for that tax year.

However, if the amount received is considered an indirect contribution from one of the public charity's donors, it will retain its character as a contribution from the donor, and if, for example, the donor is a substantial contributor to the ultimate recipient, the amount is excluded from the numerator of the support fraction. If a public charity makes both an indirect contribution from its donor and an additional grant to the ultimate recipient, the indirect contribution is treated as made first.

An indirect contribution is one that is expressly or impliedly earmarked by the donor as being for, or for the benefit of, a particular recipient rather than for a particular purpose.

Method of accounting. An organization's support is determined solely on the cash receipts and disbursements method of accounting. For example, if a grantor makes a grant to an organization payable over a term of years, the grant will be includible in the support fraction of the grantee organization only when and to the extent amounts payable under the grant are received by the grantee.

Gross receipts from a related activity. When the charitable purpose of an organization described in section 501(c)(3) is accomplished through furnishing facilities for a rental fee or loans to a particular class of persons, such as aged, sick, or needy persons, the support received from those persons will be considered gross receipts from a related exempt activity rather than gross investment income or unrelated business taxable income.

However, if the organization also furnishes facilities or loans to persons who are not members of a particular class and furnishing the facilities or funds does not contribute importantly to accomplishing the organization's exempt purposes, the support received from furnishing the facilities or funds will be considered rents or interest and will be treated as gross investment income or unrelated business taxable income.

Example. X, an organization described in section 501(c)(3), is organized and operated to provide living facilities for needy widows of deceased servicemen. X charges the widows a small rental fee for the use of the facilities. Since X is accomplishing its exempt purpose through the rental of the facilities, the support received from the widows is considered gross receipts from a related exempt activity. However, if X rents part of its facilities to persons having no relationship to X's exempt purpose, the support received from these rentals will be considered gross investment income or unrelated business taxable income.

Section 509(a)(3) Organizations

Section 509(a)(3) excludes from the definition of private foundation those organizations that meet all of the three following requirements.

- 1) The organization must be organized and at all times thereafter operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations (which can be either domestic or foreign) as described in section 509(a)(1) or (2). These section 509(a)(1) and 509(a)(2) organizations are commonly called **publicly supported** organizations.
- 2) The organization must be operated, supervised, or controlled by or in connection with one or more of the organizations described in section 509(a)(1) or (2).
- 3) The organization must not be controlled directly or indirectly by disqualified persons (defined later) other than one or more organizations described in section 509(a)(1) or (2).

Section 509(a)(3) differs from the other provisions of section 509 that describe a publicly supported organization. Instead of describing an organization that conducts a particular kind of activity or that receives financial support from the general public, sec-

tion 509(a)(3) describes organizations that have established certain relationships in support of section 509(a)(1) or (2) organizations. Thus, an organization may qualify as other than a private foundation even though it may be funded by a single donor, family, or corporation. This kind of funding ordinarily would indicate private foundation status, but a section 509(a)(3) organization has limited purposes and activities and gives up a significant degree of independence.

The requirement in (2) above provides that a supporting (section 509(a)(3)) organization have one of three types of relationships with one or more publicly supported (section 509(a)(1) or (2)) organizations. It must be:

- 1) Operated, supervised, or controlled by a publicly supported organization,
- 2) Supervised or controlled in connection with a publicly supported organization, or
- 3) Operated in connection with a publicly supported organization.

More than one type of relationship may exist between a supporting organization and a publicly supported organization. Any relationship, however, must insure that the supporting organization will be responsive to the needs or demands of, and will be an integral part of or maintain a significant involvement in, the operations of one or more publicly supported organizations.

The first two relationships, "operated, supervised, or controlled by" and "supervised or controlled in connection with," are based on an existence of majority control of the governing body of the supporting organization by the publicly supported organization. They have the same rules for meeting the tests under requirement (1) and are discussed as *Category one* in the following discussion. The "operated in connection with" relationship requires that the supporting organization be responsive to and have operational relationships with publicly supported organizations. This third relationship has different rules for meeting the requirement (1) tests and is discussed separately as *Category two*.

Category one. This category includes organizations either "operated, supervised, or controlled by" or "supervised or controlled in connection with" organizations described in section 509(a)(1) or (2).

These kinds of organizations have a governing body that either includes a majority of members elected or appointed by one or more publicly supported organizations or that consists of the same persons that control or manage the publicly supported organizations. If an organization is to qualify under this category, it also must meet an organizational test, an operational test, and not be controlled by disqualified persons. These requirements are covered later in this discussion.

Operated, supervised, or controlled by. Each of these terms, as used for supporting organizations, presupposes a substantial degree of direction over the policies, programs, and activities of a supporting organization by one or more publicly supported organizations. The relationship required under any one of these terms is comparable to that of a parent and subsidiary, in which the subsidiary is under the direction of and is accountable or responsible to the parent organization. This relationship is established when a majority of the officers, directors, or trustees of the sup-

porting organization are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more publicly supported organizations.

A supporting organization may be operated, supervised, or controlled by one or more publicly supported organizations even though its governing body is not made up of representatives of the specified publicly supported organizations for whose benefit it is operated. This occurs only if it can be demonstrated that the purposes of the publicly supported organizations are carried out by benefiting the specified publicly supported organizations (discussed later under *Specified organizations*).

Supervised or controlled in connection with. The control or management of the supporting organization must be vested in the same persons that control or manage the publicly supported organization. In order for an organization to be supervised or controlled in connection with a publicly supported organization, common supervision or control by the persons supervising or controlling both organizations must exist to insure that the supporting organization will be responsive to the needs and requirements of the publicly supported organization.

An organization will not be considered supervised or controlled in connection with one or more publicly supported organizations if it merely makes payments (mandatory or discretionary) to the publicly supported organizations. This is true even if the obligation to make payments is legally enforceable and the organization's governing instrument contains provisions requiring the distribution. These arrangements do not provide a sufficient connection between the payor organization and the needs and requirements of the publicly supported organizations to constitute supervision or control in connection with the organizations.

Organizational and operational tests. To qualify as a section 509(a)(3) organization (supporting organization), the organization must be both **organized** and **operated** for the purposes set out in requirement (1) at the beginning of this section. If an organization fails to meet either the organizational or the operational test, it cannot qualify as a supporting organization.

In the case of supporting organizations created before 1970, the organizational and operational tests apply as of January 1, 1970. Therefore, even though the original articles of organization did not limit its purposes to those in requirement (1), and even though it operated before 1970 for some purpose other than those in requirement (1), an organization will satisfy the organizational and operational tests if, on January 1, 1970, and at all times thereafter, it is so constituted as to comply with these tests.

Organizational test. An organization is organized exclusively for one or more of the purposes specified in requirement (1) only if its articles of organization:

- 1) Limit the purposes of the organization to one or more of those purposes,
- 2) Do not expressly empower the organization to engage in activities that are not in furtherance of those purposes,
- 3) "Specify" (as explained later under *Specified organizations*) the publicly

supported organizations on whose behalf the organization is operated, and

- 4) Do not expressly empower the organization to operate to support or benefit any organization other than the ones specified in item (3).

In meeting the organizational test, the organization's purposes as stated in its articles may be as broad as, or more specific than, the purposes set forth in requirement (1) at the beginning of the discussion of *Section 509(a)(3) Organizations*. Therefore, an organization that by the terms of its articles is formed **for the benefit** of one or more specified publicly supported organizations will, if it otherwise meets the other requirements, be considered to have met the organizational test.

For example, articles stating that an organization is formed to perform the publishing functions of a specified university are enough to comply with the organizational test. An organization operated, supervised, or controlled by, or supervised or controlled in connection with, one or more publicly supported organizations to carry out the purposes of those organizations, will be considered to have met these requirements if the purposes set forth in its articles are similar to but no broader than the purposes set forth in the articles of its controlling organizations. If, however, the organization by which it is operated, supervised, or controlled is a publicly supported section 501(c)(4), (5), or (6) organization, the supporting organization will be considered to have met these requirements if its articles require it to carry on charitable, etc., activities within the meaning of section 170(c)(2).

Limits. An organization is not organized exclusively for the purposes specified in requirement (1) if its articles expressly permit it to operate, to support, or to benefit any organization other than the specified publicly supported organizations. It will not meet the organizational test even though the actual operations of the organization have been exclusively for the benefit of the specified publicly supported organizations.

Specified organizations. In order to meet requirement (1), an organization must be organized and operated exclusively to support or benefit one or more specified publicly supported organizations. The manner in which the publicly supported organizations must be specified in the articles will depend on whether the supporting organization is "operated, supervised, or controlled by" or "supervised or controlled in connection with" the organizations or whether it is "operated in connection with" the organizations.

Generally, the articles of the supporting organization must designate each of the specified organizations by name, **unless:**

- 1) The supporting organization is "operated, supervised, or controlled by" or "supervised or controlled in connection with" one or more publicly supported organizations **and** the articles of organization of the supporting organization require that it be operated to support or benefit one or more beneficiary organizations that are designated by class or purpose and include—
 - a) The publicly supported organizations referred to above (without designating the organizations by name), or

- b) Publicly supported organizations that are closely related in purpose or function to those publicly supported organizations, **or**
- 2) An historic and continuing relationship exists between the supporting organization and the publicly supported organizations, and because of this relationship, a substantial identity of interests has developed between the organizations.

If a supporting organization is operated, supervised, or controlled by, or is supervised or controlled in connection with, one or more publicly supported organizations, it will not fail the test of being organized for the benefit of specified organizations solely because its articles:

- 1) Permit the substitution of one publicly supported organization within a designated class for another publicly supported organization either in the same or a different class designated in the articles,
- 2) Permit the supporting organization to operate for the benefit of new or additional publicly supported organizations of the same or a different class designated in the articles, or
- 3) Permit the supporting organization to vary the amount of its support among different publicly supported organizations within the class or classes of organizations designated by the articles.

See also the rules considered under the *Organizational test*, in the later discussion for organizations in *Category two*.

Operational test—permissible beneficiaries. A supporting organization will be regarded as operated exclusively to support one or more specified publicly supported organizations only if it engages solely in activities that support or benefit the specified organizations. These activities may include making payments to or for the use of, or providing services or facilities for, individual members of the charitable class benefited by the specified publicly supported organization.

For example, a supporting organization may make a payment indirectly through another unrelated organization to a member of a charitable class benefited by a specified publicly supported organization, but only if the payment is a grant to an individual rather than a grant to an organization. Similarly, an organization will be regarded as operated exclusively to support or benefit one or more specified publicly supported organizations if it supports or benefits a section 501(c)(3) organization, other than a private foundation, that is operated, supervised, or controlled directly by or in connection with a publicly supported organization, or an organization that is a publicly owned college or university. However, an organization will not be regarded as one that is operated exclusively to support or benefit a publicly supported organization if any part of its activities is in furtherance of a purpose other than supporting or benefiting one or more specified publicly supported organizations.

Operational test—permissible activities. A supporting organization does not have to pay its income to the publicly supported organizations to meet the operational test. It may satisfy the test by using its income

to carry on an independent activity or program that supports or benefits the specified publicly supported organizations. All such support, however, must be limited to permissible beneficiaries described earlier. The supporting organization also may engage in fund raising activities, such as solicitations, fund raising dinners, and unrelated trade or business, to raise funds for the publicly supported organizations or for the permissible beneficiaries.

Absence of control by disqualified persons. The third requirement an organization must meet to qualify as a supporting organization requires that the organization not be controlled directly or indirectly by one or more disqualified persons other than foundation managers or one or more publicly supported organizations.

Disqualified persons. For the purposes of the rules discussed in this publication, the following persons are considered disqualified persons:

- 1) All substantial contributors to the foundation.
- 2) All foundation managers of the foundation.
- 3) An owner of more than 20% of—
 - a) The total combined voting power of a corporation that is (during such ownership) a substantial contributor to the foundation,
 - b) The profits interest of a partnership that is (during such ownership) a substantial contributor to the foundation, or
 - c) The beneficial interest of a trust or unincorporated enterprise that is (during such ownership) a substantial contributor to the foundation.
- 4) A member of the family of any of the individuals just listed.
- 5) A corporation of which more than 35% of the total combined voting power is owned by persons just listed.
- 6) A partnership of which more than 35% of the profits interest is owned by persons described in (1), (2), (3), or (4).
- 7) A trust, estate, or unincorporated enterprise of which more than 35% of the beneficial interest is owned by persons described in (1), (2), (3), or (4).

Remember, however, that foundation managers and publicly supported organizations are not disqualified persons for purposes of the third requirement under section 509(a)(3).

If a person who is a disqualified person with respect to a supporting organization, such as a substantial contributor, is appointed or designated as a foundation manager of the supporting organization by a publicly supported beneficiary organization to serve as the representative of the publicly supported organization, that person is still a disqualified person, rather than a representative of the publicly supported organization.

An organization is considered controlled for this purpose if the disqualified persons, by combining their votes or positions of authority, may require the organization to perform any act that significantly affects its operations or may prevent the organization from performing the act. This includes, but is not limited to, the right of any substantial contrib-

utor or spouse to designate annually the recipients from among the publicly supported organizations of the income from his or her contribution. Except as explained under *Proof of independent control*, next, a supporting organization will be considered to be controlled directly or indirectly by one or more disqualified persons if the voting power of those persons is 50% or more of the total voting power of the organization's governing body, or if one or more of those persons have the right to exercise veto power over the actions of the organization.

Thus, if the governing body of a foundation is composed of five trustees, none of whom has a veto power over the actions of the foundation, and no more than two trustees are at any time disqualified persons, the foundation is not considered controlled directly or indirectly by one or more disqualified persons by reason of this fact alone. However, all pertinent facts and circumstances (including the nature, diversity, and income yield of an organization's holdings, the length of time particular stocks, securities, or other assets are retained, and its manner of exercising its voting rights with respect to stocks in which members of its governing body also have some interest) are considered in determining whether a disqualified person does in fact indirectly control an organization.

Proof of independent control. An organization is permitted to establish to the satisfaction of the IRS that disqualified persons, in fact, do not directly or indirectly control it. For example, in the case of a religious organization operated in connection with a church, the fact that the majority of the organization's governing body is composed of lay persons who are substantial contributors to the organization will not disqualify the organization under section 509(a)(3) if a representative of the church, such as a bishop or other official, has control over the policies and decisions of the organization.

Category two. This category includes organizations "operated in connection with" one or more organizations described in section 509(a)(1) or (2).

This kind of section 509(a)(3) organization is one that has certain types of operational relationships. If an organization is to qualify as a section 509(a)(3) organization because it is "operated in connection with" one or more publicly supported organizations, it must not be controlled by disqualified persons (as described earlier) and it must meet an organizational test, a responsiveness test, an integral part test, and an operational test.

Organizational test. This test requires that the organization, in its governing instrument:

- 1) Limit its purposes to supporting one or more publicly supported organizations,
- 2) Designate the organizations "operated, supervised, or controlled by," and
- 3) Not have express powers inconsistent with these purposes.

These tests apply to all supporting organizations.

In the case of an organization that is "operated in connection with" one or more publicly supported organizations, however, the designation requirement under the organizational test can be satisfied using either of the following two methods.

Method one. If an organization is organized and operated to support one or more publicly supported organizations and it is "operated in connection with" that type of organization or organizations, then, its articles of organization must designate the specified organizations by name to satisfy the test. But a supporting organization that has one or more specified organizations designated by name in its articles will not fail the organizational test solely because its articles:

- 1) Permit a publicly supported organization, that is designated by class or purpose rather than by name, to be substituted for the publicly supported organization or organizations designated by name in the articles, but only if the substitution is conditioned upon the occurrence of an event that is beyond the control of the supporting organization, such as loss of exemption, substantial failure or abandonment of operations, or dissolution of the organization or organizations designated in the articles,
- 2) Permit the supporting organization to operate for the benefit of an organization that is not a publicly supported organization, but only if the supporting organization is currently operating for the benefit of a publicly supported organization and the possibility of its operating for the benefit of other than a publicly supported organization is remote, or
- 3) Permit the supporting organization to vary the amount of its support between different designated organizations, as long as it meets the requirements of the integral part test (discussed later) with respect to at least one beneficiary organization.

If the beneficiary organization referred to in (2) is not a publicly supported organization, the supporting organization will not meet the operational test. Therefore, if a supporting organization substituted a beneficiary other than a publicly supported organization and operated in support of that beneficiary, the supporting organization would not be one described in section 509(a)(3).

Method two. If an historic and continuing relationship exists between the supporting organization and the publicly supported organizations, and because of this relationship, a substantial identity of interests has developed between the organizations, then the articles of organization will not have to designate the specified organization by name.

Responsiveness test. An organization will meet this test if it is responsive to the needs or demands of the publicly supported organizations. To meet this test, **either** of the following must be satisfied:

- 1) The publicly supported organizations must elect, appoint, or maintain a close and continuing relationship with the officers, directors, or trustees of the supporting organization (Consequently, the officers, directors, or trustees of the publicly supported organizations have a significant voice in the investment policies of the supporting organization, the timing of grants and the manner of making them, the selection of recipients, and generally the use of the income or assets of the supporting organization.);
- or**

- 2) The supporting organization is a charitable trust under state law, each specified publicly supported organization is a named beneficiary under the trust's governing instrument, and the beneficiary organization has the power to enforce the trust and compel an accounting under state law.

For an organization that was supporting or benefiting one or more publicly supported organizations before November 20, 1970, additional facts and circumstances, such as an historic and continuing relationship between organizations, may be taken into account in addition to the factors described earlier to establish compliance with the responsiveness test.

Integral part test. The organization will meet this test if it maintains a significant involvement in the operations of one or more publicly supported organizations and these organizations are in turn dependent upon the supporting organization for the type of support that it provides. To meet this test, **either** of the following must be satisfied (unless transitional rules, discussed later, apply):

- 1) The activities engaged in for, or on behalf of, the publicly supported organizations are activities to perform the functions of or to carry out the purposes of the organizations, and, but for the involvement of the supporting organization, would normally be engaged in by the publicly supported organizations themselves, **or**
- 2) The supporting organization makes payments of substantially all of its income to, or for the use of, publicly supported organizations, and the amount of support received by one or more of these publicly supported organizations is enough to insure the attentiveness of these organizations to the operations of the supporting organization.

If item (2) is being relied on, a substantial amount of the total support of the supporting organization also must go to those publicly supported organizations that meet the attentiveness requirement with respect to the supporting organization. Except as explained in the next paragraph, the amount of support received by a publicly supported organization must represent a large enough part of the organization's total support to insure such attentiveness. In applying this, if the supporting organization makes payments to, or for the use of, a particular department or school of a university, hospital, or church, the total support of the department or school must be substituted for the total support of the beneficiary organization.

Even when the amount of support received by a publicly supported beneficiary organization does not represent a large enough part of the beneficiary organization's total support, the amount of support received from a supporting organization may be large enough to meet the requirements of item (2) of the integral part test if it can be demonstrated that, in order to avoid the interruption of a particular function or activity, the beneficiary organization will be sufficiently attentive to the operations of the supporting organization. This may occur when either the supporting organization or the beneficiary organization earmarks the support received from the supporting organization for a particular

program or activity, even if the program or activity is not the beneficiary organization's primary program or activity, as long as the program or activity is a substantial one.

All factors, including the number of beneficiaries, the length and nature of the relationship between the beneficiary and supporting organization, and the purpose to which the funds are put, will be considered in determining whether the amount of support received by a publicly supported beneficiary organization is large enough to insure the attentiveness of the organization to the operations of the supporting organization.

Normally, the attentiveness of a beneficiary organization is motivated by the amounts received from the supporting organization. Thus, the more substantial the amount involved, in terms of a percentage of the publicly supported organization's total support, the greater the likelihood that the required degree of attentiveness will be present. However, in determining whether the amount received from the supporting organization is large enough to insure the attentiveness of the beneficiary organization to the operations of the supporting organization (including attentiveness to the nature and yield of the supporting organization's investments), evidence of actual attentiveness by the beneficiary organization is of almost equal importance.

Imposing this requirement is merely one of the factors in determining whether a supporting organization is complying with the attentiveness test. The absence of this requirement will not preclude an organization from classification as a supporting organization if it complies with the other factors.

However, when none of the beneficiary organizations are dependent upon the supporting organization for a large enough amount of their support, the requirements of item (2) of the integral part test will not be satisfied, even though the beneficiary organizations have enforceable rights against the supporting organization under state law.

If an organization cannot meet the requirements of item (2) of the integral part test for its current tax year solely because the amount received by one or more of the beneficiaries from the supporting organization is no longer large enough, it can still qualify under the integral part test if it can establish that it has met the requirements of item (2) of the integral part test for any 5-year period and that there has been an historic and continuing relationship of support between the organizations between the end of the 5-year period and the tax year in question.

Transitional rule. A charitable trust created before November 20, 1970, will meet the integral part test if for tax years beginning after October 16, 1972, the trustee makes annual written reports to all publicly supported beneficiary organizations giving a description of the trust assets (including a detailed list of the assets and the income produced by them) and if the following five conditions have been met continuously since November 20, 1970.

- 1) All the unexpired interests in the trust are devoted to charitable purposes.
- 2) The trust did not receive any grant, contribution, bequest, or other transfer on or after November 20, 1970.
- 3) The trust is required by its governing instrument to distribute all its net income currently to designated publicly supported beneficiary organizations.

- 4) The trustee does not have discretion to vary either the beneficiaries or the amounts payable to the beneficiaries.
- 5) None of the trustees would be disqualified persons (other than foundation managers) with respect to the trust if the trust were treated as a private foundation.

Operational test. The requirements for meeting the operational test for organizations "operated, supervised, or controlled by" publicly supported organizations (discussed earlier, beginning on page 23, under *Qualifying As Publicly Supported*) have limited applicability to organizations "operated in connection with" one or more publicly supported organizations. This is because the operational requirements of the integral part test, just discussed, generally are more specific than the general rules found for the operational test in the preceding category. However, a supporting organization can fail both the integral part test and the operational test if it conducts activities of its own that do not constitute activities or programs that would, but for the supporting organization, have been conducted by any publicly supported organization named in the supporting organization's governing instrument. A similar result occurs for such activities or programs that would not have been conducted by an organization with which the supporting organization has established an historic and continuing relationship.

An organization operated in conjunction with a social welfare organization, labor or agricultural organization, business league, chamber of commerce, or other organization described in section 501(c)(4), (5), or (6), may qualify as a supporting organization under section 509(a)(3) and therefore not be classified as a private foundation if both the following conditions are met.

- 1) The supporting organization must meet all the requirements previously specified (the organizational tests, the operational test, and the requirement that it be operated, supervised, or controlled by or in connection with one or more specified organizations, and not be controlled by disqualified persons).
- 2) The section 501(c)(4), (5), or (6) organization would be described in section 509(a)(2) if it was a charitable organization described in section 501(c)(3). This provision allows separate charitable funds of certain noncharitable organizations to be described in section 509(a)(3) if the noncharitable organizations receive their support and otherwise operate in the manner specified by section 509(a)(2).

Special rules of attribution. To determine whether an organization meets the not-more-than-one-third support test in section 509(a)(2), amounts received by the organization from an organization that seeks to be a section 509(a)(3) organization because of its support of the organization are gross investment income (rather than gifts or contributions) to the extent they are gross investment income of the distributing organization. (This rule also applies to amounts received from a charitable trust, corporation, fund, association, or similar organization that is required by its governing instrument or otherwise to distribute, or that normally does

distribute, at least 25% of its adjusted net income to the organization, and whose distribution normally comprises at least 5% of its adjusted net income.) All income that is gross investment income of the distributing organization will be considered distributed first by that organization. If the supporting organization makes distributions to more than one organization, the amount of gross investment income considered distributed will be prorated among the distributees.

Also, treat amounts paid by an organization to provide goods, services, or facilities for the direct benefit of an organization seeking section 509(a)(2) status (rather than for the direct benefit of the general public) in the same manner as amounts received by the latter organization. These amounts will be treated as gross investment income to the extent they are gross investment income of the organization spending the amounts. An organization seeking section 509(a)(2) status must file a separate statement with its annual information return, Form 990, listing all amounts received from supporting organizations.

Relationships created for avoidance purposes. If a relationship between an organization seeking section 509(a)(3) status and an organization seeking section 509(a)(2) status is established or availed of after October 9, 1969, and one of the purposes of establishing or using the relationship is to avoid classification as a private foundation with respect to either organization, then the character and amount of support received by the section 509(a)(3) organization will be attributed to the section 509(a)(2) organization for purposes of determining whether the latter meets the support tests under section 509(a)(2). If this type of relationship is established or used between an organization seeking section 509(a)(3) status and two or more organizations seeking section 509(a)(2) status, the amount and character of support received by the former organization will be prorated among the latter organizations.

In determining whether a relationship exists between an organization seeking section 509(a)(3) status (supporting organization) and one or more organizations seeking section 509(a)(2) status (beneficiary organizations) for the purpose of avoiding private foundation status, all pertinent facts and circumstances will be taken into account. The following facts may be used as evidence that such a relationship was **not** established or availed of to avoid classification as a private foundation.

- 1) The supporting organization is operated to support or benefit several specified beneficiary organizations.
- 2) The beneficiary organization has a substantial number of dues-paying members who have an effective voice in the management of both the supporting and the beneficiary organizations.
- 3) The beneficiary organization is composed of several membership organizations, each of which has a substantial number of members, and the membership organizations have an effective voice in the management of the supporting and beneficiary organizations.
- 4) The beneficiary organization receives a substantial amount of support from the general public, public charities, or governmental grants.

- 5) The supporting organization uses its funds to carry on a meaningful program of activities to support or benefit the beneficiary organization and, if the supporting organization were a private foundation, this use would be sufficient to avoid the imposition of the tax on failure to distribute income.
- 6) The operations of the beneficiary and supporting organizations are managed by different persons, and each organization performs a different function.
- 7) The supporting organization is not able to exercise substantial control or influence over the beneficiary organization because the beneficiary organization receives support or holds assets that are disproportionately large in comparison to the support received or assets held by the supporting organization.

Effect on 509(a)(3) organizations. If a beneficiary organization fails to meet either of the support tests of section 509(a)(2) due to these provisions, and the beneficiary organization is one for whose support the organization seeking section 509(a)(3) status is operated, then the supporting organization will not be considered to be operated exclusively to support or benefit one or more section 509(a)(1) or (2) organizations and therefore would not qualify for section 509(a)(3) status.

Classification under section 509(a). If an organization is described in section 509(a)(1), and is also described in either section 509(a)(2) or (3), it will be treated as a section 509(a)(1) organization.

Reliance by grantors and contributors. Once an organization has received a final ruling or determination letter classifying it as an organization described in section 509(a)(1), (2), or (3), the treatment of grants and contributions and the status of grantors and contributors to the organization will generally not be affected by reason of a later revocation by the IRS of the organization's classification until the date on which notice of change of status is made to the public (generally by publication in the *Internal Revenue Bulletin*) or another applicable date, if any, specified in the public notice. In appropriate cases, however, the treatment of grants and contributions and the status of grantors and contributors to an organization described in section 509(a)(1), (2), or (3) may be affected pending verification of the continued classification of the organization. Notice to this effect will be made in a public announcement by the IRS. In these cases, the effect of grants and contributions made after the date of the announcement will depend on the statutory qualification of the organization as an organization described in section 509(a)(1), (2), or (3).



The preceding paragraph shall not apply if the grantor or contributor:

- 1) *Had knowledge of the revocation of the ruling or determination letter classifying the organization as an organization described in section 509(a)(1), (2), or (3), or*
- 2) *Was in part responsible for, or was aware of, the act, the failure to act, or the substantial and material change on the part of*

the organization that gave rise to the revocation.

Section 509(a)(4) Organizations

Section 509(a)(4) excludes from classification as private foundations those organizations that qualify under section 501(c)(3) as organized and operated for the purpose of **testing products for public safety**. Generally, these organizations test consumer products to determine their acceptability for use by the general public.

Private Operating Foundations

Some private foundations qualify as private operating foundations. These are types of private foundations that, although lacking general public support, make **qualifying distributions** directly for the active conduct of their educational, charitable, and religious purposes, as distinct from merely making grants to other organizations for these purposes.

Most of the restrictions and requirements that apply to private foundations also apply to private operating foundations. However, there are advantages to being classified as a private operating foundation. For example, a private operating foundation (as compared to a private foundation) can be the recipient of grants from a private foundation without having to distribute the funds received currently within 1 year, and the funds nevertheless may be treated as qualifying distributions by the donating private foundation; charitable contributions to a private operating foundation qualify for a higher charitable deduction limit on the donor's tax return; and for tax years beginning after 1984, the excise tax on net investment income does not apply to an **exempt operating foundation**.

Private operating foundation means any private foundation that meets the assets test, the support test, or the endowment test, and makes qualifying distributions directly for the active conduct of its activities for which it was organized of substantially all (85% or more) of the lesser of its:

- 1) Adjusted net income, or
- 2) Minimum investment return.

Assets test. A private foundation will meet the assets test if substantially more than half (65% or more) of its assets are:

- 1) Devoted directly to the active conduct of its exempt activity, to a functionally related business, or to a combination of the two,
- 2) Stock of a corporation that is controlled by the foundation (by ownership of at least 80% of the total voting power of all classes of stock entitled to vote and at least 80% of the total shares of all other classes of stock) and substantially all (at least 85%) the assets of which are devoted as provided above, or
- 3) Any combination of (1) and (2).

This test is intended to apply to organizations such as museums and libraries.

Support test. A private foundation will meet the support test if:

- 1) Substantially all (at least 85%) of its support (other than gross investment income) is normally received from the general public and five or more unrelated exempt organizations,
- 2) Not more than 25% of its support (other than gross investment income) is normally received from any one exempt organization, and
- 3) Not more than 50% of its support is normally received from gross investment income.

This test is intended to apply to special-purpose foundations, such as learned societies and associations of libraries.

Endowment test. A foundation will meet the endowment test if it normally makes qualifying distributions directly for the active conduct of its exempt function of at least two-thirds of its minimum investment return.

The **minimum investment return** for any private foundation for any tax year is 5% of the excess of the total fair market value of all assets of the foundation (other than those used directly in the active conduct of its exempt purpose) over the amount of indebtedness incurred to acquire those assets.

In determining whether the amount of qualifying distributions is at least two-thirds of the organization's minimum investment return, the organization is not required to trace the source of the expenditures to determine whether they were derived from investment income or from contributions.

This test is intended to apply to organizations such as research organizations that actively conduct charitable activities but whose personal services are so great in relationship to charitable assets that the cost of those services cannot be met out of small endowments.

Exempt operating foundations. The excise tax on net investment income does not apply to an exempt operating foundation. An exempt operating foundation for the tax year is any private foundation that—

- 1) Is an operating foundation, as described previously,
- 2) Has been publicly supported for at least 10 tax years or was an operating foundation on January 1, 1983, or for its last taxable year ending before January 1, 1983,
- 3) Has a governing body that, at all times during the tax year, is broadly representative of the general public and consists of individuals no more than 25% of whom are disqualified individuals, and
- 4) Does not have any officer, at any time during the tax year, who is a disqualified individual.

The foundation must obtain a ruling letter from the IRS recognizing this special status.

New organization. If you are applying for recognition of exemption as an organization described in section 501(c)(3) and you wish to establish that your organization is a private operating foundation, you should complete Schedule E of your exemption application (Form 1023).

Lobbying Expenditures

In general, if a substantial part of the activities of your organization consists of carrying on propaganda or otherwise **attempting to influence legislation**, your organization's exemption from federal income tax will be denied. However, a public charity (other than a church, an integrated auxiliary of a church or of a convention or association of churches, or a member of an affiliated group of organizations that includes a church, etc.) may avoid this result. Such a charity can elect to replace the substantial part of activities test with a limit defined in terms of expenditures for influencing legislation. Private foundations cannot make this election.

Making the election. Use **Form 5768, Election/Revocation of Election By an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation**, to make the election. The form must be signed and postmarked within the first tax year to which it applies. If the form is used to revoke the election, it must be signed and postmarked before the first day of the tax year to which it applies.

Eligible section 501(c)(3) organizations that have made the election to be subject to the limits on lobbying expenditures must use Part VI–A of Schedule A (Form 990) to figure these limits.

Attempting to influence legislation. Attempting to influence legislation, for this purpose, means:

- 1) Any attempt to influence any legislation through an effort to affect the opinions of the general public or any segment thereof (grass roots lobbying), and
- 2) Any attempt to influence any legislation through communication with any member or employee of a legislative body or with any government official or employee who may participate in the formulation of legislation (direct lobbying).

However, the term "attempting to influence legislation" does **not** include the following activities:

- 1) Making available the results of nonpartisan analysis, study, or research,
- 2) Examining and discussing broad social, economic, and similar problems,
- 3) Providing technical advice or assistance (where the advice would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision thereof in response to a written request by that body or subdivision,
- 4) Appearing before or communicating with any legislative body about a possible decision of that body that might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deduction of contributions to the organization, or
- 5) Communicating with a government official or employee, other than—

- a) A communication with a member or employee of a legislative body (when the communication would otherwise constitute the influencing of legislation), or
- b) A communication with the principal purpose of influencing legislation.

Also excluded are communications between an organization and its bona fide members about legislation or proposed legislation of direct interest to the organization and the members, unless these communications directly encourage the members to attempt to influence legislation or directly encourage the members to urge nonmembers to attempt to influence legislation, as explained earlier.

Lobbying expenditures limits. If a public charitable organization makes the election to be subject to the lobbying expenditures limits rules (instead of the substantial part of activities test), it will not lose its tax-exempt status under section 501(c)(3), unless it normally makes **lobbying expenditures** that are more than 150% of the **lobbying nontaxable amount** for the organization for each tax year or normally makes **grass roots expenditures** that are more than 150% of the **grass roots nontaxable amount** for the organization for each tax year. See *Tax on excess expenditures to influence legislation*, later in this section.

Lobbying expenditures. These are any expenditures that are made for the purpose of attempting to influence legislation, as discussed earlier under *Attempting to influence legislation*.

Grass roots expenditures. This term refers only to those lobbying expenditures that are made to influence legislation by attempting to affect the opinions of the general public or any segment thereof.

Lobbying nontaxable amount. The lobbying nontaxable amount for any organization for any tax year is the lesser of \$1,000,000 or:

- 1) 20% of the **exempt purpose expenditures** if the exempt purpose expenditures are not over \$500,000,
- 2) \$100,000 plus 15% of the excess of the exempt purpose expenditures over \$500,000 if the exempt purpose expenditures are over \$500,000 but not over \$1,000,000,
- 3) \$175,000 plus 10% of the excess of the exempt purpose expenditures over \$1,000,000 if the exempt purpose expenditures are over \$1,000,000 but not over \$1,500,000, or
- 4) \$225,000 plus 5% of the excess of the exempt purpose expenditures over \$1,500,000 if the exempt purpose expenditures are over \$1,500,000.

The term **exempt purpose expenditures** means the total of the amounts paid or incurred (including depreciation and amortization, but not capital expenditures) by an organization for the tax year to accomplish its exempt purposes. In addition, it includes:

- 1) Administrative expenses paid or incurred for the organization's exempt purposes, and
- 2) Amounts paid or incurred for the purpose of influencing legislation, whether or not

the legislation promotes the organization's exempt purposes.

Exempt purpose expenditures **do not include** amounts paid or incurred to or for:

- 1) A separate fund-raising unit of the organization, or
- 2) One or more other organizations, if the amounts are paid or incurred primarily for fund raising.

Grass roots nontaxable amount. The grass roots nontaxable amount for any organization for any tax year is 25% of the lobbying nontaxable amount for the organization for that tax year.

Years for which election is effective. Once an organization elects to come under these provisions, the election will be in effect for all tax years that end after the date of the election and begin before the organization revokes this election.

Note. These elective provisions for lobbying activities by public charities do not apply to a church, an integrated auxiliary of a church or of a convention or association of churches, or a member of an affiliated group of organizations that includes a church, etc., or a private foundation. Moreover, these provisions will not apply to any organization for which an election is not in effect.

Expenditures of affiliated organizations. If two or more section 501(c)(3) organizations are members of an affiliated group of organizations and at least one of these organizations has made the election regarding the treatment of certain lobbying expenditures, then the determination as to whether excess lobbying expenditures have been made and the determination as to whether the expenditure limits, described earlier, have been exceeded by more than 150% will be made as though the affiliated group is one organization.

If the group has excess lobbying expenditures, each organization for which the election is effective for the year will be treated as an organization that has excess lobbying expenditures in an amount that equals the organization's proportionate share of the group's excess lobbying expenditures. Further, if the expenditure limits, described in this section, are exceeded by more than 150%, each organization for which the election is effective for that year will lose its tax-exempt status under section 501(c)(3).

Two organizations will be considered members of an affiliated group of organizations if:

- 1) The governing instrument of one of the organizations requires it to be bound by decisions of the other organization on legislative issues, or
- 2) The governing board of one of the organizations includes persons who—
 - a) Are specifically designated representatives of the other organization or are members of the governing board, officers, or paid executive staff members of the other organization, and
 - b) Have enough voting power to cause or prevent action on legislative issues by the controlled organization by combining their votes.

Tax on excess expenditures to influence legislation. If an election for a tax year is in effect for an organization and that organization exceeds the lobbying expenditures limits, an excise tax of 25% of the excess lobbying expenditures for the tax year will be imposed. Excess lobbying expenditures for a tax year, in this case, means the greater of:

- 1) The amount by which the lobbying expenditures made by the organization during the tax year are more than the lobbying nontaxable amount for the organization for that tax year, or
- 2) The amount by which the grass roots expenditures made by the organization during the tax year are more than the grass roots nontaxable amount for the organization for that tax year.

Eligible organizations that have made the election to be subject to the limits on lobbying expenditures and that owe the tax on excess lobbying expenditures (as computed in Part VI-A of Schedule A (Form 990)) must file Form 4720, *Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code*, to report and pay the tax.

Organization that no longer qualifies. An organization that no longer qualifies for exemption under section 501(c)(3) because of substantial lobbying activities will not at any time thereafter be treated as an organization described in section 501(c)(4). This provision, however, does not apply to certain organizations (churches, etc.) that cannot make the election discussed earlier.

Tax on disqualifying lobbying expenditures. The law imposes a tax on certain organizations if they no longer qualify under section 501(c)(3) by reason of having made disqualifying lobbying expenditures. An additional tax may be imposed on the managers of those organizations.

Tax on organization. Organizations that lose their exemption under section 501(c)(3) due to lobbying activities generally will be subject to an excise tax of 5% of the lobbying expenditures. The tax does not apply to private foundations. Also, the tax does not apply to organizations that have elected the lobbying limits of section 501(h) or to churches or church-related organizations that cannot elect these limits. This tax is to be paid by the organization.

Tax on managers. Managers may also be liable for a 5% tax on the lobbying expenditures that result in the disqualification of the organization. For the tax to apply, a manager would have to agree to the expenditures knowing that the expenditures were likely to result in revocation of the organization's exempt status. No tax will be imposed if the manager's agreement is not willful and is due to reasonable cause.

Excise taxes on political expenditures. The law imposes an excise tax on the political expenditures of section 501(c)(3) organizations. A two-tier tax is imposed on both the organizations and the managers of those organizations.

Taxes on organizations. An initial tax of 10% of certain political expenditures is imposed on a charitable organization. A second tax of 100% of the expenditure is imposed if the political expenditure that resulted in the imposition of the initial (first-tier) tax is not

corrected within a specified period. These taxes must be paid by the organization.

Taxes on managers. An initial tax of 2½% of the amount of certain political expenditures is imposed on a manager of an organization who agrees to such expenditures knowing that they are political expenditures. No tax will be imposed if the manager's agreement was not willful and was due to reasonable cause. A second tax of 50% of the expenditures is imposed on a manager if he or she refuses to agree to a correction of the expenditures that resulted in the imposition of the initial (first-tier) tax. For purposes of these taxes, an organization manager is generally an officer, director, trustee, or any employee having authority or responsibility concerning the organization's political expenditures. These taxes must be paid by the manager of the organization.

Political expenditures. Generally, political expenditures that will trigger these taxes are amounts paid or incurred by a section 501(c)(3) organization in any participation or intervention in any political campaign for or against any candidate for public office. Political expenditures include publication or distribution of statements for these purposes. Political expenditures also include certain expenditures by organizations that are formed primarily to promote the candidacy (or prospective candidacy) of an individual for public office and by organizations that are effectively controlled by a candidate and are used primarily to promote that candidate.

Correction of expenditure. A correction of a political expenditure is the recovery, if possible, of all or part of the expenditure and the establishment of safeguards to prevent future political expenditures.

Status after loss of exemption for lobbying or political activities. As explained earlier, an organization can lose its tax-exempt status under section 501(c)(3) of the Code because of lobbying activities or participation or intervention in a political campaign on behalf of or in opposition to a candidate for public office. If this happens to an organization, it cannot later qualify for exemption under section 501(c)(4) of the Code.

4.

Other Section 501(c) Organizations

Introduction

This chapter contains specific information for certain organizations described in section 501(c), other than those organizations that are described in section 501(c)(3); the latter organizations are covered in chapter 3 of this publication.

The Table of Contents at the beginning of this publication, as well as the *Organization Reference Chart* on page 51, may help you

locate at a glance the type of organization discussed in this chapter.

501(c)(4)— Civic Leagues and Social Welfare Organizations

If your organization is not organized for profit and will be operated only to promote social welfare, you should file Form 1024 to apply for recognition of exemption from federal income tax under section 501(c)(4). The discussion that follows describes the information you must provide when applying. For application procedures, see chapter 1.

To qualify for exemption under section 501(c)(4), the organization's net earnings must be devoted only to charitable, educational, or recreational purposes. In addition, no part of the organization's net earnings may benefit any private shareholder or individual. If the organization provides an "excess benefit" to certain persons, an excise tax may be imposed. See *Excise tax on excess benefits* under *Public Charities* in chapter 3 for more information about this tax.

Examples. Examples of types of organizations that are considered to be social welfare organizations are civic associations and volunteer fire companies.

Nonprofit operation. You must submit evidence that your organization is organized and will be operated on a nonprofit basis. However, such evidence, including the fact that your organization is organized under a state law relating to nonprofit corporations, will not in itself establish a social welfare purpose.

Social welfare. To establish that your organization is organized exclusively to promote social welfare, you should submit evidence with your application showing that your organization will operate primarily to further (in some way) the common good and general welfare of the people of the community (such as by bringing about civic betterment and social improvements).

An organization that restricts the use of its facilities to employees of selected corporations and their guests is primarily benefiting a private group rather than the community. It therefore does not qualify as a section 501(c)(4) organization. Similarly, an organization formed to represent member-tenants of an apartment complex does not qualify, since its activities benefit the member-tenants and not all tenants in the community. However, an organization formed to promote the legal rights of all tenants in a particular community may qualify under section 501(c)(4) as a social welfare organization.

Political activity. Promoting social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, if you submit proof that your organization is organized exclusively to promote social welfare, it may still obtain exemption even if it participates legally in some political activity on behalf of or in opposition to candidates for public office. See the discussion in chapter 2 under *Return for Political Activity*.

Social activity. If social activities will be the primary purpose of your organization, you should not file an application for exemption as a social welfare organization but should file for exemption as a social club described in section 501(c)(7).

Retirement benefit program. An organization established by its members that has as its primary activity providing supplemental retirement benefits to its members or death benefits to their beneficiaries does not qualify as an exempt social welfare organization. It may qualify under another paragraph of section 501(c) depending on all the facts.

However, a nonprofit association that is established, maintained, and funded by a local government to provide the only retirement benefits to a class of employees may qualify as a social welfare organization under section 501(c)(4).

Tax treatment of donations. Donations to volunteer fire companies are deductible on the donor's federal income tax return, but only if made for exclusively public purposes. Contributions to civic leagues or other section 501(c)(4) organizations generally are not deductible as charitable contributions for federal income tax purposes. They may be deductible as trade or business expenses, if ordinary and necessary in the conduct of the taxpayer's business. However, see *Deduction not allowed for dues used for political or legislative activities* on page 41 for more information.

Specific Organizations

The following information should be contained in the application form and accompanying statements of certain types of civic leagues or social welfare organizations.

Volunteer fire companies. If your organization wishes to obtain exemption as a volunteer fire company or similar organization, you should submit evidence that its members are actively engaged in fire fighting and similar disaster assistance, whether it actually owns the fire fighting equipment, and whether it provides any assistance for its members, such as death and medical benefits in case of injury to them.

If your organization does not have an independent social purpose, such as providing recreational facilities for members, it may be exempt under section 501(c)(3). In this event, your organization should file Form 1023.

Homeowners associations. A membership organization formed by a real estate developer to own and maintain common green areas, streets, and sidewalks and to enforce covenants to preserve the appearance of the development should show that it is operated for the benefit of all the residents of the community. The term "community" generally refers to a geographical unit recognizable as a governmental subdivision, unit, or district thereof. Whether a particular association meets the requirement of benefiting a community depends on the facts and circumstances of each case. Even if an area represented by an association is not a community, the association can still qualify for exemption if its activities benefit a community.

The association should submit evidence that areas such as roadways and park land that it owns and maintains are open to the

general public and not just its own members. It also must show that it does not engage in exterior maintenance of private homes.

A homeowners association that is not exempt under section 501(c)(4) and that is either a condominium management association or a residential real estate management association generally may elect under the provisions of section 528 to receive certain tax benefits that, in effect, permit it to exclude its exempt function income from its gross income.

Other organizations. Other nonprofit organizations that qualify as social welfare organizations include:

- An organization operating an **airport** that is on land owned by a local government, which supervises the airport's operation, and that serves the general public in an area with no other airport,
- A **community association** that works to improve public services, housing and residential parking, publishes a free community newspaper, sponsors a community sports league, holiday programs and meetings, and contracts with a private security service to patrol the community,
- A **community association** devoted to preserving the community's traditions, architecture, and appearance by representing it before the local legislature and administrative agencies in zoning, traffic, and parking matters,
- An organization that tries to encourage **industrial development** and relieve unemployment in an area by making loans to businesses so they will relocate to the area, and
- An organization that holds an annual **festival** of regional customs and traditions.

501(c)(5)— Labor, Agricultural, and Horticultural Organizations

If you are a member of an organization that wants to obtain recognition of exemption from federal income tax as a labor, agricultural, or horticultural organization, you should submit an application on Form 1024. You must indicate in your application for exemption and accompanying statements that your organization will not permit its net earnings to inure to the benefit of any member. In addition, you should follow the procedure for obtaining recognition of exempt status described in chapter 1. Submit any additional information that may be required, as described in this section.

Tax treatment of donations. Contributions to labor, agricultural, and horticultural organizations are not deductible as charitable contributions on the donor's federal income tax return. However, such payments may be deductible as business expenses, provided they are ordinary and necessary in the conduct of the taxpayer's trade or business. For

more information about certain limits affecting the deductibility of these business expenses, see *Deduction not allowed for dues used for political or legislative activities* on page 41.

Labor Organizations

A labor organization is an association of workers, usually in the form of a labor union, council, or committee, that is organized to protect and promote the interests of labor in connection with employment.

To show that your organization has the purpose of a labor organization, you should include in the articles of organization or accompanying statements (submitted with your exemption application) information establishing that the organization is organized to better the conditions of workers, improve the grade of their products, and develop a higher degree of efficiency in their respective occupations. In addition, no net earnings of the organization may inure to the benefit of any member.

Composition of membership. While a labor organization generally is composed of employees or representatives of the employees (in the form of collective bargaining agents) and similar employee groups, evidence that an organization's membership consists mainly of workers does not in itself indicate an exempt purpose. You must show in your application that your organization has the purposes described in the preceding paragraph. These purposes may be accomplished by a single labor organization acting alone or by several organizations acting together through a separate organization.

Benefits to members. The payment by a labor organization of death, sick, accident, and similar benefits to its individual members with funds contributed by its members, if made under a plan to better the conditions of the members, does not preclude exemption as a labor organization. However, an organization does not qualify for exemption as a labor organization if it has no authority to represent members in job-related matters, even if it provides weekly income to its members in the event of a lawful strike by the members' union, in return for an annual payment by the member.

Agricultural and Horticultural Organizations

Agricultural and horticultural organizations are connected with raising livestock, forestry, harvesting crops or aquatic resources, the cultivation of useful or ornamental plants, and similar pursuits.

For the purpose of these provisions, **aquatic resources** include only animal or vegetable life, but not mineral resources. The term harvesting, in this case, includes fishing and related pursuits.

Agricultural organizations may be quasi-public in character and are often designed to encourage the development of better agricultural and horticultural products through a system of awards, using income from entry fees, gate receipts, and donations to meet the necessary expenses of upkeep and operation. When the activities are directed toward the improvement of marketing or other business conditions in one or more lines of business, rather than the improvement of production techniques or the betterment of the

conditions of persons engaged in agriculture, the organization must qualify for exemption as a business league, board of trade, or other organization, as discussed next in the section on 501(c)(6) organizations.

The primary purpose of exempt agricultural and horticultural organizations must be to better the conditions of those engaged in agriculture or horticulture, develop more efficiency in agriculture or horticulture, or improve the grade of products.

The following list contains some **examples** of activities that show an agricultural or horticultural purpose:

- 1) Promoting various cooperative agricultural, horticultural, and civic activities among rural residents by a state and county farm and home bureau,
- 2) Exhibiting livestock, farm products, and other characteristic features of agriculture and horticulture,
- 3) Testing soil for members and nonmembers of the farm bureau on a cost basis, the results of the tests and other recommendations being furnished to the community members to educate them in soil treatment,
- 4) Guarding the purity of a specific breed of livestock,
- 5) Encouraging improvements in the production of fish on privately-owned fish farms, and
- 6) Negotiating with processors for the price to be paid to members for their crops.

501(c)(6)— Business Leagues, Etc.

If your association wants to apply for recognition of exemption from federal income tax as a nonprofit business league, chamber of commerce, real estate board, board of trade, or professional football league (whether or not administering a pension fund for football players), it should file Form 1024. For a discussion of the procedure to follow, see chapter 1.

Your organization must indicate in its application form and attached statements that no part of its net earnings will inure to the benefit of any private shareholder or individual and that it is not organized for profit or organized to engage in an activity ordinarily carried on for profit (even if the business is operated on a cooperative basis or produces only sufficient income to be self-sustaining).

In addition, your organization must be primarily engaged in activities or functions that are the basis for its exemption. It must be primarily supported by membership dues and other income from activities substantially related to its exempt purpose.

A business league, in general, is an association of persons having some common business interest, the purpose of which is to promote that common interest and not to engage in a regular business of a kind ordinarily carried on for profit. Trade associations and professional associations are considered business leagues.

Chamber of commerce. A chamber of commerce usually is composed of the merchants and traders of a city.

Board of trade. A board of trade often consists of persons engaged in similar lines of business. For example, a nonprofit organization formed to regulate the sale of a specified agricultural commodity to assure equal treatment of producers, warehouse workers, and buyers is a board of trade.

Chambers of commerce and boards of trade usually promote the common economic interests of all the commercial enterprises in a given trade community.

Real estate board. A real estate board consists of members interested in improving the business conditions in the real estate field. It is not organized for profit and no part of the net earnings inures to the benefit of any private shareholder or individual.

General purpose. You must indicate in the material submitted with your application that your organization will be devoted to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. It must be shown that the conditions of a particular trade or the interests of the community will be advanced. Merely indicating the name of the organization or the object of the local statute under which it is created is not enough to demonstrate the required general purpose.

Line of business. This term generally refers either to an entire industry or to all components of an industry within a geographic area. It does not include a group composed of businesses that market a particular brand within an industry.

Common business interest. A common business interest of all members of the organization must be established by the application documents.

Examples of activities that would tend to illustrate a common business interest are:

- 1) Promotion of higher business standards and better business methods and encouragement of uniformity and cooperation by a retail merchants association,
- 2) Education of the public in the use of credit,
- 3) Establishment of uniform casualty rates and compilation of statistical information by an insurance rating bureau operated by casualty insurance companies,
- 4) Establishment and maintenance of the integrity of a local commercial market,
- 5) Operation of a trade publication primarily intended to benefit an entire industry, and
- 6) Encouragement of the use of goods and services of an entire industry (such as a lawyer referral service whose main purpose is to introduce individuals to the use of the legal profession in the hope that they will enter into lawyer-client relationships on a paying basis as a result).

Improvement of business conditions generally must be shown to be the purpose of the organization. This is not established by evidence of particular services that provide a convenience or economy to individual mem-

bers in their businesses, such as advertising that carries the name of members, interest free loans, assigning exclusive franchise areas, operation of a real estate multiple listing system, or operation of a credit reporting agency.

Stock or commodity exchange. A stock or commodity exchange is not a business league, chamber of commerce, real estate board, or board of trade and is not exempt under section 501(c)(6).

Legislative activity. An organization that is exempt under section 501(c)(6) may work for the enactment of laws to advance the common business interests of the organization's members.

Deduction not allowed for dues used for political or legislative activities. A taxpayer cannot deduct the part of dues or other payments to a business league, trade association, labor union, or similar organization that is for any of the following activities:

- 1) Influencing legislation,
- 2) Participating or intervening in a political campaign for, or against, any candidate for public office,
- 3) Trying to influence the general public, or part of the general public, with respect to elections, legislative matters, or referendums (also known as "grassroots lobbying"), or
- 4) Communicating directly with certain executive branch officials to try to influence their official actions or positions.

See *Dues Used for Lobbying or Political Activities* under *Required Disclosures* in chapter 2 for more information.

Exception for local legislation. Members may deduct dues (or assessments) to an organization that are for expenses of:

- 1) Appearing before, submitting statements to, or sending communications to members of a local council or similar governing body with respect to legislation or proposed legislation of direct interest to the member, or
- 2) Communicating information between the member and the organization with respect to local legislation or proposed legislation of direct interest to the organization or the member.

Legislation or proposed legislation is of direct interest to a taxpayer if it will, or may reasonably be expected to, affect the taxpayer's trade or business.

De minimis exception. In-house expenditures of \$2,000 or less for the year for activities (1)–(4) listed earlier will not prevent a deduction for dues, if the dues meet all other tests to be deductible as a business expense.

Grassroots lobbying. A tax-exempt trade association, labor union, or similar organization is considered to be engaging in grassroots lobbying if it contacts prospective members or calls upon its own members to contact their employees and customers for the purpose of urging such persons to communicate with their elected state or Congressional representatives to support the promotion, defeat, or repeal of legislation that is of direct interest to the organization. Any dues or assessments directly related to such ac-

tivities are not deductible by the taxpayer, since the individuals being contacted, who are not members of the organization, are a segment of the general public.

Appeal procedures. If the IRS determines that dues or other payments made by contributors to a labor union, trade association, or similar organization are not deductible because of the lobbying or political activity of the organization, the appeal procedures discussed in chapter 1 will apply to the organization.

Tax treatment of donations. Contributions to organizations described in this section are not deductible as charitable contributions on the donor's federal income tax return. They may be deductible as trade or business expenses if ordinary and necessary in the conduct of the taxpayer's business.

501(c)(7)— Social and Recreation Clubs

If your club is organized for pleasure, recreation, and other similar nonprofit purposes and substantially all of its activities are for these purposes, it should file Form 1024 to apply for recognition of exemption from federal income tax.

In applying for recognition of exemption, you should submit the information described in this section. Also see chapter 1 for the procedures to follow.

Typical organizations that should file for recognition of exemption as social clubs include:

- College alumni associations that are not described in chapter 3 under *Alumni association*,
- College fraternities or sororities operating chapter houses for students,
- Country clubs,
- Amateur hunting, fishing, tennis, swimming, and other sport clubs,
- Dinner clubs that provide a meeting place, library, and dining room for members,
- Hobby clubs,
- Garden clubs, and
- Variety clubs.

Discrimination prohibited. Your organization will not be recognized as tax exempt if its charter, bylaws, or other governing instrument, or any written policy statement provides for discrimination against any person on the basis of race, color, or religion.

However, a club that in good faith limits its membership to the members of a particular religion to further the teachings or principles of that religion and not to exclude individuals of a particular race or color will not be considered as discriminating on the basis of religion. Also, the restriction on religious discrimination does not apply to a club that is an auxiliary of a fraternal beneficiary society (discussed later) if that society is described in section 501(c)(8) and exempt from tax under section 501(a) and limits its membership to the members of a particular religion.

Private inurement prohibited. No part of the organization's net earnings may inure to the benefit of any person having a personal and private interest in the activities of the organization. For purposes of this requirement, it is not necessary that net earnings be actually distributed. Even undistributed earnings can benefit members. Examples of this include a decrease in membership dues or an increase in the services the club provides to its members without a corresponding increase in dues or other fees paid for club support. However, fixed fee payments to members who bring new members into the club are not an inurement of the club's net earnings, if the payments are reasonable compensation for performance of a necessary administrative service.

Purposes. To show that your organization possesses the characteristics of a club within the meaning of the exemption law, you should submit evidence with your application that personal contact, commingling, and fellowship exist among members. You must show that members are bound together by a common objective of pleasure, recreation, and other non-profitable purposes.

Fellowship need not be present between each member and every other member of a club if it is a material part in the life of the organization. A statewide or nationwide organization that is made up of individual members, but is divided into local groups, satisfies this requirement if fellowship is a material part of the life of each local group.

The term **other non-profitable purposes** means other purposes similar to pleasure and recreation. For example, a club that, in addition to its social activities, has a plan for the payment of sick and death benefits is not operating exclusively for pleasure, recreation, and other non-profitable purposes.

Limited membership. The membership in a social club must be limited. To show that your organization has a purpose that would characterize it as a club, you should submit evidence with your application that there are limits on admission to membership consistent with the character of the club.

A social club that issues **corporate membership** is dealing with the general public in the form of the corporation's employees. Corporate members of a club are not the kind of members contemplated by the law. Gross receipts from these members would be a factor in determining whether the club qualifies as a social club. See *Gross receipts from nonmembership sources*, later. Bona fide individual memberships paid for by a corporation would not have an effect on the gross receipts source.

The fact that a social club may have an **associate (nonvoting) class of membership** will not be, in and of itself, a cause for nonrecognition of exemption. However, if one membership class pays substantially lower dues and fees than another membership class, although both classes enjoy the same rights and privileges in using the club facilities, there may be an inurement of income to the benefited class, resulting in a denial of the club's exemption.

Support. In general, your club should be supported solely by membership fees, dues, and assessments. However, if otherwise entitled to exemption, your club will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

Business activities. If your club will engage in business, such as selling real estate, timber, or other products or services, it generally will be denied exemption. However, evidence submitted with your application form that your organization will provide meals, refreshments, or services related to its exempt purposes only to its own members or their dependents or guests will not cause denial of exemption.

Facilities open to public. Evidence that your club's facilities will be open to the general public (persons other than members or their dependents or guests) may cause denial of exemption. This does not mean, however, that any dealing with outsiders will automatically deprive a club of exemption.

Gross receipts from nonmembership sources. A section 501(c)(7) organization may receive up to 35% of its gross receipts, including investment income, from sources outside of its membership without losing its tax-exempt status. Of the 35%, up to 15% of the gross receipts may be derived from the use of the club's facilities or services by the general public or from other activities not furthering social or recreational purposes for members. If an organization has outside income that is more than these limits, all the facts and circumstances will be taken into account in determining whether the organization qualifies for exempt status.

Gross receipts. Gross receipts, for this purpose, are receipts from the normal and usual (traditionally conducted) activities of the club. These receipts include charges, admissions, membership fees, dues, assessments, investment income, and normal recurring capital gains on investments. Receipts do not include initiation fees and capital contributions. Unusual amounts of income, such as from the sale of a clubhouse or similar facility, are not included in gross receipts or in figuring the percentage limits.

Fraternity foundations. If your organization is a foundation formed for the exclusive purpose of acquiring and leasing a chapter house to a local fraternity chapter or sorority chapter maintained at an educational institution and does not engage in any social activities, it may be a title holding corporation (discussed later under section 501(c)(2) organizations and under section 501(c)(25) organizations) rather than a social club.

Tax treatment of donations. Donations to exempt social and recreation clubs are not deductible as charitable contributions on the donor's federal income tax return.

501(c)(8) and (10)— Fraternal Beneficiary Societies and Domestic Fraternal Societies

This section describes the information to be provided upon application for recognition of exemption by two types of fraternal societies: beneficiary and domestic. The major distinction is that fraternal beneficiary societies provide for the payment of life, sick, accident, or other benefits to their members or their dependents, while domestic fraternal societ-

ies do not provide these benefits but rather devote their earnings to fraternal, religious, charitable, etc., purposes. The procedures to follow in applying for recognition of exemption are described in chapter 1.

If your organization is controlled by a central organization, you should check with your controlling organization to determine whether your unit has been included in a group exemption letter or may be added. If so, your organization need not apply for individual recognition of exemption. For more information see *Group Exemption Letter* in chapter 1 of this publication.

Tax treatment of donations. Donations by an individual to a domestic fraternal beneficiary society or a domestic fraternal society operating under the lodge system are deductible as charitable contributions only if used exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals.

Fraternal Beneficiary Societies (501(c)(8))

A fraternal beneficiary society, order, or association should file an application for recognition of exemption from federal income tax on Form 1024. The application and accompanying statements should establish that the organization:

- 1) Is a fraternal organization,
- 2) Operates under the lodge system or for the exclusive benefit of the members of a fraternal organization itself operating under the lodge system, and
- 3) Provides for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents.

Lodge system. Operating under the lodge system means carrying on activities under a form of organization that comprises local branches, chartered by a parent organization and largely self-governing, called lodges, chapters, or the like.

Payment of benefits. It is not essential that every member be covered by the society's program of sick, accident, or death benefits. An organization can qualify for exemption if most of its members are eligible for benefits, and the benefits are paid from contributions or dues paid by those members.

The benefits must be limited to members and their dependents. If members will have the ability to confer benefits to other than themselves and their dependents, exemption will not be recognized.

Whole-life insurance. Whole-life insurance constitutes a life benefit under section 501(c)(8) even though the policy may contain investment features such as a cash surrender value or a policy loan.

Reinsurance pool. Payments by a fraternal beneficiary society into a state-sponsored reinsurance pool that protects participating insurers against excessive losses on major medical health and accident insurance will not preclude exemption as a fraternal beneficiary society.

Domestic Fraternal Societies (501(c)(10))

A domestic fraternal society, order, or association may file an application for recognition of exemption from federal income tax on Form 1024. The application and accompanying statements should establish that the organization:

- 1) Is a domestic fraternal organization,
- 2) Operates under the lodge system,
- 3) Devotes its net earnings exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and
- 4) Does not provide for the payment of life, sick, accident, or other benefits to its members.

The organization may arrange with insurance companies to provide optional insurance to its members without jeopardizing its exempt status.

501(c)(4), (9), and (17)— Employees' Associations

This section describes the information to be provided upon application for recognition of exemption by the following types of employees' associations:

- 1) **A local association of employees** whose membership is limited to employees of a designated person or persons in a particular municipality, and whose income will be devoted exclusively to charitable, educational, or recreational purposes,
- 2) **A voluntary employees' beneficiary association**, (including federal employees' associations) organized to pay life, sick, accident, and similar benefits to members or their dependents, or designated beneficiaries, if no part of the net earnings of the association inures to the benefit of any private shareholder or individual, and
- 3) **A supplemental unemployment benefit trust** whose primary purpose is providing for payment of supplemental unemployment benefits.

Both the application form to file and the information to provide are discussed later under the section that describes your employee association. Chapter 1 describes the procedures to follow in applying for exemption.

Tax treatment of donations. Donations to these organizations are not deductible as charitable contributions on the donor's federal income tax return.

Local Employees' Associations (501(c)(4))

A local employees' association may apply for recognition of exemption by filing Form 1024. The organization must submit evidence that:

- 1) It is of a purely local character,
- 2) Its membership is limited to employees of a designated person or persons in a particular locality, and
- 3) Its net earnings will be devoted exclusively to charitable, educational, or recreational purposes.

A local association of employees that has established a system of paying retirement and/or death benefits to its members will not qualify for exemption, since the payment of these benefits is not considered as being for charitable, educational, or recreational purposes. Similarly, a local association of employees that is operated primarily as a cooperative buying service for its members in order to obtain discount prices on merchandise, services, and activities does not qualify for exemption.

Voluntary Employees' Beneficiary Associations (501(c)(9))

An application for recognition of exemption as a voluntary employees' beneficiary association must be filed on Form 1024. The material submitted with the application must show that your organization:

- 1) Is a voluntary association of employees,
- 2) Will provide for payment of life, sick, accident, or other benefits to members or their dependents or designated beneficiaries and substantially all of its operations are for this purpose, and
- 3) Will not allow any of its earnings to inure to the benefit of any private individual or shareholder except in the form of scheduled benefit payments.

Notice requirement. An organization will not be considered tax exempt under this section unless the organization gives notice to the IRS that it is applying for recognition of exempt status. The organization gives notice by filing Form 1024. If the notice is not given by 15 months after the end of the month in which the organization was created, the organization will not be exempt for any period before notice is given. The key District Director may grant an extension of time for filing the notice under the same procedures as those described for section 501(c)(3) organizations in chapter 3 under *Application for Recognition of Exemption*.

Membership. Membership of a section 501(c)(9) organization must consist of individuals who are employees and have an employment-related common bond. This common bond may be a common employer (or affiliated employers), coverage under one or more collective bargaining agreements, membership in a labor union, or membership in one or more locals of a national or international labor union.

The membership of an association may include some individuals who are not employees, provided they have an employment-related bond with the employee-members. For example, the owner of a business whose employees are members of the association may be a member. An association will be considered composed of employees if 90% of its total membership on one day of each quarter of its tax year consists of employees.

Employees. Employees include individuals who became entitled to membership because they are or were employees. For example, an individual will qualify as an employee even though the individual is on a leave of absence or has been terminated due to retirement, disability, or layoff.

Generally, membership is **voluntary** if an affirmative act is required on the part of an employee to become a member. Conversely, membership is involuntary if the designation as a member is due to employee status. However, an association will be considered voluntary if employees are required to be members of the organization as a condition of their employment and they do not incur a detriment (such as a payroll deduction) as a result of their membership. An employer has not imposed involuntary membership on the employee if membership is required as the result of a collective bargaining agreement or as an incident of membership in a labor organization.

Payment of benefits. The information submitted with your application must show that your organization will pay life, sick, accident, supplemental unemployment, or other similar benefits. The benefits may be provided directly by your association or indirectly by your association through the payments of premiums to an insurance company (or fees to a medical clinic). Benefits may be in the form of medical, clinical, or hospital services, transportation furnished for medical care, or money payments.

Nondiscrimination requirements. An organization that is part of a plan will not be exempt unless the plan meets certain nondiscrimination requirements. However, if the organization is part of a plan maintained under any collective bargaining agreement between employee organizations and employers, the plan need not meet these requirements for the organization to qualify as tax exempt.

A plan meets the nondiscrimination requirements only if both of the following statements are true.

- 1) Each class of benefits under the plan is provided under a classification of employees that is set forth in the plan and does not discriminate in favor of employees who are highly compensated individuals.
- 2) The benefits provided under each class of benefits do not discriminate in favor of highly compensated individuals.

A life insurance, disability, severance pay, or supplemental unemployment compensation benefit does not discriminate in favor of highly compensated individuals merely because the benefits available bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees covered by the plan.

For purposes of determining whether a plan meets the nondiscrimination requirements, the employer may elect to exclude all disability or severance payments payable to individuals who are in pay status as of January 1, 1985. This will not apply to any increase in such payment by any plan amendment adopted after June 22, 1984.

If a plan provides a benefit for which there is a nondiscrimination provision provided under the Internal Revenue Code as a condition of that benefit being excluded from gross in-

come, these nondiscrimination requirements do not apply. The benefit will be considered nondiscriminatory only if it meets the nondiscrimination provision of the applicable Code section. For example, benefits provided under a medical reimbursement plan would meet the nondiscrimination requirements for an association, if the benefits meet the nondiscrimination requirements of Code section 105(h)(3) and (4).

Excluded employees. Certain employees who are not covered by a plan may be excluded from consideration in applying these requirements. These include employees—

- 1) Who have not completed 3 years of service,
- 2) Who have not attained age 21,
- 3) Who are seasonal or less than half-time employees,
- 4) Who are not in the plan and who are included in a unit of employees covered by a collective bargaining agreement if the class of benefits involved was the subject of good faith bargaining, or
- 5) Who are nonresident aliens and who receive no earned income from the employer that is United States source income.

Highly compensated individual. A highly compensated individual is one who:

- 1) Owned 5 percent or more of the employer at any time during the current year or the preceding year,
- 2) Received more than \$80,000 (adjusted for inflation) in compensation from the employer for the preceding year, and
- 3) Was among the top 20% of employees by compensation for the preceding year.

But the employer can choose not to have (3) apply.

Aggregation rules. The employer may choose to treat two or more plans as one plan for purposes of meeting the nondiscrimination requirements. Employees of controlled groups of corporations, trades or businesses under common control, or members of an affiliated service group, are treated as employees of a single employer. Leased employees are treated as employees of the recipient.

One employee. A trust created to provide benefits to one employee will not qualify as a “voluntary employees’ beneficiary association” under section 501(c)(9).

Supplemental Unemployment Benefit Trusts (501(c)(17))

A trust or trusts forming part of a written plan (established and maintained by an employer, his or her employees, or both) providing solely for the payment of supplemental unemployment compensation benefits must file the application for recognition of exemption on Form 1024. The trust must be a valid, existing trust under local law and must be evidenced by an executed document. A conformed copy of the plan of which the trust is a part should be attached to the application.

Notice requirement. An organization will not be considered tax exempt under this section unless the organization gives notice to the IRS that it is applying for recognition of exempt status. The organization gives notice by filing Form 1024. If the notice is not given by 15 months after the end of the month in which the organization was created, the organization will not be exempt for any period before such notice is given. The key District Director may grant an extension of time for filing the notice under the same procedures as those described for section 501(c)(3) organizations in chapter 3, under *Application for Recognition of Exemption*.

Types of payments. You must show that the supplemental unemployment compensation benefits will be benefits paid to an employee because of the employee’s involuntary separation from employment (whether or not the separation is temporary) resulting directly from a reduction-in-force, discontinuance of a plant or operation, or other similar conditions. In addition, sickness and accident benefits (but not vacation, retirement, or death benefits) may be included in the plan if these are subordinate to the unemployment compensation benefits.

Diversion of funds. It must be impossible under the plan (at any time before the satisfaction of all liabilities with respect to employees under the plan) to use or to divert any of the corpus or income of the trust to any purpose other than the payment of supplemental unemployment compensation benefits (or sickness or accident benefits to the extent just explained).

Discrimination in benefits. Neither the terms of the plan nor the actual payment of benefits may be discriminatory in favor of the company’s officers, stockholders, supervisors, or highly paid employees. However, a plan is not discriminatory merely because benefits bear a uniform relationship to compensation or the rate of compensation.

Reestablishing exemption. If your organization is a supplemental unemployment benefit trust and has received a denial of exemption because it engaged in a prohibited transaction, as defined by section 503(b), it may file a claim for exemption in any tax year following the tax year in which the notice of denial was issued. It must file the claim on Form 1024. The organization must include a written declaration that it will not knowingly again engage in a prohibited transaction. An authorized principal officer of your organization must make this declaration under the penalties of perjury.

If your organization has satisfied all requirements as a supplemental unemployment benefit trust described in section 501(c)(17), it will be notified in writing that it has been recognized as exempt. However, the organization will be exempt only for those tax years after the tax year in which the claim for exemption (Form 1024) is filed. Tax year in this case means the established annual accounting period of the organization or the calendar year, if the organization has not established an annual accounting period. For more information about the requirements for reestablishing an exemption previously denied, contact the IRS.

501(c)(12)— Local Benevolent Life Insurance Associations, Mutual Irrigation and Telephone Companies, and Like Organizations

Each of the following organizations may apply for recognition of exemption from federal income tax by filing Form 1024:

- 1) **Benevolent life insurance associations** of a purely local character and like organizations,
- 2) **Mutual ditch or irrigation companies** and like organizations, and
- 3) **Mutual or cooperative telephone companies** and like organizations.

A **like organization** is an organization that performs a service comparable to that performed by any one of the above organizations.

The information to be provided upon application by each of these organizations is described in this section. For information as to the procedures to follow in applying for exemption, see chapter 1.

General requirements. These organizations must use their income solely to cover losses and expenses, with any excess being returned to members or retained for future losses and expenses. They must collect at least 85% of their income from members for the sole purpose of meeting losses and expenses.

Mutual character. These organizations, other than benevolent life insurance associations, must be organized and operated on a mutual or cooperative basis. They are associations of persons and organizations, or both, banded together to provide themselves a mutually desirable service approximately at cost and on a mutual basis. To maintain the mutual characteristic of democratic ownership and control, they must be so organized and operated that their members have the right to choose the management, to receive services substantially at cost, to receive a return of any excess of payments over losses and expenses, and to share in any assets upon dissolution.

The rights and interests of members in the annual savings of the organization must be determined in proportion to their business with the organization. Upon dissolution, gains from the sale of appreciated assets must be distributed to all persons who were members during the period the assets were owned by the organization in proportion to the amount of business done during that period. The bylaws must not provide for forfeiture of a member’s rights and interest upon withdrawal or termination.

Membership. Membership of a mutual organization consists of those who join the organization to obtain its services, acquire an interest in its assets, and have a voice in its management. In a stock company, the stock-

holders are members. Membership may include distributors who furnish service to individual consumers. However, it does not include the individual consumers served by the distributor. A mutual service organization may serve nonmembers as long as at least 85% of its gross income is collected from members. However, a mutual life insurance organization may have no policyholders other than its members.

Losses and expenses. In furnishing services substantially at cost, an organization must use its income solely for paying losses and expenses. Any excess income not retained in reasonable reserves for future losses and expenses belongs to members in proportion to their patronage or business done with the organization. If such patronage refunds are retained in reasonable amounts for purposes of expanding facilities, retiring capital indebtedness, acquiring other assets, etc., the organization must maintain records sufficient to reflect the equity of each member in the assets acquired with the funds.

Dividends. Dividends paid to stockholders on stock or the value of a capital equity interest **constitute a distribution of profits and are not an expense** within the term losses and expenses. Therefore, a mutual or cooperative association whose shares carry the right to dividends will not qualify for exemption. However, this prohibition does not apply to the distribution of the unexpended balance of collections or assessments remaining on hand at the end of the year to members as patronage dividends or refunds prorated to each on the basis of their patronage or business done with the organization. Such distribution represents a reduction in the cost of services rendered to the member.

The 85% requirement. All of the organizations discussed in this section must submit evidence with their application that they receive 85% or more of their gross income from their members for the sole purpose of meeting losses and expenses. Nevertheless, certain items of income are excluded from the computation of the 85% requirement if the organization is a mutual or cooperative telephone or electric company.

A mutual or cooperative telephone company will exclude from the computation of the 85% requirement any income received or accrued from:

- 1) A nonmember telephone company for the performance of communication services involving the completion of long distance calls to, from, or between members of the mutual or cooperative telephone company,
- 2) Qualified pole rentals,
- 3) The sale of display listings in a directory furnished to its members, or
- 4) The prepayment of a loan created in 1987, 1988, or 1989, under section 306A, 306B, or 311 of the Rural Electrification Act of 1936.

A mutual or cooperative electric company will exclude from the computation any income received or accrued from qualified pole rentals and from the prepayment of loans described in (4) above. An electric cooperative's sale of excess fuel at cost in the year of purchase is not income for purposes of determining compliance with the 85% requirement.

The term **qualified pole rental** means any rental of a pole (or other structure used to support wires) if the pole (or other structure) is used:

- 1) By the telephone or electric company to support one or more wires that are used by the company in providing telephone or electric services to its members, and
- 2) Pursuant to the rental to support one or more wires (in addition to wires described in (1)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

The term rental, for this purpose, includes any sale of the right to use the pole (or other structure).

The 85% requirement is applied on the basis of **an annual accounting period**. Failure of an organization to meet the requirement in a particular year precludes exemption for that year, but has no effect upon exemption for years in which the 85% requirement is met.

Gain from the **sale or conversion of the organization's property** is not considered an amount received from members in determining whether the organization's income consists of amounts collected from members.

Because the 85% income test is based on gross income, capital losses cannot be used to reduce capital gains for purposes of this test.

Example. The books of an organization reflect the following for the calendar year.

Collections from members	\$2,400
Short-term capital gains	600
Short-term capital losses	400
Other income	None
Gross income (\$2,400 + \$600 = \$3000) ..	100%
Collected from members (\$2,400)	80%

Since amounts collected from members do not constitute at least 85% of gross income, the organization is not entitled to exemption from federal income tax for the year.

Voluntary contributions in the nature of gifts are not taken into account for purposes of the 85% computation.

Other tax-exempt income besides gifts is considered as income received from other than members in applying the 85% test.

If the 85% test is not met, your organization, if classifiable under this section, will not qualify for exemption as any other type of organization described in this publication.

Tax treatment of donations. Donations to an organization described in this section are not deductible as charitable contributions on the donor's federal income tax return.

Local Life Insurance Associations

A benevolent life insurance association or an organization seeking recognition of exemption on grounds of similarity to a benevolent life insurance association must submit evidence upon applying for recognition of exemption that it will be of a purely local character, that its excess funds will be refunded to members or retained in reasonable reserves to meet future losses and expenses, and that it meets the 85% income requirement. If an organization issues policies for stipulated cash premiums, or if it requires advance deposits to cover the cost of the insurance and maintains investments from which more than 15% of its

income is derived, it will not be entitled to exemption.

To establish that your organization is of a **purely local character**, it should show that its activities will be confined to a particular community, place, or district irrespective of political subdivisions. Evidence that the activities of an organization are limited only by the borders of a state or any other political subdivision will not establish that it is purely local in character. A benevolent life insurance association that does not terminate membership when a member moves from the local area in which the association operates will qualify for exemption if it meets the other requirements.

A copy of each type of policy issued by your organization should be included with the application for recognition of exemption.

Organizations similar to local benevolent life insurance companies. These organizations include those that in addition to paying death benefits also provide for the payment of sick, accident, or health benefits. However, an organization that pays only sick, accident, or health benefits, but not life insurance benefits, is not an organization similar to a benevolent life insurance association and should not apply for recognition of exemption as described in this section.

Burial and funeral benefit insurance organization. This type of organization can apply for recognition of exemption as an organization similar to a benevolent life insurance company if it establishes that the benefits are paid in cash and if it is not engaged directly in the manufacture of funeral supplies or the performance of funeral services. An organization that provides its benefits in the form of supplies and service is not a life insurance company. Such an organization may seek recognition of exemption from federal income tax, however, as a mutual insurance company other than life.

Mutual or Cooperative Associations

Mutual ditch or irrigation companies, mutual or cooperative telephone companies, and like organizations need not establish that they are of a purely local character. They may serve noncontiguous areas.

Like organization. This is a term generally restricted to organizations that perform a service comparable to mutual ditch, irrigation, and telephone companies such as mutual water, communications, electric power, or gas companies all of which satisfy the 85% test. Examples are an organization structured for the protection of river banks against erosion whose only income consists of assessments against the property owners concerned, a nonprofit organization providing and maintaining a two-way radio system for its members on a mutual or cooperative basis, or a local light and water company organized to furnish light and water to its members. A cooperative organization providing cable television service to its members may qualify for exemption as a "like" organization if the requirements discussed in this section are met.

Associations operating a bus for their members' convenience, providing and maintaining cooperative housing facilities for the personal benefit of individuals, or furnishing a financing service for purchases made by members of cooperative organizations are not like organizations.

501(c)(13)— Cemetery Companies

If your organization wishes to obtain recognition of exemption from federal income tax as a cemetery company or a corporation chartered solely for the purpose of the disposal of human bodies by burial or cremation, it should file an application on Form 1024. For the procedure to follow, see chapter 1.

A **nonprofit mutual cemetery company** that seeks recognition of exemption should submit evidence with its application that it is owned and operated exclusively for the benefit of its lot owners who hold lots for bona fide burial purposes and not for purposes of resale. A mutual cemetery company that also engages in charitable activities, such as the burial of paupers, will be regarded as operating within this standard. The fact that a mutual cemetery company limits its membership to a particular class of individuals, such as members of a family, will not affect its status as mutual so long as all the other requirements of section 501(c)(13) are met.

If your organization is a nonprofit corporation chartered solely for the purpose of the disposal of human bodies by burial or cremation, you should show that it is not permitted by its charter to engage in any business not necessarily incident to that purpose. The sale of monuments, markers, vaults, and flowers solely for use in the cemetery is permissible if the profits from these sales are used to maintain the cemetery as a whole.

How income may be used. You should show that your organization's earnings are or will be used only in one or more of the following ways:

- 1) To pay the ordinary and necessary expenses of operating, maintaining, and improving the cemetery or crematorium,
- 2) To buy cemetery property, and
- 3) To create a fund that will provide a source of income for the perpetual care of the cemetery or a reasonable reserve for any ordinary or necessary purpose.

No part of the net earnings of your organization may inure to the benefit of any private shareholder or individual.

Ordinary and necessary expenses in connection with the operation, management, maintenance, and improvement of the cemetery are permitted, as are reasonable fees for the services of a manager.

Buying cemetery property. Payments may be made to amortize debt incurred to buy land, but may not be in the nature of profit distributions. You must show the method used to finance the purchase of the cemetery property and that the purchase price of the land at the time of its sale to the cemetery was not unreasonable.

Except for holders of preferred stock (discussed later), no person may have any interest in the net earnings of a tax-exempt cemetery company or crematorium. Therefore, if property is transferred to the organization in exchange for an interest in the organization's net earnings, the organization will not be exempt so long as that interest remains outstanding.

An equity interest in the organization is an interest in the net earnings of the organiza-

tion. However, an interest in the organization that is not an equity interest may still be an interest in the organization's net earnings. For example, a bond issued by a cemetery company that provides for a fixed rate of interest and also provides for additional interest payments based on the income of the organization is considered an interest in the net earnings of the organization. Similarly, a convertible debt obligation issued after July 7, 1975, is considered an interest in the net earnings of the organization.

A **perpetual care organization**, including, for example, a trust organized to receive, maintain, and administer funds that it receives from a nonprofit tax-exempt cemetery pursuant to state law and contracts, may apply for recognition of exemption on Form 1024, even though it does not own the land used for burial. However, the income from these funds must be devoted exclusively to the perpetual care and maintenance of the nonprofit cemetery as a whole. Also, no part of the net earnings may inure to the benefit of any private shareholder or individual.

In addition, a perpetual care organization not operated for profit, but established as a civic enterprise to maintain and administer funds, the income of which is devoted exclusively to the perpetual care and maintenance of an abandoned cemetery as a whole, may qualify for exemption.

Care of individual plots. When funds are received by a cemetery company for the perpetual care of an individual lot or crypt, a trust is created that is subject to federal income tax. Any trust income that is used or permanently set aside for the care, maintenance, or beautification of a particular family burial lot or mausoleum crypt is not deductible in computing the trust's taxable income.

Common and preferred stock. A cemetery company that issues **common stock** may qualify for exemption only if no dividends may be paid. The payment of dividends must be legally prohibited either by the corporation's charter or by applicable state law.

Generally, a cemetery company or crematorium is not exempt if it issues **preferred stock**. However, it can still be exempt if the preferred stock was issued before November 28, 1978, or was issued after that date under a written plan adopted before that date. The adoption of the plan must be shown by the acts of the responsible officers and appear on the official records of the organization.

The preferred stock issued either before November 28, 1978, or under a plan adopted before that date, must meet all the following requirements.

- 1) The preferred stock entitles the holders to dividends at a fixed rate that is not more than the greater of the legal rate of interest in the state of incorporation or 8% a year on the value of the consideration for which the stock was issued.
- 2) The organization's articles of incorporation require—
 - a) That the preferred stock be retired at par as rapidly as funds become available from operations, and
 - b) That all funds not required for the payment of dividends on or for the retirement of preferred stock be

used by the company for the care and improvement of the cemetery property.

Tax treatment of donations. Donations to exempt cemetery companies, corporations chartered solely for human burial purposes, and perpetual care funds (operated in connection with such exempt organizations) are deductible as charitable contributions on the donor's federal income tax return. However, a donor may not deduct a contribution made for the perpetual care of a particular lot or crypt. Payments made to a cemetery company or corporation as part of the purchase price of a burial lot or crypt, whether irrevocably dedicated to the perpetual care of the cemetery as a whole or earmarked for the care of a particular lot, are also not deductible.

501(c)(14)— Credit Unions and Other Mutual Financial Organizations

If your organization wants to obtain recognition of exemption as a credit union without capital stock, organized and operated under state law for mutual purposes and without profit, it should file an application including the facts, information, and attachments described in this section. In addition, it should follow the procedures described in chapter 1.

Federal credit unions organized and operated in accordance with the Federal Credit Union Act, as amended, are instrumentalities of the United States, and therefore, are exempt under section 501(c)(1). They are included in a group exemption letter issued to the National Credit Union Administration. They are not discussed in this publication.

State chartered credit unions and other mutual financial organizations may file applications for recognition of exemption from federal income tax under section 501(c)(14). The "other mutual financial organizations" must be corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit to provide reserve funds for, and insurance of, shares or deposits in:

- 1) Domestic building and loan associations,
- 2) Cooperative banks (without capital stock) organized and operated for mutual purposes and without profit,
- 3) Mutual savings banks (not having capital stock represented by shares), or
- 4) Mutual savings banks described in section 591(b).

Similar organizations, formed before September 1, 1957, that provide reserve funds for (but not insurance of shares or deposits in) one of the types of savings institutions described in (1), (2), or (3) above may be exempt from tax if 85% or more of the organization's income is from providing reserve funds and from investments. There is no specific restriction against the issuance of capital stock for these organizations.

Building and loan associations, savings and loan associations, mutual savings banks, and cooperative banks, other than those described in this section, are not exempt from tax.

Application form. The Internal Revenue Service does not provide a printed application form for the use of organizations described in this section. Any form of written application is acceptable as long as it shows the information indicated in this section and includes a declaration that it is made under the penalties of perjury. The application must be submitted in duplicate.

State Chartered Credit Unions

Your organization must show on its application that it is formed under a state credit union law, the state and date of incorporation, and that the state credit union law with respect to loans, investments, and dividends, if any, is being complied with.

A form of statement furnished to applicants by the Credit Union National Association is acceptable in meeting the application requirements for credit unions, and may be used instead of the statement form of application just described. Following is a reproduction of that form:

Claim for Exemption

from Federal Income Tax _____ (Date)

The undersigned _____ (Complete name) _____ Credit Union, Inc., _____ (Complete address, including street and number) a credit union operating under the credit union law of the State of _____ claims exemption from Federal income tax and supplies the following information relative to its operation:

- 1) Date of incorporation _____.
- 2) It was incorporated under the credit union law of the State of _____, and is being operated under uniform bylaws adopted by said state.
- 3) In making loans the state credit union law requirements including their purposes, security, and rate of interest charged thereon, are complied with.
- 4) Its investments are limited to securities which are legal investments for credit unions under the state credit union law.
- 5) Its dividends on shares, if any, are distributed as prescribed by the state credit union law.

I, the undersigned, a duly authorized officer of the _____ Credit Union, Inc., declare that the above information is a true statement of facts concerning the credit union.

Signature _____ of Officer _____
Title _____

Other Mutual Financial Organizations

Every other organization included in this section must show in its application the state in which the organization is incorporated and the date of incorporation; the character of the organization; the purpose for which it was organized; its actual activities; the sources of its receipts and the disposition thereof; whether

any of its income may be credited to surplus or may inure to the benefit of any private shareholder or individual; whether the law relating to loans, investments, and dividends is being complied with; and, in general, all facts relating to its operations that affect its right to exemption.

The application must include detailed information showing either that the organization provides both reserve funds for and insurance of shares and deposits of its member financial organizations; or that the organization provides reserve funds for shares or deposits of its members and 85% or more of the organization's income is from providing reserve funds and from investments. There should be attached a conformed copy of the articles of incorporation or other document setting forth the permitted powers or activities of the organization; the bylaws or other similar code of regulations; and the latest annual financial statement showing the receipts, disbursements, assets, and liabilities of the organization.

501(c)(19)— Veterans Organizations

A post or organization of past or present members of the Armed Forces of the United States may file Form 1024 to apply for recognition of exemption from federal income tax. You should follow the general procedures outlined in chapter 1. The organization must also meet the qualifications described in this section.

Examples of groups that would qualify for exemption are posts or auxiliaries of the American Legion, Veterans of Foreign Wars, and similar organizations.

To qualify for recognition of exemption, your application should show:

- 1) That the post or organization is organized in the United States or any of its possessions,
- 2) That at least 75% of the members are past or present members of the U.S. Armed Forces and that at least 97.5% of all members of the organization are past or present members of the U.S. Armed Forces, cadets (including only students in college or university ROTC programs or at armed services academies) or spouses, widows, or widowers of any of those listed here, and
- 3) That no part of the net earnings inure to the benefit of any private shareholder or individual.

In addition to these requirements, a veterans organization also must be operated exclusively for one or more of the following purposes:

- 1) To promote the social welfare of the community (that is, to promote in some way the common good and general welfare of the people of the community),
- 2) To assist disabled and needy war veterans and members of the U. S. Armed Forces and their dependents and the widows and orphans of deceased veterans,

- 3) To provide entertainment, care, and assistance to hospitalized veterans or members of the U.S. Armed Forces,
- 4) To carry on programs to perpetuate the memory of deceased veterans and members of the Armed Forces and to comfort their survivors,
- 5) To conduct programs for religious, charitable, scientific, literary, or educational purposes,
- 6) To sponsor or participate in activities of a patriotic nature,
- 7) To provide insurance benefits for its members or dependents of its members or both, or
- 8) To provide social and recreational activities for its members.

Auxiliary unit. An auxiliary unit or society of a veterans organization may apply for recognition of exemption provided that the veterans organization (parent organization) meets the requirements explained earlier in this section. The auxiliary unit or society must also meet all the following additional requirements.

- 1) It is affiliated with, and organized in accordance with, the bylaws and regulations formulated by the parent organization.
- 2) At least 75% of its members are either past or present members of the U.S. Armed Forces, spouses of those members, or related to those members within two degrees of kinship (grandparent, brother, sister, and grandchild represent the most distant allowable relationship).
- 3) All of its members either are members of the parent organization, spouses of a member of the parent organization, or related to a member of such organization within two degrees of kinship.
- 4) No part of its net earnings inure to the benefit of any private shareholder or individual.

Trusts or foundations. Trusts or foundations for a veterans organization also may apply for recognition of exemption provided that the parent organization meets the requirements explained earlier. The trust or foundation must also meet all the following qualifications.

- 1) The trust or foundation is in existence under local law and, if it is organized for charitable purposes, has a dissolution provision similar to charitable organizations. (See *Articles of Organization* in chapter 3 of this publication.)
- 2) The corpus or income cannot be diverted or used other than for—
 - a) The funding of a veterans organization, described in this section,
 - b) Religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals, or
 - c) An insurance set aside.
- 3) The trust income is not unreasonably accumulated and, if the trust or foundation is not an insurance set aside, a substantial portion of the income is in fact distributed to the parent organization or for the purposes described in item (2)(b).

- 4) It is organized exclusively for one or more of the purposes listed earlier in this section that are specifically applicable to the parent organization.

Tax treatment of donations. Donations to war veterans organizations are deductible as charitable contributions on the donor's federal income tax return. At least 90% of the organization's membership must consist of war veterans. The term "war veterans" means persons, whether or not present members of the U.S. Armed Forces, who have served in the U.S. Armed Forces during a period of war (including the Korean and Vietnam conflicts).

501(c)(20)— Group Legal Services Plan Organizations

For tax years that began before July 1, 1992, an organization or trust created in the U.S. for the exclusive function of forming a part of a qualified group legal services plan or plans could obtain recognition of exemption from income tax by filing Form 1024. The law that allows the exemption has expired for tax years beginning after June 30, 1992.

501(c)(21)— Black Lung Benefit Trusts

If your organization wishes to obtain recognition of exemption as a black lung benefit trust, it must file its application by letter and include a copy of its trust instrument. The general procedures to follow for obtaining recognition are discussed in chapter 1 of this publication. This section describes the additional (or specific) information to be provided upon application.

Requirements. A black lung benefit trust that is established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) will qualify for tax-exempt status if it meets both of the following requirements.

- 1) Its only purpose is—
 - a) To satisfy in whole or in part the liability of that person (generally, the coal mine operator contributing to the trust) for, or with respect to, claims for compensation arising under federal or state statutes for disability or death due to pneumoconiosis,
 - b) To pay the premiums for insurance that covers only that liability, and
 - c) To pay the administrative and other incidental expenses of that trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust and processing of black lung

claims against such person arising under federal or state statutes.

- 2) No part of its assets may be used for, or diverted to, any purposes other than—
 - a) The purposes described in (1), above,
 - b) Payments into the Black Lung Disability Trust Fund or into the general fund of the U.S. Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust),
 - c) Investment in public debt securities of the U.S., obligations of a state or local government that are not in default as to principal or interest, or time or demand deposits in a bank or an insured credit union located in the U.S. (These investments are restricted to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in (1), above), or
 - d) Accident and health benefits or insurance premiums and other administrative expenses for retired coal miners and their spouses. The amount of assets available for such use is generally limited to 110% of the present value of the liability for black lung benefits.

An annual information return is required of exempt trusts described in section 501(c)(21). Form 990-BL, *Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons*, must be used for this purpose. However, a trust that normally has gross receipts in each tax year of not more than \$25,000 is excepted from this filing requirement.

Excise taxes. If your organization makes any expenditures, payments, or investments other than those described earlier in this section, a tax equal to 10% of the amount of such expenditures is imposed on the trust. If there are any acts of self-dealing between the trust and a disqualified person, a tax equal to 10% of the amount involved is imposed on the disqualified person. Both of these excise taxes are reported on Schedule A (Form 990-BL). See the Form 990-BL instructions for more information on these taxes and what has to be filed, even if the trust is excepted from filing.

Tax treatment of donations. Contributions by a taxpayer (generally, the coal mine operator) to a black lung benefit trust are deductible for federal income tax purposes under section 192 of the Code. The deduction is limited, and any excess contributions are subject to an excise tax of 5%. Form 6069, *Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction*, is used to compute the allowable deduction and any excise tax liability. The form does not have to be filed if there is no excise tax liability. For more information about these contributions, see Form 6069 and its instructions.

501(c)(2)— Title Holding Corporations For Single Parents

If your organization wants to obtain recognition of exemption from federal income tax as a corporation organized to hold title to property, collect income from that property, and turn over the entire amount less expenses to a single parent organization that is exempt from income tax, it should file its application on Form 1024. The information to submit upon application is described in this section. For a discussion of the procedures for obtaining recognition of exemption, see chapter 1.

You must show that your organization is a corporation. If you are in doubt as to whether your organization qualifies as a corporation for this purpose, contact your District Director's office.

A title holding corporation will qualify for exemption only if there is effective ownership and control over it by the distributee exempt organization. For example, the distributee organization may control the title holding corporation by owning its voting stock or possessing the power to select nominees to hold its voting stock.

Corporate charter. The corporate charter that you submit upon application must confine the purposes and powers of your organization to holding title to property, collecting income from the property, and turning the income over to an exempt organization. If the charter authorizes your organization to engage in activities that go beyond these limits, its exemption may not be recognized even if its actual operations are so limited. If your organization's original charter does not limit its powers, you may amend the charter to conform to the required limits and submit evidence with your application that the charter has been so amended.

Payment of income. You must show that your corporation is required to turn over the entire income from the property, less expenses, to one or more exempt organizations.

Actual payment of the income is required. A mere obligation to use the income for the exempt organization's benefit, or the fact that such organization has control over the income does not satisfy this requirement.

Expenses. Expenses may reduce the amount of income required to be turned over to the tax-exempt organization for which your organization holds property. The term "expenses" (for this purpose) includes not only ordinary and necessary expenses paid or incurred, but also reasonable additions to depreciation reserves and other reserves that would be proper for a business corporation holding title to and maintaining property.

In addition, the title holding corporation may retain part of its income each year to apply to debt on property to which it holds title. This transaction is treated as if the income had been turned over to the exempt organization and the latter had used the income to make a contribution to the capital of the title holding corporation that in turn, applied the contribution to the debt.

Waiver of payment of income. Generally, there is no payment of rent when the occupant of property held by your title holding corporation is the exempt organization for which your corporation holds the title. In this situation, the statutory requirement that income be paid over to the exempt organization is satisfied if your corporation turns over whatever income is available.

Application for recognition of exemption. In addition to the information required by Form 1024, the title holding corporation must furnish evidence that the organization for which title is held has obtained recognition of exempt status. If that organization has not been specifically notified in writing by the IRS that it is exempt, the title holding corporation must submit the necessary application and supporting documents to enable the IRS to determine whether the organization for which title is held qualifies for exemption. A copy of a ruling or determination letter issued to the organization for which title is held will be proof that it qualifies for exemption. However, until the organization for which title is held obtains recognition of exempt status or proof is submitted to show that it qualifies, the title holding corporation cannot obtain recognition of exemption.

Tax treatment of donations. Donations to an exempt title holding corporation generally are not deductible as charitable contributions on the donor's federal income tax return.

501(c)(25)— Title Holding Corporations for Multiple Parents

If your organization wants to obtain recognition of exemption from federal income tax as an organization organized for the exclusive purpose of acquiring, holding title to, and collecting income from real property, and turning over the entire amount less expenses to member organizations exempt from income tax, it should file its application on Form 1024. For a discussion of the procedures for obtaining recognition of exemption, see chapter 1.

Who can control the organization. Organizations recognized as exempt under this section may have up to 35 shareholders or beneficiaries, in contrast to title-holding organizations recognized as exempt under IRC 501(c)(2), which may have only 1 controlling parent organization.

Organizational requirements. A 501(c)(25) organization must be either a corporation or a trust. Only one class of stock is permitted in the case of a corporation. In the case of a trust, only one class of beneficial interest is allowed.

Organizations eligible to acquire or hold interests in this type of title-holding organization are qualified pension, profit-sharing, or stock bonus plans, governmental plans, governments and their agencies and instrumentalities, and charitable organizations.

The articles of incorporation or trust instrument must include provisions showing

that the corporation or trust is organized to meet the requirements of the statute, including compliance with the limitations on membership and classes of stock or beneficial interest, and compliance with the income distribution requirements. The organizing document must permit the organization's shareholders or beneficiaries to dismiss the organization's investment advisor, if any, upon a vote of the shareholders or beneficiaries holding a majority interest in the organization.

The organizing document must permit the shareholders or beneficiaries to terminate their interests by at least one of the following methods:

- 1) By selling or exchanging their stock or beneficial interest to any organization described in IRC 501(c)(25)(C), provided that the sale does not cause the number of shareholders or beneficiaries to exceed 35, or
- 2) By having their stock or beneficial interest redeemed by the 501(c)(25) organization upon 90 days notice.

If state law prevents a corporation from including in its articles of incorporation the above provisions, such provisions must instead be included in the bylaws of the corporation.

A 501(c)(25) organization may be organized as a nonstock corporation if its articles of incorporation or bylaws provide members with the same rights as described above.

Subsidiaries. A wholly owned subsidiary will not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit will be treated as belonging to the section 501(c)(25) organization. Subsidiaries should not apply separately for recognition of exemption.

Tax treatment of donations. Donations to an exempt title holding corporation generally are not deductible as charitable contributions on the donor's federal income tax return.

Unrelated Business Income

In general, the receipt of unrelated business income by a section 501(c)(25) organization will subject the organization to loss of exempt status, since the organization cannot be exempt from taxation if it engages in any business other than that of holding title to **real property** and collecting the income from the property. However, exempt status will not be affected by the receipt of debt-financed income that is treated as unrelated business taxable income solely because of section 514.

Under section 514(c)(9), certain shareholders or beneficiaries are not subject to unrelated debt-financed income tax under section 514 on their investments through the organization. These shareholders are generally schools, colleges, universities, or supporting organizations of such educational institutions. Organizations other than these will take into account as gross income from an unrelated trade or business their pro-rata share of income that is treated as unrelated debt-financed income because section 514(c)(9) does not apply. These organizations will also take their pro-rata share of the allowable deductions from unrelated taxable income.

Real property. Real property can include personal property leased in connection with real property, but only if the rent from the personal property is not more than 15% of the total rent for both the real property and the personal property.

Real property acquired after June 10, 1987 cannot include any interest as a tenant in common (or similar interest) or any indirect interest.

501(c)(26)— State-Sponsored High-Risk Health Coverage Organizations

A state-sponsored organization established to provide medical care to high-risk individuals should apply by letter for recognition of exemption from federal income tax under section 501(c)(26).

To qualify for exemption, the organization must be a membership organization established by a state exclusively to provide coverage for medical care on a nonprofit basis to high-risk individuals who are state residents. It may provide coverage either by issuing insurance itself or by entering into an arrangement with a health maintenance organization (HMO).

The state must determine the composition of membership in the organization. No part of the net earnings of the organization can inure to the benefit of any private shareholder or individual.

High-risk individuals. These are individuals who, because of a pre-existing medical condition:

- 1) Cannot get medical care coverage for that condition through insurance or an HMO, or
- 2) Can get coverage for that condition only at a rate that is substantially higher than the rate for the same coverage from the state-sponsored organization.

501(c)(27)— State-Sponsored Worker's Compensation Reinsurance Organizations

A state-sponsored worker's compensation reinsurance organization should apply by letter for recognition of exemption from federal income tax under section 501(c)(27).

To qualify for exemption, the organization must meet all the following requirements.

- 1) It was established by a state before June 1, 1996, exclusively to reimburse its members for losses under worker's compensation acts.

- 2) The state requires that the membership consist of all persons who issue insurance covering worker's compensation losses in the state and all persons and government entities who self-insure against those losses.
- 3) It operates as a nonprofit organization by returning surplus income to its members or worker's compensation policyholders on a periodic basis and by reducing initial premiums in anticipation of investment income.

5.

How To Get More Information



You can get help from the IRS in several ways.

Free publications and forms. To order free publications and forms, call 1-800-TAX-FORM (1-800-829-3676). You can also write to the IRS Forms Distribution Center nearest you. Check your income tax package for the address. Your local library

or post office also may have the items you need.

For a list of free tax publications, order Publication 910, *Guide to Free Tax Services*. It also contains an index of tax topics and related publications and describes other free tax information services available from IRS, including tax education and assistance programs.

If you have access to a personal computer and modem, you also can get many forms and publications electronically. See *Quick and Easy Access To Tax Help and Forms* in your income tax package for details.

Tax questions. You can call the IRS with your tax questions. Check your income tax package or telephone book for the local number, or you can call 1-800-829-1040.

TTY/TDD equipment. If you have access to TTY/TDD equipment, you can call 1-800-829-4059 to ask tax questions or to order forms and publications. See your income tax package for the hours of operation.

Organization Reference Chart

Section of 1986 Code	Description of organization	General nature of activities	Application Form No.	Annual return required to be filed	Contributions allowable
501(c)(1)	Corporations Organized Under Act of Congress (including Federal Credit Unions)	Instrumentalities of the United States	No Form	None	Yes, if made for exclusively public purposes
501(c)(2)	Title Holding Corporation For Exempt Organization	Holding title to property of an exempt organization	1024	990 ¹ or 990EZ ⁸	No ²
501(c)(3)	Religious, Educational, Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organizations	Activities of nature implied by description of class of organization	1023	990 ¹ or 990EZ ⁸ , or 990-PF	Yes, generally
501(c)(4)	Civic Leagues, Social Welfare Organizations, and Local Associations of Employees	Promotion of community welfare; charitable, educational or recreational	1024	990 ¹ or 990EZ ⁸	No, generally ^{2,3}
501(c)(5)	Labor, Agricultural, and Horticultural Organizations	Educational or instructive, the purpose being to improve conditions of work, and to improve products and efficiency	1024	990 ¹ or 990EZ ⁸	No ²
501(c)(6)	Business Leagues, Chambers of Commerce, Real Estate Boards, Etc.	Improvement of business conditions of one or more lines of business	1024	990 ¹ or 990EZ ⁸	No ²
501(c)(7)	Social and Recreation Clubs	Pleasure, recreation, social activities	1024	990 ¹ or 990EZ ⁸	No ²
501(c)(8)	Fraternal Beneficiary Societies and Associations	Lodge providing for payment of life, sickness, accident, or other benefits to members	1024	990 ¹ or 990EZ ⁸	Yes, if for certain Sec. 501(c)(3) purposes
501(c)(9)	Voluntary Employees' Beneficiary Associations	Providing for payment of life, sickness, accident, or other benefits to members	1024	990 ¹ or 990EZ ⁸	No ²
501(c)(10)	Domestic Fraternal Societies and Associations	Lodge devoting its net earnings to charitable, fraternal, and other specified purposes. No life, sickness, or accident benefits to members	1024	990 ¹ or 990EZ ⁸	Yes, if for certain Sec. 501(c)(3) purposes
501(c)(11)	Teachers' Retirement Fund Associations	Teachers' association for payment of retirement benefits	No Form ⁵	990 ¹ or 990EZ ⁸	No ²
501(c)(12)	Benevolent Life Insurance Associations, Mutual Ditch or Irrigation Companies, Mutual or Cooperative Telephone Companies, Etc.	Activities of a mutually beneficial nature similar to those implied by the description of class of organization	1024	990 ¹ or 990EZ ⁸	No ²
501(c)(13)	Cemetery Companies	Burials and incidental activities	1024	990 ¹ or 990EZ ⁸	Yes, generally
501(c)(14)	State Chartered Credit Unions, Mutual Reserve Funds	Loans to members	No Form ⁵	990 ¹ or 990EZ ⁸	No ²
501(c)(15)	Mutual Insurance Companies or Associations	Providing insurance to members substantially at cost	1024	990 ¹ or 990EZ ⁸	No ²
501(c)(16)	Cooperative Organizations to Finance Crop Operations	Financing crop operations in conjunction with activities of a marketing or purchasing association	No Form ⁵	990 ¹ or 990EZ ⁸	No ²
501(c)(17)	Supplemental Unemployment Benefit Trusts	Provides for payment of supplemental unemployment compensation benefits	1024	990 ¹ or 990EZ ⁸	No ²
501(c)(18)	Employee Funded Pension Trust (created before June 25, 1959)	Payment of benefits under a pension plan funded by employees	No Form ⁵	990 ¹ or 990EZ ⁸	No ²
501(c)(19)	Post or Organization of Past or Present Members of the Armed Forces	Activities implied by nature of organization	1024	990 ¹ or 990EZ ⁸	No, generally ⁷
501(c)(21)	Black Lung Benefit Trusts	Funded by coal mine operators to satisfy their liability for disability or death due to black lung diseases	No Form ⁵	990-BL	No ⁴
501(c)(22)	Withdrawal Liability Payment Fund	To provide funds to meet the liability of employers withdrawing from a multi-employer pension fund	No Form ⁵	990 or 990EZ ⁸	No ⁵
501(c)(23)	Veterans Organization (created before 1880)	To provide insurance and other benefits to veterans	No Form ⁵	990 or 990EZ ⁸	No, generally ⁷
501(c)(25)	Title Holding Corporations or Trusts with Multiple Parents	Holding title and paying over income from property to 35 or fewer parents or beneficiaries	1024	990 or 990EZ	No
501(c)(26)	State-Sponsored Organization Providing Health Coverage for High-Risk Individuals	Provides health care coverage to high-risk individuals	No Form ⁵	990 ¹ or 990EZ ⁸	No
501(c)(27)	State-Sponsored Workers' Compensation Reinsurance Organization	Reimburses members for losses under workers' compensation acts	No Form ⁵	990 ¹ or 990EZ ⁸	No
501(d)	Religious and Apostolic Associations	Regular business activities. Communal religious community	No Form	1065 ⁹	No ²
501(e)	Cooperative Hospital Service Organizations	Performs cooperative services for hospitals	1023	990 ¹ or 990EZ ⁸	Yes
501(f)	Cooperative Service Organizations of Operating Educational Organizations	Performs collective investment services for educational organizations	1023	990 ¹ or 990EZ ⁸	Yes
501(k)	Child Care Organization	Provides care for children	1023	990 or 990EZ ⁸	Yes
501(n)	Charitable Risk Pools	Pools certain insurance risks of 501(c)(3) organizations	1023	990 ¹ or 990EZ ⁸	Yes
521(a)	Farmers' Cooperative Associations	Cooperative marketing and purchasing for agricultural producers	1028	990-C	No

¹ For exceptions to the filing requirement, see chapter 2 and the Form instructions.
² An organization exempt under a Subsection of Code Sec. 501 other than (c)(3) may establish a charitable fund, contributions to which are deductible. Such a fund must itself meet the requirements of section 501(c)(3) and the related notice requirements of section 508(a).
³ Contributions to volunteer fire companies and similar organizations are deductible, but only if made for exclusively public purposes.
⁴ Deductible as a business expense to the extent allowed by Code section 192.
⁵ Deductible as a business expense to the extent allowed by Code section 194A.

⁶ Application is by letter to the address shown on Form 8718. A copy of the organizing document should be attached and the letter should be signed by an officer.
⁷ Contributions to these organizations are deductible only if 90% or more of the organization's members are war veterans.
⁸ For limits on the use of Form 990EZ, see chapter 2 and the general instructions for Form 990EZ (or Form 990).
⁹ Although the organization files a partnership return, all distributions are deemed dividends. The members are not entitled to "pass-through" treatment of the organization's income or expenses.



Building an Effective Organization

Starting A Nonprofit Organization

Presented by
LaCharla Figgs, Program Director
Management & Organizational Development
The Enterprise Foundation, Inc.



Building an Effective Organization

STARTING A NONPROFIT:

- Assemble a Team
- Develop a Business Plan
- Incorporate
- Establish Board Operations
- Apply for Tax Exemption
- Secure Financial Support
- Set Up Shop



Building an Effective Organization

Assemble a Team

- Develop a Business Plan
 - Incorporate
 - Establish Board Operations
 - Apply for Tax Exemption
 - Secure Financial Support
- Set Up Shop



Building an Effective Organization

DEVELOP A BUSINESS PLAN

- State the Mission
- Describe the Business
- Research the Market
- Analyze Financial Data
- Prepare the Report



Building an Effective Organization

INCORPORATE

- ❑ State corporation laws
 - Eligible activities
 - Filing Procedures
- ❑ Articles of Incorporation
 - Boilerplate
 - IRS Language



Building an Effective Organization

Establish Board Operations

- ❑ The Founding Board
 - Number
 - Composition
 - Duties
- ❑ The Bylaws
 - Boilerplate
 - State Requirements



Building an Effective Organization

Apply for Tax Exemption

- ❑ Types of Exemption
- ❑ Section 501(c)(3)
 - Eligible Activity
 - Private Foundation
 - Public Charity

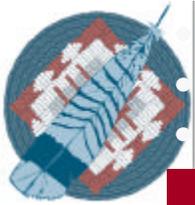


Building an Effective Organization

Apply For Tax Exemption

The Forms!

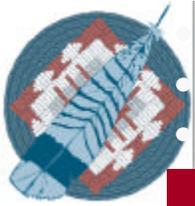
- Publication 557: Tax-Exempt Info
- Form SS4: Employer ID Number
- Package 1023: Application
- Form 872-C: Advance Ruling
- Form 8718: User Fee



Building an Effective Organization

Secure Financial Support

- The Start-Up Budget
- Break-Even Analysis
- Resource Development Plan
- Start-Up Funds



Building an Effective Organization

Set Up Shop

- ❑ Licenses and Permits
- ❑ Office Space and Equipment
- ❑ Staff, Consultants, Volunteers
- ❑ Operating Systems & Policies
 - Personnel
 - Financial Management



Building an Effective Organization

Time For Action

- What 3 things will you do next?
- Who'll help you do them?
- When do you plan to start?



Building an Effective Organization

Some Final Tips

- ❑ The Business Plan: A Guide Only
- ❑ The Board: Commitment & Skill
- ❑ Tax Exemption: Living with IRS
- ❑ Laws and Regs: Vigilance Pays



Building an Effective Organization

Assessing Your Resources

- ❑ People - Talent & expertise.
- ❑ Time - Devoted to building your organization, grant writing, community building.
- ❑ Available funding - Traditional and alternative sources.
- ❑ Creative capacity!



Building an Effective Organization

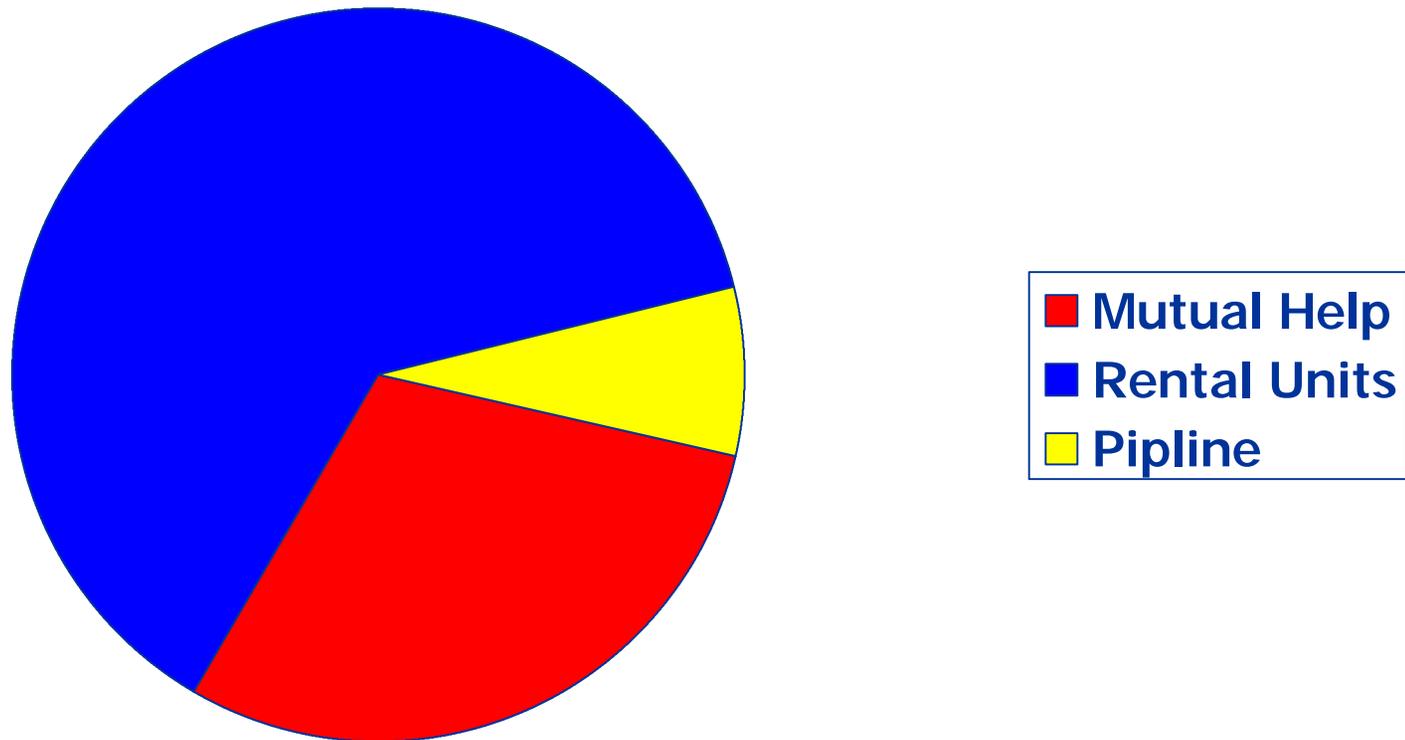
The End



Oglala Sioux Tribe Partnership for Housing, Inc.



Current Oglala Sioux (Lakota) Housing Profile (1937 Housing Act Inventory)

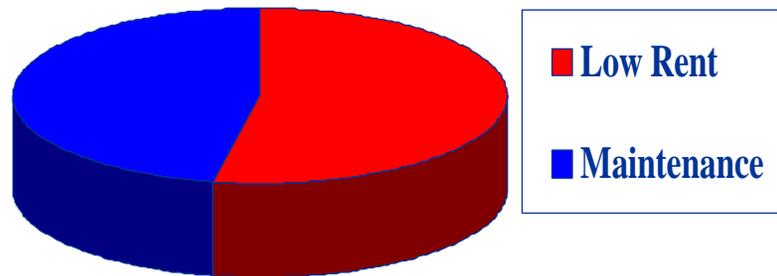




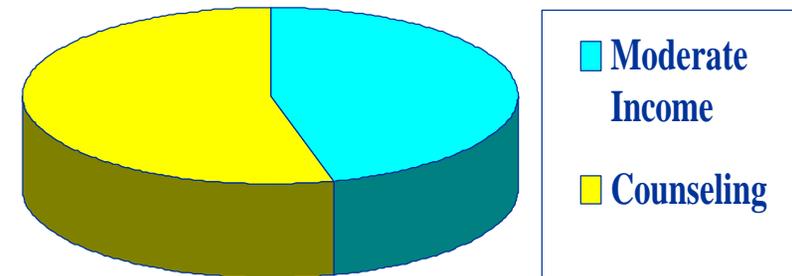
Redirecting Expanded Housing Resources

Figures are for illustrative purposes only

Future OSLH Responsibilities



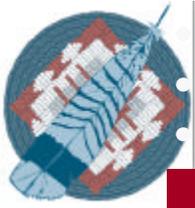
Future Partnership for Housing Responsibilities





Roadmap

- Vision and Mission
- Strategies
- Progress to Date
- Housing Construction



Vision and Mission

- ❑ Enhance affordable homeownership opportunities
- ❑ Stimulate the creation of a homeownership market in Indian country



New Opportunities

- New programs and initiatives
 - NAHASDA
 - Section 184
- Interest in working with tribes
 - Lenders
 - Nonprofits
 - Secondary market



Resource Book

- Corporate Documents
- Position Descriptions
- Budget
- Policies and Procedures
- Requirements for FHA Title II Loan Correspondent
- Information on Financing



Benefits of Model

- ❑ Vehicle for building wealth for tribal families
- ❑ Increased housing capacity of TDHEs for very low-income tribal families
- ❑ Development of regulatory jurisdiction over financial and commercial transactions --> predictability --> homeownership and economic development



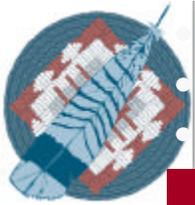
Business Objectives

- Homeownership Counseling
- Leverage Financial Intermediaries
- Homeownership Referral Services



Strategies: Homeownership Counseling

- ❑ Homebuyer Readiness
- ❑ Pre- and post-purchase counseling
 - Group and one-on-one
 - Budgeting, credit repair, maintenance
- ❑ Educational programs
 - High school
 - College



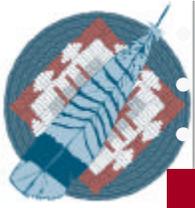
Strategies: Leverage Financial Intermediaries

- ❑ Establish relationships with financial intermediaries
- ❑ Create affordable loan products
- ❑ Liaison between lenders and borrowers
- ❑ Leverage current Federal funding
- ❑ Raise financial capital



Strategies: Homeownership Referral Services

- Resource for information
- Listing and brokerage agent
- Referral service



Progress to Date

- Legal
 - Nonprofit Corporation
 - Tax-exempt status
- Financial
 - Funding
- Organizational



Structure

- ❑ Interim Board of Directors
- ❑ Interim Executive Director
- ❑ Interim Housing Counselor
- ❑ Contracted Construction Manager



Housing Construction

Short-term

- Housing counseling
- Building Summit II July 31 - August 7, 1999

Long-term

- Housing counseling
- Financial products
- Referral Services



BUILDING AN EFFECTIVE ORGANIZATION

KTUNAXA Community Development Corporation

Realizing the potential of Self Determination through forming community-based organizations

Presented by:

Blake Chambliss, Rural Community Assistance
Corporation, &

Nancy Warneke, Salish Kootenai College



BUILDING AN EFFECTIVE ORGANIZATION

VISION STATEMENT:

- To have developed a Model Indian Community
- Prosperous, with housing built by our Indian People
- Self governing Ktunaxa Community Development Corporation
- Culturally sound, children educated in culture and tradition
- A language and People that is not dying out
- Empowered / Assertive People with the capacity to build



BUILDING AN EFFECTIVE ORGANIZATION

IMAGINE

- Living blended into the natural environment
- Homes naturally heated and cooled – elegant and affordable
- Natural water systems, food produced, waste managed
- Neighbors, young and old, routinely help each other
- Less traffic, less pollution, more open space
- Leisure time w/ recreation opportunities
- Designed to save money – and the Earth its precious resources

Larry Santoyo



BUILDING AN EFFECTIVE ORGANIZATION

“If you think you can,
or if you think you can't
.....either way you're right”

Thomas Edison



BUILDING AN EFFECTIVE ORGANIZATION

A Powerful Vision

Human and Financial Resources

Appropriate Organizational Structure



BUILDING AN EFFECTIVE ORGANIZATION

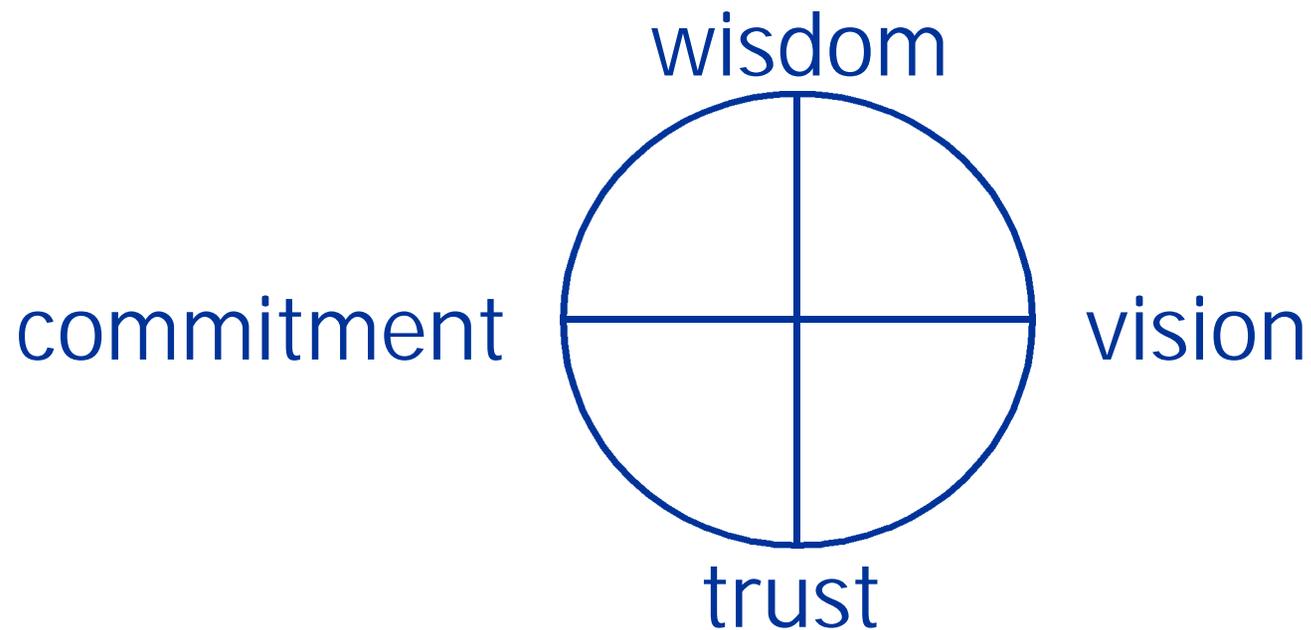
MODEL PROGRAM – A NEW PARADIGM

Create a community that:

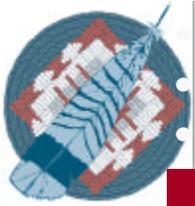
- Respects and supports traditional values
- Preserving language and culture
- Strengthens individuals and community
- Creates a prosperous community
- Employs and empowers its People
- Development that is sustainable – a “Permaculture”
- Respects the land



BUILDING AN EFFECTIVE ORGANIZATION



BALANCE



BUILDING AN EFFECTIVE ORGANIZATION

WISDOM

- What do we need to know
- About the land
- Planning constraints
- The community
- Other responsibilities
- The needs of the residents
- What alternatives are there to meet needs



BUILDING AN EFFECTIVE ORGANIZATION

TRUST

- How will the trust be built
- Within the community and to outsiders
- Who “authors,” prioritizes, benefits
- Fairness among partners
- Resources for planning and implementation
- Now vs. future



BUILDING AN EFFECTIVE ORGANIZATION

Who gets to decide?

- For whom plans are made
- Who implements the plan
- Who balances the benefits and costs
- What process will be for future decisions



BUILDING AN EFFECTIVE ORGANIZATION

VISION

- ❑ What is the intended end result?
 - For the current residents
 - For future residents
 - Who and how will the development serve them
 - Can it restore “oneness”
 - ✓ Cultural, traditional
 - ✓ Economic justice
 - ✓ Spiritual relationships
 - Who is responsible for each phase of the plan’s implementation



BUILDING AN EFFECTIVE ORGANIZATION

COMMITMENT

- Who needs to be involved/committed
- What are their interests
- What resources need to be made available
- How are commitments secured
- What is group's credibility
- How can partnerships be maintained



BUILDING AN EFFECTIVE ORGANIZATION

“When the goals you seek constantly recede before you,
You should recognize that the journey is the goal.”



BUILDING AN EFFECTIVE ORGANIZATION

HUMAN AND FINANCIAL RESOURCES

- Housing Authority Allocation
- Infrastructure
- Single Family Housing
- Multifamily Rental Housing
- Rental Assistance
- Rehabilitation of Existing Housing



BUILDING AN EFFECTIVE ORGANIZATION

HUMAN AND FINANCIAL RESOURCES(Cont.)

- State and Federal Resources
- HUD
- US Department of Agriculture Rural Development (ASDA-RD)
- Small Business Administration (SBA)
- Tax-Exempt Bonds
- Low-Income Housing Tax Credit (LIHTC)



BUILDING AN EFFECTIVE ORGANIZATION

HUMAN AND FINANCIAL RESOURCES(Cont.)

- Private Investment
- Banks
- Foundations (Loans and Grants)
- Community Development Financial Institutions (CDFI)
- Federal Home Loan BB



BUILDING AN EFFECTIVE ORGANIZATION

HUMAN AND FINANCIAL RESOURCES(Cont.)

- Individuals / Families
- 'Sweat Equity'
- Land, Lumber – Tribal Allotments
- Personal Equity



BUILDING AN EFFECTIVE ORGANIZATION

LEVERAGING RESOURCES

- Create Powerful Vision
- Secure Community Support
- Develop an Inclusive Strategic Plan
- Identify Potential Resource Partners
- Match Resource Partners with Appropriate Projects
- Secure Specific Support for Each Project



BUILDING AN EFFECTIVE ORGANIZATION

STEPS TO BE TAKEN

- ❑ Create Organizational Structure
 - Stability
 - Local Involvement
 - ✓ Vision
 - ✓ Planning
 - ✓ Commitment
 - ✓ Ownership of Process/Results



BUILDING AN EFFECTIVE ORGANIZATION

STEPS TO BE TAKEN (Cont.)

- Outside Commitments
 - ✓ Financial Resources
 - ✓ Technical Assistance
 - ✓ Project Success



BUILDING AN EFFECTIVE ORGANIZATION

CHDO / CDC ORGANIZATION

Community-Based Nonprofit Organizational Structure

- Focus on Accomplishing Vision
- Direct involvement of community members
- Independent of Tribal Politics
- Partnership with Tribal Leadership
- Access to Outside Resources
- Productive Partnerships Within and Beyond Tribal Boundaries
- Managing Risk
- Entrepreneurial Business Outlook



BUILDING AN EFFECTIVE ORGANIZATION

SCHEDULE

Spring

- Tribal Members Plan Community Workshop
- Identify Participants
- Plan Strategy
- Organize Program Events



BUILDING AN EFFECTIVE ORGANIZATION

SCHEDULE

Summer

- Community Workshop
 - ✓ Goals / Vision Refined
 - ✓ Needs Assessment Initiated
 - ✓ Strategic Plan Outlined
 - ✓ Specific Assignments Made
- Commitments Secured
- 501(c)3 Status In Hand
- CHDO / CDC Certification Application



BUILDING AN EFFECTIVE ORGANIZATION

SCHEDULE

Fall

- Project Priorities Identified
- Project Funding Applications Prepared
- Community / Financing Commitments Secured
- Economic Development Supports In Place



BUILDING AN EFFECTIVE ORGANIZATION

LESSONS LEARNED

❑ **Human and Financial Resources**

- The Importance of Inclusive Community Participation in All Phases of the Program, Building “Ownership” of the Whole Effort. Identifying the full range of potential financial partners that exist for assisting in the development of an appropriate, sustainable community.



BUILDING AN EFFECTIVE ORGANIZATION

LESSONS LEARNED (Cont.)

□ **Appropriate Organizational Structure**

- The Value of Individuals Taking Responsibility for the Preservation and the Nurture of the Community's Traditional and Cultural Values. The selection of an entrepreneurial organizational model that can involve the community in achieving its Vision.



BUILDING AN EFFECTIVE ORGANIZATION

LESSONS LEARNED

❑ Powerful Vision

- Recognition of the Interdependence of Cultural Values with Community Building in Shaping Economic Development and Housing Programs Respectful of Native American Traditions



BUILDING AN EFFECTIVE ORGANIZATION

For More Information:

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Nancy Warneke
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tel (406) 675 4800 x 245
nancy_warneke@skc.edu



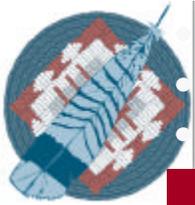
HOMEOWNERSHIP 101: THE BASICS

Charlie Eiseman



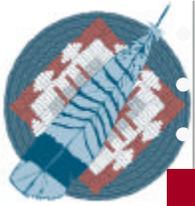
BASICS -- THE 4 "W's"

- ❑ Who--Tribally Designated Housing Entity (TDHE's)
- ❑ What--Building a Better Social Economic Environment for Tribal Members
- ❑ Where--TO BE DETERMINED
- ❑ Why--Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA)



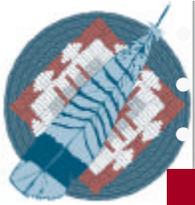
INDIAN HOUSING PLAN

- Indian Housing Plan (IHP)
 - Basic Information
 - 5 Year Housing Plan
 - ✓ Mission Statement
 - ✓ Goals & Objectives
 - ✓ Activities
 - 1 Year Housing Plan...



INDIAN HOUSING PLAN (cont.)

- 1 Year Housing Plan
 - ✓ Goals & Objectives
 - ✓ Statement of Needs
 - ✓ Financial Resources
 - Income & Assets
 - Annual Expenses & Liabilities
 - Capital & Special Projects
 - Affordable Housing Resources



SOURCES & USES OF FUNDS

☐ Cash Flow

- Total Annual Income Available for Annual Expenses

- ✓ Annual Income--Deposits to Checking or Saving Accounts

- ✓ Annual Expenses--Checks written from checking or savings for expenses

☐ Proforma (Estimating the Future)

- Based upon actual income & expenses--estimate for next 5 years



SOURCES & USES OF FUNDS (cont.)

- ❑ Net Income--Amount of income left after expenses
 - Maximum Leveraging of Net Income
- ❑ Assets & Liabilities
 - Assets less liabilities = Net worth
 - Leveraging of Net Worth



NEEDS ASSESSMENT

- ❑ An estimate of housing needs and the need for assistance for the low-income Indian families in the jurisdiction, and outside the jurisdiction where Tribal needs require consideration.
- ❑ Housing Survey
 - Mailer--stuff in Tribal Correspondence, checks, mailers, etc.--to every Tribal member
 - BIA Survey
 - Waiting List
 - Census Information

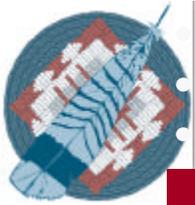


NEEDS ASSESSMENT (cont.)

Tribal Member Profile

- > 80% of Area of Medium Income
- 80% of Area Median Income
- 60% of Area Median Income
- Less than 60% and/or Homeless

Establish Housing Priorities



CODIFY HOUSING PROGRAMS

- Put Housing Programs in Writing
 - Create Program Summary and make available to all members
 - Establish Application
 - Establish Criteria for Loan Decisions
 - Establish Working Loan Committee



HELP -- ASSISTANCE

- ❑ Block Grant money can be utilized for study
 - Existing internal capabilities
 - Training of existing personal
 - Hiring
 - Contracting out study
 - Getting it done and doing it right



HELP -- ASSISTANCE (cont.)

Resources

- Other TDHE's
- National American Indian Housing Council
- Lenders -- CRA, FHLB Programs
- Attorneys
- Accountants

Taking the Lead

- Someone has to be in charge -- Their Primary Responsibility
- Persistence & Hard Work
- Opportunity

**BRINGING PRIVATE RESOURCES
TO NATIVE LANDS**

March 1999



Federal Home Loan Bank
of Seattle

Federal Home Loan Bank Resources for Community Development

The Role of the Federal Home Loan Banks

As wholesale banks, the Federal Home Loan Banks provide financial institutions with low-cost, flexible funding, ranging from overnight to 30 years, to help them meet their communities' credit needs. This funding enhances a lender's ability to provide competitively priced and longer-term financing. The Federal Home Loan Banks have more than \$200 billion in loans outstanding to their customers.

In addition to their primary funding services, the Federal Home Loan Banks provide targeted grants from their Affordable Housing Programs (AHP), reduced-rate loans from their Community Investment Programs (CIP), and a variety of other special products and services. These programs help lenders provide financing for a wide range of projects that benefit low- and moderate-income families and neighborhoods.

The Affordable Housing Program (AHP)

Through the AHP, the Federal Home Loan Banks provide targeted grants to financial institutions to support the creation and preservation of housing for low-income families and individuals. Each Federal Home Loan Bank funds its AHP with ten percent of its annual profits. The banks on the basis of competitive applications award subsidies and lenders often partner with nonprofit housing agencies, local governments, and tribally designated housing entities.

A wide variety of programs receive AHP funding, including rental and homeownership, housing for homeless individuals and families, and rehabilitation of existing affordable homes.

In Indian Country, First National Bank of Anchorage is working with 18 rural Alaska Native Villages to help more than 80 families buy or repair their homes with more than \$1.0 million in an AHP grant from the Federal Home Loan Bank of Seattle. These villages will use the AHP funds to leverage their NAHASDA funds to help more families than they could with NAHASDA alone.

The attached case study of the Felseman Addition shows another innovative use of the AHP on the Flathead Reservation in Montana.

The Community Investment Program (CIP)

Through the CIP, the Federal Home Loan Banks provide advances (loans) at their cost of funds to their customers to help lenders make long-term, fixed-rate loans for affordable housing and community development. Examples of CIP-financed projects include affordable rental housing, community medical clinics, small business, retail improvements, and day care centers.

In Portland, Oregon, U.S. Bank used a \$105,000 CIP advance to provide a long-term mortgage to LIHNAPO, a nonprofit organization that services Native Americans living in urban communities. The loan was used to acquire and rehabilitate a 3-unit apartment building so that it was affordable to low-income Native families.

Other Initiatives

Every Federal Home Loan Bank has other initiatives to support the affordable housing and community development needs of its region.

The Federal Home Loan Bank of Seattle, for example, provides grants of \$10,000 from its "Challenge Fund" program to lenders who are working with nonprofit housing groups in rural communities. The Seattle Bank made a Challenge Fund award to Zions Bank for the Navajo Utah Commission. The commission will facilitate homebuyer counseling for Native families living in the Utah portion of the reservation. The grants will be repaid as successful families purchase their first homes.

The Federal Home Loan Bank of San Francisco has been an active supporter of the Native Homeownership Center on the Navajo Reservation in Arizona providing technical assistance to that effort.

Many of the Federal Home Loan Banks offer special grants for down payment and closing cost assistance to first-time homebuyers which would be available to Native families living on or off the reservation if they were able to qualify for a mortgage loan.

Contact Your Local Federal Home Loan Bank

For more information about any of these programs, please contact your regional Federal Home Loan Bank. A list of Community Investment Officers is attached.

The Felsman Addition
Flathead Indian Reservation, Pablo, Montana

**A Case Study on Developing Lease-to-Own Homes
with Low-Income Housing Tax Credits and
The Affordable Housing Program**

Summary

To address the tremendous unmet need for affordable homeownership opportunities on the Flathead Reservation in western Montana, the Salish & Kootenai Housing Authority created 24 new, lease-to-own homes. The authority used the Federal Home Loan Bank of Seattle's Affordable Housing Program (AHP) and the lease-purchase provision of the Low-Income Housing Tax Credit program, which allows families to purchase their homes at the end of 15 years. The AHP grant reduces the interest on the permanent financing, helping keep rents affordable, and the tax credits provide the bulk of the equity requirement.

This combination of funding is especially suitable for Indian Country where a lack of experience with traditional credit keeps many families from qualifying for conventional financing and some federal housing programs (like Section 248 and 184). The extended lease period gives families time to learn to be successful homeowners and to become financially able to support a mortgage.

The Felsman Addition was the first project nationwide to use the Low Income Housing Tax Credit program to fund a lease-purchase program on an Indian reservation, and the first on a reservation to combine tax credits with an AHP grant.

The Problem

The Flathead Indian Reservation covers 1.2 million acres in western Montana. Its economic condition is similar to many other reservations -- 18 percent of its members live below the poverty level and 9 percent live in overcrowded conditions. The Salish & Kootenai Housing Authority maintains a waiting list of over 600 families.

The housing authority manages 800 units of housing on the Flathead Reservation and is widely recognized as one of the nation's top-performing Indian housing authorities. It has successfully developed affordable apartments for students attending Salish & Kootenai College on the reservation and has effectively used the mutual help lease-purchase program to provide homeownership opportunities to tribal members.

The Solution

The Low Income Housing Tax Credit Program is a federal program that encourages private corporations to invest in low-income housing development by providing a dollar-for-dollar credit against an investor's federal income tax liability on ordinary income. Tax credits can only be used for rental projects and the rental property must remain in compliance with the program guidelines for at least 15 years.

In order to use tax credit equity and still provide homeownership opportunities to the families on its waiting list, the Salish & Kootenai Housing Authority created a lease-to-own program which allows tenants to purchase their homes after the 15-year compliance period required by the tax credits has expired. The lease-to-own model is particularly valuable for Native Americans, many of whom do not have experience with traditional credit, because it provides an extended period for them to receive homeownership training and credit counseling and develop a good credit history.

The Result

The Salish & Kootenai Housing Authority purchased the property and is building 24 single-family homes. Twenty of the homes would be available under the lease-to-own program. Families will rent the three- and four-bedroom homes for \$365 to \$395 per month. The purchase price at the end of the lease period is expected to be approximately \$40,000 per home and mortgage payments will be less than the residents' previous rental payments. Eligible families will earn no more than 50 percent of the median income on the reservation, or \$20,800 per year for a family of four. Participants will be required to attend credit counseling and homeownership and budget training.

Named for Joseph Felsman, former Salish & Kootenai Housing Authority commissioner and Tribal Council chairman, the Felsman Addition will be managed by the Salish & Kootenai Housing Authority with help from residents. In addition, the tribes' Office of Social Services and the Salish & Kootenai Community College will provide families with access to counseling services. The National American Indian Housing Council will provide compliance monitoring and technical assistance for the life of the project.

The Low Income Housing Tax Credit Program requires that the property remain affordable during the 15-year compliance period and for another 15 years when projects utilize the extended-use provision for lease-purchase programs. The housing authority will also record a deed restriction requiring recapture of the AHP grant in the event the homes are sold after the first 15 years to families that are not low income.

Funding

Funding for the \$1.6 million Felsman Addition is from a combination of public and private sources. The Salish & Kootenai Housing Authority will contribute \$100,000 to the project and the Enterprise Social Investment Corporation will purchase Low-Income Housing Tax Credits from the Montana Board of Housing to provide the project with \$900,000 in equity.

Ronan State Bank is providing a \$523,467 permanent loan for the project and secured a \$94,533 grant from the Federal Home Loan Bank of Seattle's Affordable Housing Program (AHP). Funded annually with ten percent of the Seattle Bank's profits, the AHP offers targeted grants and reduced-rate loans to help financial institutions support rental and homeownership programs serving lower-income families and individuals. The Salish & Kootenai Housing Authority will use its AHP grant to reduce the interest rate on the loan from Ronan State Bank.

Low Income Tax Credit Investor (ESIC)	\$ 900,000
Ronan State Bank Permanent Loan	523,467
General Partner Capital (Salish & Kootenai Housing Authority)	100,000
Federal Home Loan Bank of Seattle Affordable Housing Program grant	94,533
TOTAL (<i>estimated</i>)	\$1,618,000

Federal Home Loan Banks'
1999 Community Investment Officers

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Community Investment Officer
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Oregon, Pacific Islands, Utah, Washington,
Wyoming)

ANY RESERVATION, TDHE

ASSUMPTIONS:

Remote Tribe (no local lending services)
100% Trust Land
Limited Economic Development (Primarily Tribal, BIA, IHS, School Jobs)
Enrollment 3,000
250 Low Rent, 100 Mutual Help from 1937 Act
Stable Tribal Government
Needs
X 400 Rental Assistance
X 200 Mortgages

SOURCES / USES OF FUNDS

Indian Housing Block Grant	\$2,000,000
Rental Income	\$ 150,000
Mutual Help Administration Charge @ \$70	<u>\$ 84,000</u>
Total Income	\$2,234,000

EXPENSES

Admin. Salary	\$275,000	
Legal	\$ 12,500	
Training	\$ 25,000	
Local Travel	\$ 5,000	
Professional Services	\$ 15,000	
Miscellaneous	<u>\$ 37,500</u>	
Total Admin.		\$ 370,000
Utilities		\$ 94,500
Maintenance Salary	\$250,000	
Materials	\$100,000	
Contracts	\$475,000	
Other	<u>\$ 27,500</u>	
Total Maint.		\$ 847,500
General Expenses		<u>\$ 250,000</u>
Total Routine		\$1,562,000
Available for other Programs		\$ 672,000



HOUSING/LANDS NEEDS SURVEY



The purpose of this survey is to identify your needs as a member of the Confederated Salish & Kootenai Tribes regarding Housing and Land.

Please complete this form and return it in the enclosed self-addressed, stamped envelope. ***If you return it by June 13, 1997, your name will be entered in a drawing for a Pendelton blanket.*** Please note that any information you give will be confidential and will be used only for statistical purposes. **If you wish to be included in the drawing, please write your name on the attached survey sheet.** Winner will be notified by mail. Thank you for your participation and good luck!

HOUSING/LANDS NEEDS SURVEY

General Information

Age group: under 18 19-25 26-40 41-60 60+ Number in Household (including self): _____

Income: under \$12,000 \$12,000-22,000 \$22,000-30,000 \$30,000-45,000 \$45,000+

Are you a Student?: Yes No Grad. Date _____

Do you currently Rent Own a Home Live with family or other Homeless

What is your monthly rent/mortgage payment?: \$ _____ Do you live on the Reservation? Yes No

If yes, what area? Evaro Arlee Ravalli St. Ignatius Pablo Ronan Dixon Old Agency Polson

Big Arm Elmo Hot Springs Nirada Camas Prairie Charlo/Moisee Other: _____

If no, do you plan on returning in the next 5 years? Yes No If yes, what area?(see list above) _____

If you need housing, how many bedrooms do you need? 2 3 4 5

Do you have any disabilities? Explain _____

Housing Needs

Please rank your needs, #1 being the most important:

__ New Housing __ Rehab of Existing Housing __ Available Rentals __ Financing for New Housing

__ Home Maintenance __ Proximity to child care __ Law Enforcement __ Handicap Service-

__ Affordability of New/Existing Housing __ Emergency Housing __ Landscaping

__ Retirement Housing __ Other: _____

Land Needs

Please rank your needs, #1 being the most important:

__ Land for New Construction (Size of parcel needed: _____)

Seeking Urban Rural site; Area (see list above): _____

__ Mobile Home Lots __ Driveway improvement __ Small clustered sites (less than 8 lots)

__ Areas designated for retirees __ Access to recreation/ parks/playgrounds __ Bicycle/Pedestrian paths

Utility Needs

Please rank your needs, #1 being most important:

__ Water/Well services __ Septic Services __ Garbage Removal

__ Community Water/Sewer Concerns; Area/Site of Concern (see list above): _____

Explain concern: _____

Application for the Flathead Finance Program

I. Type of Mortgage and terms of loan

Purpose of loan request:

1. First Time Homebuyer down payment and closing costs, this is a second mortgage
2. First Mortgage Finance Loan, must have denial from other lending institution
3. Revolving Rehabilitation Loan, must have denial from lending institution and HIP

Type of Home:

Existing home Existing manufactured home (trailer house) on foundation system
 Construction of new home New manufactured/modular home set on a foundation system

Legal Description of Subject Property (attach description if necessary)

Number of acres _____ County where property is located _____

Present Property Owners _____

Is the property Fee Simple? If yes, are the taxes current? _____

Name of Realty Company involved? _____

Did you attach a copy of the buy/sell agreement? _____

Individual Trust property? If yes, what is the Allotment number: _____

Did you attach a copy of a buy/sell agreement? _____

Tribal Homesite?

Tract Number: _____

Has the lease been transferred into your name? _____ Need a copy of lease

If purchasing improvements on a lease lot did you attach a copy of a buy/sell agreement? _____

Purchase amount: \$ _____

Lender to be used _____ Contact person _____

Number of monthly payments requested: _____ MONTHS

II. Borrower Information

Borrower				Co-Borrower		
Full Name:				Full Name:		
Social Security	Home Phone	DOB		Social Security	Home Phone	DOB
Marital Status		No. Dependents		Marital Status		No. Dependents
Name of dependent	Date of Birth	Social Security #				
_____	_____	_____				
_____	_____	_____				
Present Mailing Address <input type="checkbox"/> Own <input type="checkbox"/> Rent <input type="checkbox"/> No. Yrs.				If Present Address is less than 2 years <input type="checkbox"/> Own <input type="checkbox"/> Rent <input type="checkbox"/> No. Yrs		
Are you an enrolled member of a federally recognized Tribe? If yes what Tribe _____				Are you an enrolled member of a federally recognized Tribe? If yes what Tribe _____		
Attach certification of Enrollment				Attach certification of Enrollment		

III. Employment Information

Borrower			Co-Borrower		
Name & Address of Employer		Years employed	Name & Address of Employer		Years employed
Position	Business Phone		Position	Business Phone	
If present employment is less than 2 years					
Name & Address of Employer		Years employed	Name & Address of Employer		Years employed
Position	Business Phone		Position	Business Phone	

IV. Monthly Income and Combined Housing Expense Information

Gross Monthly Income	Borrower	Co-Borrower	Total monthly	Total annual	Combined Monthly Housing Expense	Present payment
Base Employee Inc*					Rent	
Dividends/Interest					First Mortgage (P&I)	
					Hazard Insurance	
					Real Estate Taxes	
OTHER					Mortgage Insurance	
Total					Total	

- Verification of the past twelve (12) months' income must be attached.
- All household income earned by members of the household over the age of 18 years of age must be documented.

V. Assets and Liabilities

Assets	Borrower Company	Cash or market value	Co-borrower Company	Cash or market value
Checking/Savings Account				
Automobiles owned				
Other Assets				
Total assets	XXXXXXXXXXXXXXXX	a)	XXXXXXXXXXXXXXXX	b)
Liabilities (name of Creditor)	Account Number		Unpaid Balance	Monthly payment
Total monthly payments	XXXXXXXXXXXXXXXX		d)	\$

VI. Declarations

If you answer "yes" to any question 1 through 8, please explain in space provided below	Borrower		Co-Borrower	
	Yes	No	Yes	No
1. Are there any outstanding judgments against you?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Have you ever participated in any programs sponsored by SKHA?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Has SKHA ever received a judgment against you for non-payment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Have you been declared bankrupt within the past 7 years?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Have you had property foreclosed upon in the last 7 years	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Have you transferred title or deed in lieu thereof in the last 7 years?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Are you a part to a lawsuit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Have you directly or indirectly been obligated on any loan, which resulted in foreclosure, transfer of title in lieu of foreclosure or judgment? (This would include such loans as home mortgage loan, SBA loan, home improvement loans, educational loan, manufactured (mobile) home loan, any mortgage, financial obligation, bond or loan guarantee. If "Yes" provide details, including date name and address of Lender, FHA or VA case number, if any, and reason for the action)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Are you presently delinquent only any Federal debt or any other loan, mortgage, financial obligation, bond or loan guarantee? If "Yes" give details as described in preceding question.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Are you obligated to pay alimony, child support, or separate maintenance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Are you a co-maker (co-signer) or endorser on a note?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Do you intend to occupy the property as your primary residence?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Have you had an ownership interest in property in the last three years?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(a) What type of property did you own-Principal residence(PR), second home(SH), or investment property(IP)? _____				
(b) How did you hold title to the home- Sole ownership(S), jointly with spouse(SP), or jointly with another person(O)? _____				

I/We certify that the information provided in this application is true and correct as of the date set forth opposite my/our signature(s) on this application and acknowledge my/our understanding that any intentional or negligent misrepresentation(s) of the information contained in this application may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq. and liability for monetary damages to the Lender, its agents, successors and assigns, insurers and any other person who may suffer any loss due to reliance upon any misrepresentation which I/we have made on this application.

Borrower: _____

Date: _____

Co-Borrower: _____

Date: _____

Authorization to Release Information

I/We have applied for a mortgage loan from Salish & Kootenai Housing Authority Flathead Finance Program. As part of the application process SKHA FFP may verify information contained in my/our loan application and in other documents required in connection with the loan, either before the loan is closed or as part of its quality control program.

I/We authorize you to provide SKHA FFP, all information and documentation that they request. Such information includes, but is not limited to, employment history and income; bank, money market, and similar account balances; credit history; and copies of income tax returns.

A copy of this authorization may be accepted as an original.

Your prompt reply to SKHA FFP, is appreciated.

Furthermore, I/We grant SKHA FFP permission to release information necessary in assisting me in obtaining other services for which I may be eligible.

This release of information is good from one year from the date signed.

Borrower: _____

Date: _____

Co-Borrower: _____

Date: _____

Notification of Penalty for Misrepresentation

Federal regulations establish administrative procedures for imposing civil penalties and assessments against persons who file false claims or statements while applying for benefits. This regulation, which implements the Program Fraud Civil Remedies Act of 1986, applies to all applicants. The Program Fraud Remedies regulations apply to any person or persons who misrepresent or omit information from applications for serves, income verification, re-examination of information, family compositions or ages of family members, etc. Such person or persons may be investigated by the Inspector General and may be subject to the following penalties:

1. Up to \$5,000.00 for filing such a claim; or
2. Up to \$ 5,000.00 plus up to twice the amount of benefits which were fraudulently received; and
3. In any case, whether or not benefits were actually received by the individual/family, or any other remedy, which may be prescribed by law, will still apply. (This means that the fines do not preclude criminal charges or legal actions against the person(s) committing the fraud.)

Some of the areas where such fraud may occur:

1. Families reporting less than all sources of income (e.g., only reporting husbands income when both spouses are working; or not reporting all or part of part-time income or other seasonal income).
2. Families listing more dependents than are eligible or who live in the household.
3. Families misrepresenting age to either get benefits for "elderly" or claim children as dependents after they reach the age of 18.
4. Families not reporting all assets, such as bank accounts, real estate/home owned.

I have read and understand these regulations

Borrower: _____

Date: _____

Co-Borrower: _____

Date: _____

Tribal Credit. Credit Report

Tribal Credit Office
P.O. Box 278
Pablo, MT 59855

Dear Tribal Credit;

The attached is authorization for your office to release information regarding your client(s) account with the Salish & Kootenai Housing Authority

Borrower & Co-Borrower _____
Enrollment Number: _____

Please complete the following information and return it to the following address as soon as possible:

Raquel J. Davis, Affordable Home Specialist
Salish & Kootenai Housing Authority
P.O. Box 38,
Pablo, MT 59855
(406) 675-4495 (FAX)

Account name		Account Number		Date Opened		
Present Status			High Credit	Payment History	Type of Account	
Date	Balance	Amount Past Due				
Credit Limit	Terms	Payment	Date last payment	Maximum Delinquency		
				Date	Amount	
Type of Collateral/Loan	Special Comments		Historical Status			
			# of months	30 days	60 days	90 days

Authorized Signature: _____ Date: _____

Please Print Name: _____ Title: _____

Payment History Code:

- 00-Too New
- 02 Pays 31-60 days late
- 04 Pays 91-120 days late
- 07 Makes regular payments or paid under wage earner plan (payroll)
- 08 Repossession
- 8D Legal repossession
- 9B collection account
- 01 As agreed: not more than 1 month late
- 03 Pays 61-90 days late
- 05 Pays over 120 days late
- 8A Voluntary Repossession
- 09 Charged off to bad debt
- 9P Making payments under account rated 09 or 9B

Type of Account Code:

- I-Individual Account
- J-Joint Account
- X-Deceased



SALISH KOOTENAI HOUSING AUTHORITY
OF THE FLATHEAD RESERVATION

Salish & Kootenai Housing Authority
Flathead Finance Program Summary

Thank you for inquiring in to the Flathead Finance Program. The Salish & Kootenai Housing Authority has elected to participate in a new homeownership program that has been initiated by various Indian Housing Authorities across Indian Country.

General Background Information on Program:

In October 1996, the program was revised. The reason for the revision was to make the program more self-sustaining. It was revised into a loan program, with repayment based on an "equity-share" basis. In May 1998, the program expanded to include lease-to-purchase program and rehab loans. The following is a synopsis of the three different programs.

General requirement for the Flathead Finance Program is:

- A. Enrolled Member. Must be an enrolled member of a federally recognized tribe with preference given to members of the Confederated Salish & Kootenai Tribes. Certification must be attached to the application.
- B. Age of applicants. The applicant must be at least 18 years of age.
- C. Application and qualification process.
 1. Applications will be processed on a "FIRST COME, FIRST SERVED" basis by the SKHA staff.
 2. Applications will be screened to determine eligibility.
 3. SKHA staff will check and verify all information that was contained in the application.
 4. A personal interview with the potential applicant(s).
 5. A written "Release of Confidential Information" shall be obtained from each applicant. This shall be received from all household members over the age of 18 years. The original release forms will be kept in the applicants' file.
 6. Credit reports are obtained on each applicant.
- D. Verification of all pertinent information.
 1. Household status by number of members, handicapped members and household income will need to be verified. The identity and status of all household members will be verified through birth certificates, Social Security Administration identifications, drivers licenses, marriage certificates, divorce decrees, adoption papers, and other such documents.
 2. Verification of all household income and assets shall be in accordance with the current income policy of the SKHA.
 3. Verification of enrollment in a federally recognized Tribe.
- E. Occupancy of the home.
 1. Time frame. Must occur within 30 days from the date of the loan closing. In case of a new construction, home the occupancy must occur within 30 days from the date the home is completed.
 2. Primary residence. The participant must occupy the home as their principal residence. Property must be owner-occupied within 30 days of loan closing and be the mortgagor's "principal" residence while any portion of the second mortgage loan remains outstanding.
 3. FFP is designed to assist eligible families in becoming homeowners, not to assist borrowers in acquiring properties for investment purposes.

F. Special Need Cases.

Housing assistance shall be given on a case by case basis for those with special housing needs. The applicants shall still be screened in accordance to current FFP regulations. The applicant must have a special housing need that cannot be met by traditional lending resources.

G. The maximum household limit

The maximum household income (per family size) shall be based 80% of the current national median income.

H. Consideration of qualifying home.

1. Once the applicant(s) has found and selected a home to purchase; chosen the floor plans for new construction, a building site and contractor; the lender and FFP will be notified.
2. In the case of an existing home, the SKHA will perform an inspection to determine whether a unit is or is not safe, decent, sanitary or in compliance with FHA insurance requirements.
3. The SKHA inspector will also determine any specific deficiencies which must be cured and provide an estimate of such repairs.
4. The Lender will determine through the appraisal process if the home is within the maximum total mortgage amount for which the applicant is qualified.
5. If the home is a manufactured home the home must be on an approved HUD foundation system.

The current program is divided into four areas: Presented for Board Approval 5/5/98

(1) Down payment assistance.

- This program can assist families with down payment and closing cost assistance. The assistance range is 4% of the purchase price up to a maximum of \$ 15,000.00.
- A no interest, deferred payment second mortgage (loan) will be provided for the difference between the purchase price of the home (up to its FHA appraised value) and the first mortgage loan amount for which the participant qualifies. The down payment and closing costs may also be included in the second mortgage.
- The minimum amount of assistance required enabling the selected participants to purchase available and qualified homes would be provided. Assistance is determined based on an affordable mortgage limit for that family size. The assistance does not take into consideration any debts the family may currently have.
- The maximum amount of assistance is \$ 15,000.00. Minimum assistance amount will be 4% of the purchase price of the home the applicant has selected. If the total purchase price is greater than the affordable maximum mortgage amount than the minimum assistance shall be 4% of the total purchase price. If the total assistance is less than 4% of the total purchase price then the minimum assistance amount shall be the 4% of the total purchase price.
- Applicant must be a first time homebuyers.** Participants must be first time homebuyers. This is defined as anyone in the household not owning a qualified home within the last three years. Several exceptions to the first-time home buyer rule will be considered on a case by case basis, and include:
 - If the applicant that already owns, as their principal residence, a dwelling unit not in compliance with local or model building codes and other applicable codes, which cannot be brought into compliance with such codes for less than the cost of constructing or purchasing a permanent, code complying, structure.
 - Where an applicant has recently divorced or is legally separated and the couple jointly owned the home during the marriage.
- Participants must be able to qualify for a first mortgage loan through a local lender or Tribal Credit in an amount of **the total purchase price** for a qualifying home. The second mortgage amount will be determined by the applicant's income level, purchase price of home, and amount of FFP funds available. A debt consolidation **CANNOT** be part of the approved loan at the lending institution.
- A letter of approval/disapproval will be furnished to the applicant. Approved applicants will then go to a local lender or Tribal Credit and obtain the maximum amount of the first mortgage that they qualify for from the lender.

- Approved applicants will be given 90 days from the date of approval to submit verification that they have received loan approval. If they do not submit the required verification, their application will be inactivated and they will have to reapply for later consideration.
- The lender will be responsible for the final qualifying of both the applicant and the home or any interim financing for construction if a new house is chosen.
- Where rehabilitation is necessary, and the lender has approved a financing plan for such rehabilitation, SKHA will work with the inspector, appraiser and the buyer to prepare specifications and cost estimates for the necessary repair work. **SKHA WILL NOT DIRECTLY ADMINISTER THE REHABILITATION DOLLARS.**
- Each lender has the right to determine its reservation and loan processing fees and to select the most cost-effective secondary market to assure maximum affordability to the homebuyer. Maximum interest rate to the home buyer will be a **fixed interest rate** at or below current FHA rates

(2) *First Mortgage Financing.*

This program is to assist families attain homeownership through a lease option. This would only be open to families who cannot attain conventional financing due to credit history, debt to income ratio, etc. The participants would lease the home from SKHA for a period of one year. Within this year the families will have homeownership educational (home buying and maintenance) and credit counseling in some cases. At the end of the lease period, the participant will assume a standard mortgage on the property. Once the participant exceeds the maximum income level for their family size, the mortgage would need to be financed at a local lender or Tribal Credit. The maximum loan amount would be \$ 99,750.00 with a maximum loan period of 30 years. The interest rate would be a variable rate from 0% to 7% (based on income available for repayment on a loan)

1. Must present verification that they cannot obtain conventional financing at any lending institution including Tribal Credit.
2. The applicant will lease for a period of 1 year. If it is determined that the applicant cannot financially assume the loan at the end of the lease year an extension may be granted for one additional year. At the end of such extension, the applicant must be financially able to assume the loan obligation.
3. During the lease period, the applicant will be able to establish a payment history or to correct past credit problems. It will also give the applicant a change to payoff debts.
4. The lease payment would be equivalent to the adjusted monthly principal, interest, taxes and insurance payment.
5. The interest rate will be a variable rate. The rate will be determined by the applicant's available income for repayment. The rate will vary from 0% to 7%.
6. The applicants will be certified each year to determine their interest rate and eligibility.
7. At the end of the lease, all payments made to date will be deducted from the total purchase price of the home.
8. A homebuyer education program will be recommended for all participants.
9. For the term of the lease, SKHA will pay the property taxes and insurance. At the end of the lease period, the applicant assumes the responsibility of the property taxes and insurance payment. An escrow account may be established to receive a monthly payment, that once a year is applied to the property taxes (if fee simple property), and homeowners insurance.
10. The maximum shall not exceed HUD mortgage limits (\$99,750).
11. The repayment shall not exceed 30 years.
12. The home shall meet all HUD/FHA housing standards.
13. The applicant(s)' monthly debt to income ratio cannot exceed 40% percent of their combined monthly gross household income.
14. The amount of the loan cannot exceed the appraised value of the home, this also includes any other assistance that may be provided to make this loan affordable
15. Appraisal shall be obtained on all loan requests. This will determine the present day value of the home. On new construction, it will give an estimated value pending all the work of the contractor is completed.
16. **Manufactured homes cannot be considered.**

17. Home Inspections are required on all purchases. A full inspection shall be made to determine if an existing structure meets FHA housing standards. On new construction, modular home set-up and rehabilitation loans, periodic inspections shall be done to insure all required work is completed.
18. Cost Breakdown on new construction and a copy of the floor plans shall be included as part of the loan package. This will give the inspector a detailed list on all material used as well as the layout of the home.
19. Homes requiring substantial remodeling or repair in order to qualify for funding will not be eligible for participation in the FFP. However, minimal and necessary repairs may be approved, if appropriate financing can be arranged.
20. On all new construction must be completed by a licensed contractor and SKHA will hold the contract with the contractor.
21. Applicant must be a first time homebuyers. Participants must be first time homebuyers. This is defined as anyone in the household not owning a qualified home within the last three years. Several exceptions to the first-time home buyer rule will be considered on a case by case basis, and include:
 - a. An applicant that already owns, as their principal residence, a dwelling unit not in compliance with local or model building codes and other applicable codes, which cannot be brought into compliance with such codes for less than the cost of constructing or purchasing a permanent, code complying, structure.
 - b. Where an applicant has recently divorced or is legally separated and the couple jointly owned the home during the marriage.
22. When the applicants' monthly gross household income exceeds the income level for that family size, they will need to refinance their loan at a lender of their choice.

(3) *Revolving Rehabilitation Loan.*

This program is to promote quality-housing standards for current homeowners. This would only be open to families who cannot attain conventional financing due to credit history, debt to income ratio, etc. This would include any families denied assistance through the SKHA HIP program. The maximum loan amount would be \$ 20,000.00 with a repayment period of 15 years. The interest rate would be a variable rate from 0% to 7% (based on income available for repayment on a loan).

1. Combined monthly household income cannot exceed current FFP guidelines.
2. Must present verification that they cannot obtain conventional lending and verification they do not qualify for any assistance through the SKHA Home Improvement Program.
3. Preference will be given according to the current points system. (Elderly, Handicap, Single families, families below 50% of median income and then all others).
4. The interest rate will be a variable rate. The rate will be determined by the applicants' available income for repayment. The rate will vary from 0% to 7%. The applicant must submit verification of income each year.
5. The homeowner shall provide verification that the homeowner insurance and property taxes are current during the term of the loan.
6. The maximum shall not exceed \$ 10,000.00. The total value owed (including the home improvement loan) shall not exceed the appraised value of the home. Only under special circumstances, may there be instances where more than \$ 10,000.00 will be needed to assist very low-income families or handicapped individuals requiring modifications for accessibility. Such cases will be reviewed on a case by case basis and approved by the SKHA FFP Committee.
7. The repayment shall not exceed 15 years.
8. The applicant(s) currently monthly debt to income ratio cannot exceed 40% percent of their combined monthly gross household income.
9. A licensed contractor must complete all rehabilitation work. SKHA shall hold the contract with the contractor.
10. Homes requiring substantial remodeling or repair in order to qualify for funding will not be eligible for participation in the FFP.
11. The home shall meet all HUD/FHA housing standards.

12. The SKHA inspector will also determine any specific deficiencies which must be cured and provide an estimate of such repairs.
13. The cost of repairs shall be contingent upon the SKHA inspector's inspection report.
14. Once the SKHA inspector has completed the estimate cost of repair, the current SKHA bid policy shall be followed.
15. SKHA will administer all advances to the contractor in accordance to current policy. No advance shall be made until an inspector has approved the request and ensured that the repairs are completed according to the plans and specifications.
16. Appraisals may be required on all loan requests. This will determine the present day value of the home, and if the repairs exceed the value of the home.
17. Upon completion of the necessary improvements, the home shall meet all HUD/FHA housing standards.
18. The FFP committee may require homeowners to complete a home maintenance education program.
19. Owners of manufactured homes will follow current manufactured home regulations.

Any home purchased through the Flathead Finance Program must meet the following standards:

- A. Housing Standards and Maximum Mortgage amounts. Any home purchased or improved through the FFP must meet the following standards:
 1. The home or home-site must be located within the exterior boundaries of the Flathead Indian Reservation.
 2. The home must meet HUD Standards for FHA Insured Loans and Section 8 Housing Quality Standards as determined by a qualified housing inspector. Inspections shall be made on all home where FFP assistance is allotted.
 3. The purchase price of the home, including necessary repairs, can be no greater than its appraised value. The cost of the repairs required to bring the home up to HUD Standards for FHA Insured Loans and Section 8 Housing Quality Standards will be considered in establishing its total value.
 4. In instances where the participant household has a member with a certified disability, the cost of necessary accessibility modifications may be included as an allowable repair.
 5. The purchase price and appraised value of the home cannot exceed 95% of the FHA 203(b) maximum mortgage limits (currently at \$ 99,750.00).
 6. The total value of the land may not exceed more than 30% of the total appraised value of the property following construction or rehabilitation of the housing unit.
 7. The home may be a single-family unit (detached or attached), a town house, condominium unit, or a manufactured/mobile home on a permanent foundation.
 8. Rental properties and cooperative units WILL NOT BE ELIGIBLE nor will mobile homes NOT PLACED ON A PERMANENT FOUNDATION and/or on property not owned by the applicant. Tribal lease lots will be allowed conditional that the lease is in the applicant(s) name.
 9. The homes constructed prior to 1978 shall be inspected for Lead-Based Paint. The dwelling unit must comply with the lead-based paint rules at 24 CFR Part 35(i.e., no cracking, peeling, scaling paint).
 10. The purchase of an appropriate home-site and new construction of a qualified home must meet the criteria for FFP participation, and is encouraged by the program in order to increase the supply of affordable housing on the Flathead Indian Reservation.
 11. There must be the ability to obtain title to the property that is free and clear of all Liens and Encumbrances. On fee simple land, a Title Insurance Policy will be requested upon the applicant being approved for financing through a local lender or Tribal Credit. On Trust Status or Tribal Lease Lots a Title Status report will be requested from the Confederated Salish & Kootenai Tribes Division of Lands Office, upon the applicant being approved for financing through a local lender or Tribal Credit.
- B. New home Construction
 1. Must submit detailed plans and specifications. The lender and FFP may require that the contractor be licensed. The detailed plans and specifications should include but not limited to material to be used, subcontractors to be used and floor plans.

2. It is advised that the homebuyer not be the general contractor.
- C. Rehabilitation of housing to meet quality standards. Homes requiring substantial remodeling or repair in order to qualify for funding will not be eligible for participation in the FFP. However, minimal and necessary repairs may be approved, if appropriate financing can be arranged. Rehabilitation work must meet the following minimum standards:
1. Repairs must be necessary to bring the home into compliance with FHA and/or Section 8 Housing Quality Standards as identified by the FHA appraisal.
 2. Exterior rehabilitation work must comply with lending criteria must be compatible to the structure and the neighborhood, and, if the structure is over 50 years old, have prior approval of the Tribal Preservation Office.
 3. Must comply with any local zoning or building codes.
 4. The cost of the repairs plus the purchase price cannot exceed the FHA appraised value (after repairs) for the home.
 5. The cost of the repairs plus the purchase price cannot exceed 95% of the FHA 203(b) Maximum Mortgage Limits.
 6. The cost of repairs, principal loan, and any down payment/closing costs loan cannot exceed the maximum level of assistance for the income level of the borrower.
- D. Manufactured Home Regulations
1. If the applicant wishes to purchase, a manufactured home/trailer house that home must be on a permanent foundation. The house must be permanently attached to the foundation system. Existing homes must be attached to the foundation system by either cable or rebar welded to the frame rail or similar fashion. The unit must be anchored to the footing.
 2. The Manufactured home must be constructed in conformance with the Federal Manufactured home Construction and Safety Standards as evidenced by the affixed certification label. This is the "RED TAG" on the rear of each section of the manufactured home. If the tag is missing, the house is not eligible for FFP assistance.
 3. Only manufactured homes built after June 15, 1976 will bear that seal. Manufactured homes built before that date are ineligible for FFP Assistance.
 4. The axles and tongue must be removed from the unit. The chassis must stay in place.
 5. Must have permanent steps into the home.

(4) Low Income Tax Credit Program

This program is a rent to own for 15 years. Currently the only site where this opportunity is available is at the Felsman Addition in Pablo. Currently all homes are full but I am creating a waiting list in the event any homes do become available. Eligibility is based on household size and income. The household income cannot exceed 60% of the median income for Lake County.

FEDERAL HOUSING PROGRAMS

Home Buyer Finance

prepared for

SHARED VISIONS:

*The Native American Home Ownership,
Legal, and ED Summit*

by:

The Enterprise Foundation





FEDERAL HOUSING PROGRAMS

- HUD Block Grants and Formula-Based Programs
- HUD Competitive Programs
- Other Federal Programs
- Non-Federal Programs



Block Grants

- ❑ HOME Investment Partnership
- ❑ Housing Opportunities for People With AIDS (HOPWA)
- ❑ Community Development Block Grants (CDBG)
- ❑ McKinney Emergency Shelter Grants



HUD's Competitive Programs Reforms Bring Changes

☐ HUD Introduces the “superNOFA” Format

- Rather than issuing more than 40 disparate Notices of Funding Availability (NOFA), HUD will now use three consolidated superNOFAs
- The superNOFAs and application kits can now be accessed through HUD's web site at www.hud.gov/nofas.html OR call the superNOFA Information Center at 1 (800) HUD-8929

☐ Combined Application Kits

- Within specified categories applicants can use standardized forms and certifications for programs



Common Factors for Award

- ❑ To simplify the application process, most competitive programs now use five common factors for award:
 - **Capacity** - do you have the organizational resources necessary to implement the proposed activities?
 - **Need/Extent of the Problem** - is there an urgent and documented need for funding the proposed activities?
 - **Soundness of Approach** - addresses the quality and appropriateness of the proposed program
 - **Leveraging Resources** - can you secure resources beyond those provided by the specific program?
 - **Comprehensiveness and Coordination** - is your strategy coordinated with related community activities?



superNOFA I : Housing and Community Development

- ❑ Community Development Technical Assistance Programs
 - Community Development Block Grant (CDBG)
 - Community Housing Development Organization (CHDO)
 - HOME
 - Supportive Housing Program (SHP)
- ❑ University and College Programs
 - Community Outreach Partnership Centers (COPCs)



superNOFA I (cont.)

- ❑ Fair Housing Initiatives and Assisted Housing Counseling Programs
 - Fair Housing Initiative Program (FHIP)
 - ✓ Education and Outreach Initiative (EOI)
 - ✓ Private Enforcement Initiative (PEI)
 - ✓ Fair Housing Organization Initiative (FHOI)
 - Housing Counseling Program
- ❑ Lead-Based Paint Hazard Control Program
- ❑ Drug Elimination Grants for Multifamily Low Income Housing



superNOFA II : Economic Development and Empowerment Programs

- ❑ Economic Development Initiative (EDI)
- ❑ Brownfields Economic Development Initiative (BEDI)
- ❑ Youthbuild



superNOFA III : Targeted Housing and Homeless Assistance

- ❑ Continuum of Care Homeless Assistance
 - Supportive Housing
 - Shelter Plus Care
 - SRO Moderate Rehabilitation
- ❑ Section 202 Supportive Housing for the Elderly
- ❑ Section 811 Supportive Housing for Persons with Disabilities
 - Section 8 Mainstream Program



superNOFA III (cont.)

- ❑ Housing Opportunities for People with AIDS (HOPWA) - Competitive



Other HUD Programs

- National Competition Program
 - FHIP National Focus
 - National Housing Counseling Training
 - National Lead Hazard Awareness Campaign
- Mainstream Housing Opportunities for Persons with Disabilities
- Family Self-Sufficiency
- Self-Help Home Ownership Opportunity
- HUD Single Family Disposition



Other Federal Programs

- Low Income Housing and Historic Tax Credit Program
- Community Development Financial Institution (CDFI) and Bank Enterprise Award (BEA) Programs (Treasury Department)
- Homeless Providers Grant and Per Diem for Veterans (Veterans Department)
- Homeless Veterans Reintegration Project



Other Federal Programs (cont.)

- ❑ Rural Rental and Cooperative Housing Loans (Section 515) and Rural Rental Assistance Payments (Section 521) (Agriculture Department)
- ❑ Rural Development - Home Ownership



Non-Federal Programs

- Federal Home Loan Bank Affordable Housing Program
- Major Private Sources
- Major Reduced Rate Lenders



Typical Home Ownership Project Includes:

- Bank (Section 184, 248 or conventional), State Housing Finance Agency, or Section 502 First Mortgage
- Second/Third + Mortgages or Grants
 - NAHASDA
 - HOME
 - ICDBG or state CDBG
 - Affordable Housing Program of the Federal Home Loan Bank
 - State Housing Trust Fund
- Home Buyer Down Payment of 3%-5%
- Fee based home ownership counseling with Housing Counseling or FHIP subsidies



Block Grants and Formula-Based Programs



*Creating A Vision and Funding
Your Project Through the
Consolidated Planning Process*





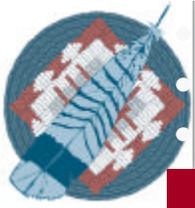
Consolidated Plan

- ❑ Articulates Need
- ❑ Creates Long Range (5 year) Plan for meeting the need
- ❑ Identifies Targets/Objectives for Meeting Long Range Plan and potential funding sources
- ❑ Identifies local obstacles (zoning/building codes/etc.) to meeting objectives
- ❑ Projects must be consistent with Consolidated Plan to be eligible for funding



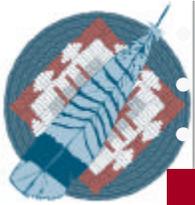
Consolidated Plan *(continued)*

- ❑ Requires Citizen Participation
 - A minimum of one public hearing
 - Requires outreach to underserved populations
 - Must consult with public and private agencies that provide housing, health, or social services
 - Summary of Consolidated Plan (CP) must appear in the newspaper
 - A “reasonable number” of draft CP’s must be provided cost free to public
 - Minimum of 30 days for public to comment
 - Must include information from Continuum of Care (if available)



Consolidated Plan *(continued)*

- Why is it important to participate
 - Access to HOME, CDBG, ESG, HOPWA funds
(most states do not currently provide these funds on tribal lands)
 - Other Federal sources often require “consistency with Consolidated Plan” letter
 - Market your projects/needs to state/local government
 - Increases your awareness of political and development environment
 - Can object if state/locality does not meet Consolidated Plan or if they do not adequately provide for Citizen Participation



HOME Investment Partnership

- ❑ Eligible Applicants: For- and nonprofit developers, Housing Authorities and housing providers. Priorities given for Community Housing Development Organizations (CHDOs)
- ❑ Program Description: Block grant provided to eligible cities, states, and counties to increase affordable housing for low income households based on strategies articulated in Consolidated Plans. Assistance can be in the form of loans, grants, equity, interest subsidies, loan guarantees (up to 20% of principal balance), or rent subsidies.



HOME Investment Partnership

- ❑ Amount Available: In FY1999, \$1.6 billion nationally.
- ❑ Use of Funds: Acquisition, rehabilitation, new construction of affordable home ownership, rental and transitional housing (under 80% of median income for all programs, 90% of rental units assisted must be rented to households earning <60% of median income with targeting of 20% of the the units in any project over 5 units for below 50% of median income).



HOME Investment Partnership

- ❑ **Use of Funds (cont.):** Affordability required for 5 to 20 years, depending on funding amount. Minimum 15% set aside for CHDOs, who can receive administrative support and at-risk pre-development financing. Minimum of \$1,000/ unit subsidy, maximum 221(d)3 limits (though localities can receive waivers for up to 210%)
- ❑ **Application Process and Due Date:** Varies by Participating Jurisdiction.



HOPWA - Block Grant

- ❑ Eligible Applicants: Service providers for people with HIV/AIDS.
- ❑ Program Description: Financing for acquisition, rehabilitation, and construction of housing, rent subsidies, services and other related uses to assist people with HIV/AIDS find and remain in decent affordable housing. Decided locally.



HOPWA - Block Grant

- Amount Available: \$183.6 million nationally in FY1998
- Use of Funds:
- Contact: David Vos - 202.708.1234



Community Development Block Grant/Section 108

- ❑ **Eligible Applicants:** For and nonprofit developers/service providers, Housing Authorities and government agencies.
- ❑ **Program Description:** Block grant provided to state and local governments to assist in redeveloping distressed neighborhoods (a majority of residents below 80% of median income and targeted by block grant recipient) and providing services to low and moderate income residents. High percentage to economic and housing development.



CDBG/Section 108

- ❑ Amount Available: \$4.2 billion nationally in FY1998.
- ❑ Use of Funds: Can be used for housing development and rehabilitation, economic development, social services, neighborhood/service planning, tenant/home owner counseling. Housing for all incomes in targeted neighborhoods, housing for low income (under 80% of median) outside of target areas. A minimum of 70% of funds must serve low and moderate income households. New



CDBG/Section 108

- ❑ Use of Funds (cont.): construction only allowed if in conjunction with community revitalization. with redevelopment plan in distressed communities. Section 108 program enables future years (up to 10 years) CDBG to be used as loan or loan guarantees for projects that meet CDBG objectives. Economic Development Initiatives (EDI) program provides financing to reduce risk of Section 108 loans.
- ❑ Due Date: Varies by locality for CDBG
- ❑ Contact: Paul Webster (202) 708-1871 x4563



Emergency Shelter Grant

- ❑ Eligible Applicants: Nonprofit organizations and government agencies
- ❑ Program Descriptions: Block grant to state and localities to improve and increase (renovations, major rehabilitation and conversions to) homeless shelters and services and to assist homeless prevention efforts.
- ❑ Amount Available: \$165 million nationally in FY1998.



Emergency Shelter Grants

- Use of Funds: Preventive and homeless services, construction/rehabilitation of emergency shelters
- Due Date: Varies by locality



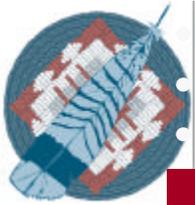
HUD's Competitive Programs



superNOFA I

Housing and Community
Development Programs





CHDO Technical Assistance

- Program Description: Assessments, direct technical assistance, training, and pass-through funds for CHDOs. Assistance can be for:
 - organization (start-up, board development, fiscal management, operating systems, etc.)
 - developing housing (financial packaging, locating financing sources, construction management, etc.)
 - managing housing (management systems, locating management companies, etc.)



CHDO Technical Assistance (cont.)

- ❑ Amount Available: \$42 million in FY1998
- ❑ Due Date: June 24, 1998



HOME Technical Assistance

- Program Description: assessments, direct technical assistance and training for lenders, for-profit developers and the Participating Jurisdictions that administer the HOME program. Typically HOME PJs are city, county, and state departments of housing or community development. Assistance includes:
 - assessments of administrative process
 - comparisons with other jurisdictions (leverage ratios, HOME investment per unit, etc.)
 - best practices for specific objectives
 - Assistance in developing HOME funded projects



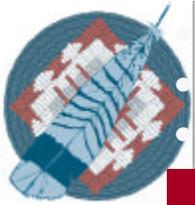
HOME Technical Assistance (cont.)

- ❑ Amount Available: \$31 million in FY1998
- ❑ Due Date: June 24, 1998



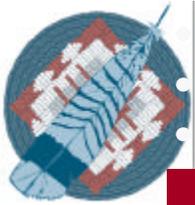
CDBG Technical Assistance

- ❑ Program Description: assessments, direct technical assistance and training for CDBG administrators or program operators. CDBG TA can cover the same organizational, project development and project management categories as HOME and CHDO TA but for organizations that are or will be funded through CDBG
- ❑ Amount Available: \$5 million in FY1998
- ❑ Due Date: June 24, 1998



SHP Technical Assistance

- ❑ Program Description: assessments, direct technical assistance and training for housing and service programs that are funded through HUD's Continuum of Care programs - typically shelters and transitional housing service programs connected to the housing and umbrella administrative agents. TA covers the same organizational, development, and management categories as previous TA programs.
- ❑ Amount Available: \$4.4 million in FY1998
- ❑ Due Date: June 24, 1998



Community Outreach Partnership Centers (COPC)

- ❑ Program Description: COPC provides funding to accredited 2- or 4-year degree-granting nonprofit institutions of higher learning to address at least three of the following issues in a urban community: (urban being defined as a population over 2,500)
 - Local Housing, Infrastructure, Economic Development, Neighborhood Revitalization, Health Care, Job Training, Crime Prevention, Education, Planning, or Community Organizing
- ❑ Amount Available: \$7 million in FY1998



COPC

- ❑ Grant Size: COPC offers 3-year grants of up to \$400,000
- ❑ Due Date: June, 1999
- ❑ For more information including a list and description of the 1997 grantees, see the Office of University Partnerships' website at www.oup.org/copc.html
- ❑ Contact: Jane Karadbil (202) 708-5918 x218



Fair Housing Initiative Program (FHIP)

- ❑ Eligible Applicants: Fair Housing government and nonprofit agencies. Other nonprofit agencies eligible for the Education and Outreach and Fair Housing Organization Initiatives, but not the Private Enforcement Initiative.
- ❑ Program Description: Supports efforts to enforce and enhance fair housing. Includes \$1.5 million set aside funding for a 24 month initiative to reduce tensions related to expanding affordable housing and \$800,000 set aside for four 18 month projects to enhance fair housing for the disabled. Most of funds earmarked for testing and fair housing enforcement.



FHIP

□ Amount Available in FY1998

- Education and Outreach: \$1 million
- Private Enforcement Initiative: \$9.3 million
- Fair Housing Organization Initiative: \$1.2 million

□ Use of Funds:

- Education and Outreach Initiative: Studies, affirmative marketing, training on meeting fair housing and disability requirements, and finding housing for the disabled.



FHIP

Use of Funds (cont.):

- Private Enforcement Initiatives: Fair housing testing (note: Massachusetts used FHIP to testing on discrimination on the homeless), investigating and litigating complaints.
- Fair Housing Organization Initiatives: Increasing capacity of fair housing organizations to do enforcement and testing. Large emphasis for organizations working with disabled to apply.

Due Date: June 25, 1998

Contact: Ivy Davis, (202) 708-0800



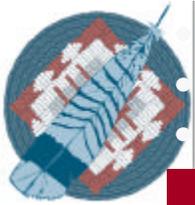
Housing Counseling Program

- ❑ Eligible applicants: HUD approved counseling agencies (\$5 million); National, regional, multi-state counseling intermediaries (\$6 million); State Housing Finance Agencies (\$7 million)
- ❑ Program Description: Provides funding for agencies to provide tenants and homeowners with information and advice on home ownership and renter obligations, property maintenance, foreclosure prevention, financial management, and legal rights.
- ❑ Amount Available: \$18 million in FY1998 (Grants to individual agencies cannot exceed \$100,000)



Housing Counseling Program

- Use of Funds:** To provide free of charge services to renters, home buyers and home owners. Funds can be used staffing, administrative costs, public outreach, and other requirements for service delivery;
- Due Date:** June 25, 1998
- Contact:** For more information call Monica Schuster, (202) 708-0317 x5447



Lead-Based Paint Hazard Control Program

- ❑ Eligible Applicants: States and local governments
- ❑ Program Description: Provides grants to devise strategies to reduce lead hazards. See www.hud.gov/lea/leagrant.html
- ❑ Amount Available: \$50 million in FY1998
- ❑ Due Date: June 1, 1998
- ❑ Grant Range: 15 to 25 grants available typically \$2-\$4 million (maximum award of \$4 million)
- ❑ Contact Person: Ellis Goldman, (202) 755-1822



Multifamily Housing Drug Elimination Program (MHDEP)

- ❑ Program Description: MHDEP's goal is to eliminate drug-related crime and associated problems in and around federally assisted low-income housing. MHDEP provides funds to owners of such housing for physical improvements and comprehensive programs to reduce drug use (e.g., prevention, education, treatment, and youth services).
- ❑ Amount Available: \$16.3 million in FY1998 (maximum grant of \$125,000)
- ❑ Due Date: June 15, 1998
- ❑ Contact: Carissa Janis, (202) 708-3291 x2487



superNOFA II



Economic Development and
Empowerment Programs





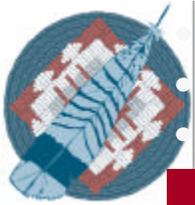
Economic Development Initiative (EDI)

- ❑ **Program Description:** EDI provides grants to local governments to enhance the security of Section 108 guaranteed loans or to improve the viability of a project financed with a Section 108-guaranteed loan. EDI grants must be used in conjunction with new Section 108 guaranteed loan commitments and can be used as additional security for the loan (for example a loss reserve to reduce the exposure of CDBG funds) or to pay for costs associated with the 108-assisted project.
- ❑ **Amount Available:** \$38 million in FY1998



EDI

- ❑ Typical Grant Size: \$400,000-\$700,000
- ❑ Due Date: July 30, 1998
- ❑ Contact: Paul Webster, (202) 708-1871 x4563



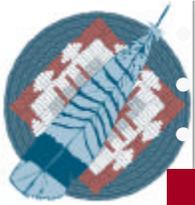
Brownfields Economic Development Initiative (BEDDI)

- **Program Description:** BEDDI is designed to help local governments redevelop abandoned, idled, or underutilized industrial and commercial facilities where expansion is complicated by real or perceived environmental contamination - brownfields. BEDDI provides funds in conjunction with Section 108 loan guarantees to finance activities such as demolition, remediation, infrastructure construction or reconstruction, assistance to businesses, and the construction or reconstruction of public facilities.



Brownfields Initiative

- ❑ Amount Available: \$25 million in FY1998
- ❑ Due Date: August 10, 1998
- ❑ Note: BEDI operates with a specific appropriation for Brownfield sites but operates under the authority of the EDI program.
- ❑ Contact: Paul Webster, (202) 708-1871 x4563 or Stan Gimont, (202) 708-1871 x4559



Youthbuild

- ❑ Program Description: Youthbuild provides funding to nonprofits, state and local governments, and housing agencies eligible to run Federal employment training programs to implement housing construction/rehabilitation training programs for very low-income high school dropouts age 16 to 24. Programs offer educational and job training services, counseling and other support activities in conjunction with on-site paid training for construction work. 50% of participants time must be spent on-site.
- ❑ Amount Available: \$33 million in FY1998



Youthbuild

- Use of Funds: \$8.3 million available for grants up to \$350,000 for 18 month programs with 20 students. \$24.9 million available for grants either under \$450,000 and up to 24 months or grants over \$450,000 and up to 30 months. (maximum award of \$700,000)
- Due Date: July 14, 1998
- Contact: Phyllis Williams, (202) 708-2035



superNOFA III



Targeted Housing and Homeless
Assistance Programs





Continuum of Care Homeless Assistance

- ❑ Eligible Applicants: Nonprofit agencies, public housing authorities, government agencies
- ❑ Program Description:
 - **Supportive Housing** - Up to \$300,000 in matching capital funds and 3 years 100% of social services and 75% (year 1 and 2) to 50% (year 3) in operating support for transitional housing and permanent housing for the homeless disabled.



Continuum of Care

- **Shelter Plus Care** - 5 year sponsor, tenant, or project based rent subsidies up to FMR (10 year, if project based in conjunction with rehabilitation of \$3,000+/unit) for homeless disabled.
- **SRO Section 8 Moderate Rehabilitation** - 10 year project based assistance for homeless singles.



Continuum of Care

- ❑ Amount Available: \$700 million for new programs in FY1998
- ❑ Use of Funds: Capital, rent subsidies, and social services, depending on program.
- ❑ Due Date: August 4, 1998



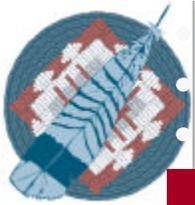
Section 202 Supportive Housing for the Elderly

- ❑ Eligible Applicants: Private Nonprofits and Consumer Cooperatives (not TDHE's) (but requires owner be a single-purpose, single asset corporation)
- ❑ Program Description: Provides up front capital and rent subsidies for very low income (50% of median and below) elderly (age 62+). Elderly pay higher of 30% of AGI, 10% of income, or welfare housing allowance, HUD pays the difference. Typically takes 2-4 years to develop and extensive paperwork and negotiations.



Section 202 Supportive Housing For the Elderly

- Use of Funds:
 - Capital Advance - Forgiven if housing is maintained for very low income (under 50% of median income) elderly for 40 years
 - Project Rental Assistance - Rent subsidy for 20 years renewable for another 20 years
- Funding Available: \$402 million in FY1998
- Contact Person: Gail Williamson, (202) 708-2556
- Due Date: July 7, 1998



Section 811 Supportive Housing For the Disabled

- ❑ **Eligible Applicants:** Private nonprofits, consumer cooperatives, and unincorporated nonprofits
- ❑ **Program Description:** Provides nonrepayable capital advances for acquisition and rehabilitation (or acquisition alone for group homes) and 20 year renewable rental assistance to housing for people with disabilities. Up to 15 people in a group home and 24 people in an independent Living facility.



Section 811 Supportive Housing For the Disabled

- ❑ Use of Funds:
 - Capital Advance - Forgiven if housing is maintained for very low income (under 50% of median income) h.h. w/disabilities for 40 years
 - Project Rental Assistance - Rent subsidy for 20 years renewable for another 20 years
- ❑ Due Date: July 7, 1998
- ❑ Amount Available: \$74.4 million nationally in FY1998
- ❑ Contact Person: Joseph Malloy, (202) 708-3000



HOPWA - Competitive

- ❑ Eligible Applicants: States, local government, and nonprofit organizations
- ❑ Program Description: Assistance for housing for low income people with HIV/AIDS and their families. Financing can be used for acquisition, rehabilitation, or construction, tenant and project based rent subsidies, emergency assistance, support services, and other related activities.
- ❑ Amount Available: \$20.15 million in FY1998



HOPWA - Competitive

- ❑ Use of Funds: Two categories:
 - **Special Projects of National Significance** (SPNS) - model projects for housing and other services
 - **Long term Comprehensive Strategy** - projects submitted by states or local governments for areas that do not qualify for HOPWA formula allocations (nonprofits may not apply but can serve as sponsor)
- ❑ Note: no longer set asides for Multiple Diagnoses Initiative (MDI) and National Technical Assistance, but both can be applied for in either of the above categories.



HOPWA - Competitive

- ❑ Use of Funds (cont.): Innovation is encouraged, within perimeters. Maximum grant size \$1 million for program activities. Additional administrative costs (up to 3% for grantees and up to 7% for sponsors) and funds to collect data on project outcomes (up to \$50,000) is also available.
- ❑ Due Date: July 10, 1998
- ❑ Contact: David Vos, (202) 708-1934



Other HUD Programs





National Competition Program

❑ Eligible Applicants:

- **FHIP National Focus Education and Outreach** - Fair Housing Enforcement Organizations and nonprofit agencies representing persons protected under Fair Housing Act or involved in fighting discrimination
- **National Housing Counseling Training Program:** HUD approved counseling agencies with 2+ years experience
- **National Lead Hazard Awareness Campaign:** Public Relations Firms, Marketing/Advertising Companies, Nonprofit agencies

❑ Amount Available: FHIP - \$3.5 million; NHCTP - \$550,000; NLHAC - \$1 million



National Competition Program

□ Program Description:

- **FHIP:** Nationwide Education Project (\$2 million) promote a centralized coordinated fair housing media campaign including posters, PSA's, cooperation w/real estate industry: Community Tensions Project (\$1.5 million) Prevent and respond to community tensions when fair housing rights enforced for underrepresented protected class members
- **Counseling:** provide training through satellite broadcast, CD-ROM, or on-site training of housing counselors on first time home ownership training and Home Equity Conversion Mortgages plus other programs
- **Lead:** National Media "Campaign for Lead-Safe America"



National Competition Program

Due Date: July 7, 1998

Contact:

- FHIP - Ivy Davis - 202.708.0800

- Counseling - 202.708.0317

- Lead - Doline Hatchett - 202.755.1785



Mainstream Housing Opportunities for Persons with Disabilities

- ❑ Eligible Applicants: Public Housing Authorities
- ❑ Program Description: Provides up to 5 years of Section 8 rental assistance for people with disabilities. To be eligible a Housing Authority needs to document Housing Need and Capacity. PHA's can set aside a portion for project based assistance



Mainstream Housing Opportunities for Persons with Disabilities

- ❑ Amount Available: \$48.5 million in FY1998 for 1,700 vouchers/certificates (up to 100 per HA; 200 for statewide/multicounty HA's)
- ❑ Due Date: July 7, 1998
- ❑ Contact: George Hendrickson - 202.708.0477



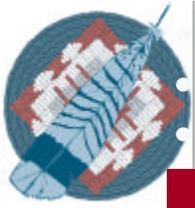
Family Self-Sufficiency

- ❑ Eligible Applicants: Public Housing Authorities (except those with major management findings)
- ❑ Program Description: Provides one year Section 8 assistance to families for whom the lack of adequate housing is a primary factor that will result in imminent placement of child(ren) to out of home care or for whom the lack of housing delays discharge of child(ren) to family;
- ❑ Amount Available: \$15 million for 2,200 vouchers/certificates (up to 100 for PHA's >500 Section 8's; up to 50 for PHA's < 500 Section 8's)



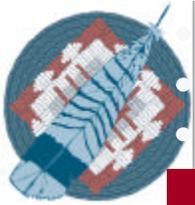
Family Self Sufficiency

- ❑ Use of Funds: Section 8 rental assistance (8% administrative)
- ❑ Due Date: July 24, 1998
- ❑ Contact: George Hendrickson - 202.708.0477



Self Help Homeownership Opportunity Program

- ❑ **Eligible Applicants:** Nonprofit national or regional organizations or consortia with capacity/experience to provide self-help housing
- ❑ **Program Description:** Assist low income (<80% of median) households to purchase homes through use of self-help and volunteer labor and community involvement in housing development. Housing development should be in a geographically diverse areas. A minimum of 30 houses must be developed.



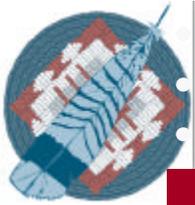
Self Help Homeownership Opportunity Program

- Amount Available: \$6.262 million (maximum of \$10,000 per house)
- Use of Funds: Funds can be used for acquisition, infrastructure, administration, planning. Cannot be used for construction/rehabilitation.
- Due Date: July 17, 1998 (expression of interest)
- Contact: Joan Morgan 202.708.3226



HUD Single Family Disposition Program

- ❑ Eligible Applicants: Government and nonprofit agencies for lease and sale program; nonprofit agencies for lease to purchase program
- ❑ **NOTE: Lease program suspended until 12/31/98**
- ❑ Program Description:
 - **Leasing Program:** Up to 10% of HUD held single family (1-4) houses can be leased by homeless programs for \$1/year (suspended until 12/31/98)
 - **Sale Program:** Properties can be purchased at 10% discount (30% discount in Revitalization areas)

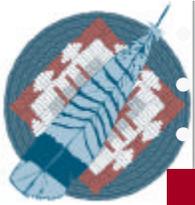


HUD Single Family Disposition Program

Program Description: (continued)

- **Lease with option to buy:** Six month lease with option to buy (at 10% discount, 30% discount in revitalization areas) if leaser receives Supported Housing Program funding. If not then can sell to PHA or maintain under lease program.

Amount Available: NA. Program does not include funding for rehab, operating or services.



Low Income Housing Tax Credit (LIHTC) (*an IRS program*)

- ❑ **Eligible Applicants:** Affordable Housing developers, typically limited partnerships or limited liability corporations. Preference or set-aside for nonprofit developer involvement.
- ❑ **Program Description:** Provides 10 years of Federal Income tax credits for the acquisition, rehabilitation or new construction of housing units affordable to households earning under 60% of median income. Typically private investors, who become “partners” in the project, purchase the credits and provide up front equity.



LIHTC

- ❑ Amount Available: \$1.25 per capita (per person) annually in each state.
- ❑ Tax Credit Equity calculation:
 - Eligible Basis X (times)
 - 130% only in “difficult to develop areas”
100% otherwise X (times)
 - Tax Credit Percentage X (times)
 - ➡ 9% new construction/rehabilitation
 - ➡ 4% eligible property (not land) acquisition
 - 10 years X (times)
 - Syndication Price (Currently .60 to .67)



LIHTC

- ❑ Required 15 year compliance and reporting period and minimum 30 years affordability (affordability period varies by state)
- ❑ Eligible for Acquisition (4%) credit basis
 - Building (not land) purchase price and related costs (for 4% credit) for buildings not “placed in service” in last 10 years



LIHTC

❑ Eligible for rehabilitation/ construction credit basis

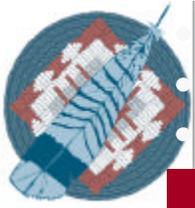
- Construction/Rehabilitation costs for residential and common space (primary use by tenants)
- Architectural, consultant, survey & engineering, environmental, appraisal, and market study costs
- Developer's fee
- Pre-development/acquisition/construction loan interest and fees
- Insurance
- Holding costs and general conditions
- Legal costs related to development
- Utility hook-up and infrastructure required for project



LIHTC

❑ NOT permitted in basis

- land acquisition and related costs
- costs of establishing partnership
- reserves and escrow's
- syndication costs
- marketing and start-up
- permanent mortgage fees
- grants and historic tax credit
- non-residential and non-low income housing residential space



Community Development Financing Institution (CDFI) <Treasury Department>

- ❑ Eligible Applicants: Non governmental controlled corporations whose primary mission is to promote community development and whose primary business is the provision of loans or development investment
- ❑ Program Description: Provides grants, equity (nonvoting shares), loans, deposits into credit unions or technical assistance for eligible financial entities to either increase investment in distressed communities OR assist



CDFI

- ❑ Program Description (cont.): individuals who have been unable to take full advantage of the financial services industry. Program requires minimum of one to one match (from non Federal sources) of similar financing as requested from CDFI. Application requires documentation of eligibility and capacity (for start-ups can be achieved through staff/board), and 5 year business plan projecting market, services, management and financial health.



CDFI

- ❑ Amount Available: \$40 million in FY1998 (note substantial increase proposed for FY1999) No more than \$2 million to any one entity (with exceptions) and no more than \$5 million over 3 years (with exceptions).
- ❑ Use of Funds: Equity, loans, and other investments in business or commercial facilities that promote community development or job retention or growth for low income people; low income housing; or other consumer lending products to assist



CDFI

- ❑ Use of Funds (continued): distressed communities, low income individuals, or others undeserved by the conventional financial market.
- ❑ Due Date: Summer, 1998
- ❑ Contact: John Carlisi, CDFI, (202) 622-8662



Bank Enterprise Award Program (BEA)

- ❑ Eligible Applicants: Insured Depository Institution as defined by Section 3(c)2 of the Federal Deposit Insurance Act
- ❑ Program Description: Provides financing to depository institutions to support CDFI's and their activities, increase investment in distressed communities, or increase services and assistance in distressed communities.
- ❑ Amount Available: \$20 million in FY1998. An applicant will receive 15% of the increased amount of investment in targeted areas over a six month period



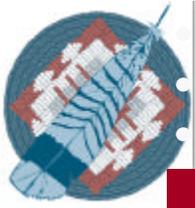
BEA Program

- ❑ Amount Available: (cont.) 33% of increase for CDFI's applying for CDFI Support Activities; 11% of increase for non-CDFI's applying for CDFI Support Activities; 15% of increase for CDFI's and 5% for non-CDFI's for anticipated increase in Development and Service Activities in distressed communities;
- ❑ Use of Funds: Equity, loans, and other investment in CDFI's or distressed communities.



BEA Program

- Date Due: Spring, 1999
- Contact: John Carlisi, CDFI, (202) 622-8662



Homeless Providers Grant and Per Diem Program For Veterans <VA>

- ❑ Eligible applicants: *States, local governments, nonprofit organizations*
- ❑ Program Description: *Provides up-front capital (up to 65%) for acquisition/rehabilitation, and/or construction of residential facilities for veterans (minimum 75% of units for veterans) or mobile service centers and on going per-diem support for services (per diem will only be given to*



Homeless Providers Grant and Per Diem Program For Veterans

- ❑ Program Description (continued):
programs funded with capital dollars.
- ❑ Amount Available: *approximately \$5 million in FY1998*
- ❑ Date Due: *early summer, 1998*
- ❑ Contact Person: *Roger Casey 202.273.8442 and 813.903.4804*



Homeless Veterans Reintegration Project

- ❑ Eligible Applicants: State and Local agencies and nonprofits
- ❑ Project Description: Assist homeless veterans to access and maintain employment
- ❑ Amount Available: \$2.5 million in FY 1998 (grants typically around \$125,000)
- ❑ Eligible Activities: Job training, Job readiness and support services to support employment



Homeless Veterans Reintegration Project

- ❑ Due Date: Early 1999
- ❑ Contact: Eileen Conners, 202.219.8421
- ❑ NOTE: This year grants focused on 75 largest cities due to restricted amounts available. Next year hope to expand program



Rural Rental and Cooperative Housing Loans and Rural Rental Assistance <Agriculture Department>

- ❑ **Eligible Applicants:** *For loans - for and nonprofit developers, Partnerships, state or local government, individuals; For rental assistance - nonprofit agencies, state and local government, for profits agreeing to limited profit*
- ❑ **Program Description:** *Loans: Provides 50 year reduced rate (1%) financing for affordable rental or cooperative housing in rural communities. About 9% awarded to nonprofits. Rental Assistance: 5 year rental assistance to low income households renewable*



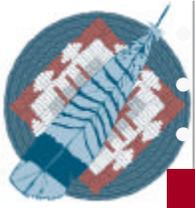
Rural Rental and Cooperative Housing Loans and Rural Rental Assistance

- Amount Available: Loans: *\$153 million in FY1997. RA: \$524 million in FY1997*
- Date Due: *Open ended (NOFA issued yearly in winter)*
- Contact Person: *Local Rural Housing Services office*



Section 502 Direct Program Home Ownership

- ❑ **Eligible Applicants:** Low and very low income home buyers (50% of median income and below)
- ❑ **Program Description:** Provides 33 year 6.75% mortgages for low and very low income home buyers, with monthly payments reduced to the equivalent of down to 1%, based on income varified annually. Home buyers get a certificate upon certification of eligibility used to assist purchase land or a home. For a \$350 fee, developer can receive forward commitment for specific property.



Department of Labor Welfare to Work Competitive Grant

- ❑ Eligible Applicants: Private Industry Councils, States and Localities, and Private Entities (including nonprofit agencies). Private Entities must submit documentation that project is consistent with PIC/political subdivision's Welfare to Work efforts
- ❑ Program Description: Assists state and local communities to provide the transitional employment assistance necessary to move hard to employ TANF recipients into lasting unsubsidized jobs. A minimum of 70% of clients must meet "Hard to Employ" definition. Emphasis on work first, innovation, community collaborations, and targeting subgroups.



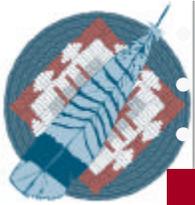
Department of Labor Welfare to Work Competitive Grant

- ❑ **Amount Available:** \$184 million (\$368 for entire FY1998; \$348 for FY1999) grant sizes are typically from \$1 to \$5 million
- ❑ **Uses of Funds:** Job readiness, placement, retention, or training services, subsidization of jobs or wages, IDA's, Intake, assessment and eligibility determination, administrative costs (up to 15%), and technology costs
- ❑ **Due Date:** July 14, 1998 (next round expected at the end of the year)
- ❑ **Contact:** Mamie D. Williams 202.219.8739



Federal Home Loan Bank Affordable Housing Program (AHP)

- ❑ **Eligible Applicants:** Federal Home Loan Bank member institutions, on behalf of project sponsor. Nonprofit or government sponsors receive extra points.
- ❑ **Program Description:** Direct subsidy or to write down the interest rate for a loan. Subsidizes projects that purchase, construct, and/or rehabilitate for low and/or moderate income home ownership or rental housing.



AHP

- ❑ Amount Available: Minimum of \$100 million total in 12 national regions
 - maximum per project varies by region
 - typically \$3,000 to \$10,000/unit
- ❑ Use of Funds: Acquisition, rehabilitation, and construction costs. Put in as direct subsidy to write down costs, downpayment or closing costs, or interest rate write down. Cannot be used for capital or operating reserves or services (however, reasonable counseling costs may be eligible). Limitations and/or reasonableness standard on developer's fees and other costs.



AHP

- ❑ Due Dates: Twice per year, varies by region.
- ❑ Contact: see attached
- ❑ Note: Conducted on a regional basis, AHP is authorized under Federal regulations but not a federal program. Nonprofit agencies must contact local member bank to apply.



Some major private sources

- ❑ Fannie Mae Foundation 212.752.6500
- ❑ Kresge Foundation 810.643.9630
- ❑ Hearst Foundation 212.586.5404



Some major reduced rate lenders

- ❑ The Enterprise Foundation
800-624-4298
- ❑ The Low Income Housing Fund
415-777-9804
- ❑ Local Initiative Support Corporation
212-455-9800



Some major reduced rate lenders

- ❑ McAuley Institute 301.588.8110
- ❑ Institute for Community Economics
413.746.8660



Pro-Forma's

Making financing make sense

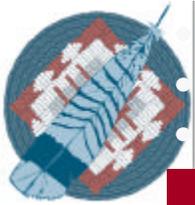
*Home Ownership Financing
for*

Shared Visions

*The Native American Homeownership,
Legal and Economic Development Summit*

prepared by The Enterprise Foundation





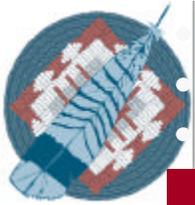
Pro-forma's

- ❑ Pro-forma's are Budgets (Revenue/ Expenses for Development/Sales)
- ❑ Explain how these budgets interrelate
 - What home buyer can afford to pay defines what, with subsidies, you have to spend to build the house
 - Explains how financing blends from acquisition/pre-development to construction to permanent



Pro-Forma's (continued)

- ❑ Can Help to calculate
 - subsidy required (for affordability to market and for “market value”)
 - Required construction financing
 - Costs typically calculated based on percent
 - ✓ developer's fee
 - ✓ contingencies
 - ✓ financing points and interest
 - ✓ home buyer downpayment/closing costs



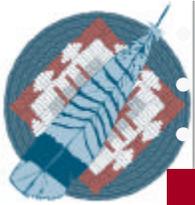
Development budget

- Revenue

- ✓ Amortizing Mortgages
- ✓ "Soft" mortgages (do not require payment)
- ✓ grants (funding from other sources that do not require repayment)
- ✓ Equity (owner's investment in property)

- Expenses

- ✓ Acquisition
- ✓ Finance/closing costs
- ✓ Other soft costs
- ✓ Infrastructure
- ✓ Construction
- ✓ Contingency



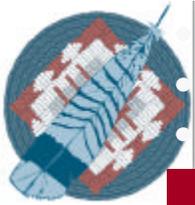
Sales Budget

- Home buyer income \times
- % of income to Principal, Interest, Taxes and Insurance (PITI)
- OR
- % of income to housing and total debt minus nonhousing debt =
- AMOUNT AVAILABLE FOR MORTGAGE PAYMENTS
- +
- Home buyer down payment +
- Grants, soft mortgages =
- FUNDING AVAILABLE TO BUILD THE HOUSE**



Common Terms/HomeOwnership

- ❑ PITI Principal, Interest, Taxes & Insurance
- ❑ Ratio's Percent of income that goes to
 - PITI (typically 28% to 33%)
 - PITI plus other debt (typically 33% to 40%)
- ❑ Mortgage Revenue Bonds Tax exempt bonds sold to investors repaid by reduced rate mortgages
- ❑ Mortgage Credit Certificates given to home buyers enabling them to reduce their income tax liability by an additional percentage of their annual interest payments



Common Terms/HomeOwnership (continued)

Cash Reserve

A common requirement that buyers have sufficient cash after closing (1 - 2 months mortgage payments)

Closing/Settlement
Costs

Costs incurred in transferring property

Earnest Money

Deposit to seller to show perspective buyer is serious

PMI

Private Mortgage Insurance (typically required for LTV > 75-80%)



Typical Home Ownership Pro-forma includes

- Development Costs
- Grant, Home Owner's Equity, Mortgage and Soft Mortgage financing to cover development costs
- Home owner affordability analysis
- May Also Include:
 - calculation of pre-development, acquisition and construction financing



Underwriting: What A Bank is Looking For

*Home Ownership Financing
for*

Shared Visions

*The Native American Homeownership,
Legal and Economic Development
Summit*

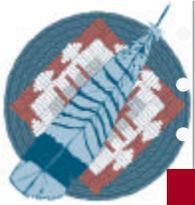
prepared by The Enterprise Foundation





Risks for Conventional Lenders

- ❑ *Small loans* cost as much to process as larger loans, but have lower fees and less return
- ❑ *Blending with government lenders and guarantors* lead to increased document review, increased legal review, increased construction inspection, increased negotiations between lenders
- ❑ *Long term affordability requirements* provide extra market risks to project viability (if they fall out of compliance), higher management costs, restrictions to resale, restrictions on long-term value, restrictions to potential market



Risks for Conventional Lenders

- ❑ *Unusual borrowers* who do not typically have great experience working with banks, have limited resources for recourse, have limited track records or histories, may need technical assistance to respond in a timely fashion to closing requirements, and can be overly affected by change in political environment
- ❑ *Resale Risk*: Restricted market (to tribal members) restricts resale value



Risks for Conventional Lenders

❑ *Loans take longer* adding to cost and, in the case of home ownership, reducing their ability to meet high volume requirements

❑ *Establishing value of property is more difficult.*

Appraisers use two methods for home ownership appraisal - cost method (total development cost); the comparable method (using neighborhood comparables); However, all measures are thrown off by the presence of government money - sometimes intentionally above value. Typically tribal lands also have fewer comparables.

❑ **Conventional products**



Underwriting: What Private Lenders Look For

- Character
- Collateral
- Credit
- Tribal Market



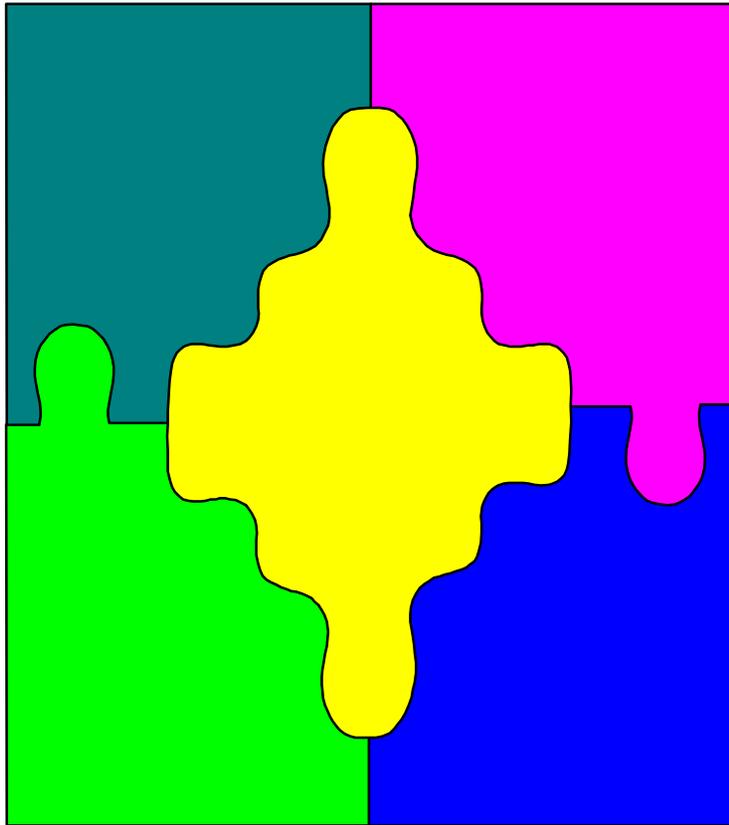
Character

- ❑ Track Record of Development Team
- ❑ Seriousness of buyer to proceed





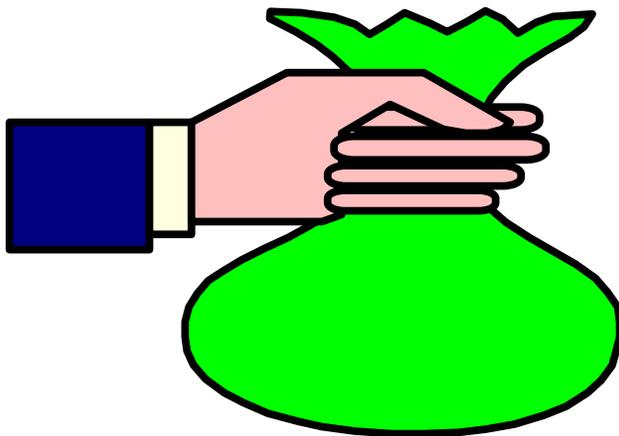
Property/Collateral



- Loan To Value Ratio
- Lien Priority/Good Title
- Ability to Use Property for proposed purpose
- Quality of Design/Materials
- Market Analysis
- Additional Collateral Requirements
- Tribal Land Status



Credit



- Reasonableness of Development Budget
- Conditions of other loans/grants/equity
- Ability to sell loan in the secondary market
- Credit history of borrower



Community Reinvestment Act

□ C

□ R

□ A

- Borrowers in unconventional markets (e.g... Tribal lands) or low income areas should examine Home Mortgage Disclosure Act (HMDA) data, ratings by oversight agencies, and know expansion plans of local lenders.

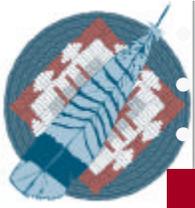


Track Record of Development Team

□ Developer

- Previous Projects
- Two to Three References
- Financial Statements
- Resume of Key staff and principals

- (if nonprofit or IHA) Board of Directors
- Upcoming project
- Relations with Tribe
- Relations with BIA



Track Record of Development Team

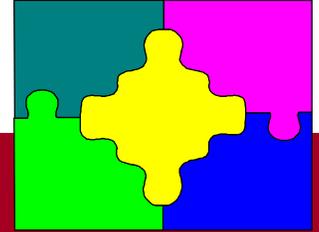
Resumes of:

- Attorney
- Architect
- Engineer
- Development Consultant
- Environmental Consultant
- Accounting Firm
- Sales Agents
- General Contractor
- Construction Manager *(may be same as architect)*
- Housing Counselor/ Home Buyer Trainer
- Other funders *(primarily your experience with those funders)*



Seriousness of Buyer to Proceed

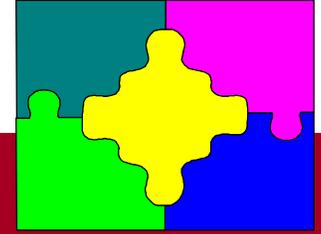
- Home ownership pre-screening and counseling
- Home ownership training
- Home buyer has required funds available
- Home buyer is prepared to settle down
- Home buyer understands advantages and obligations of home ownership
- Creditworthiness of buyer
- Buyer participation in home buyer counseling



Loan To Value Ratio

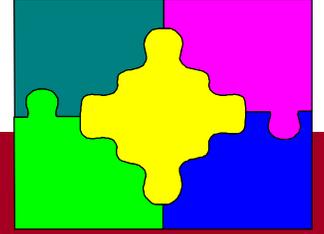
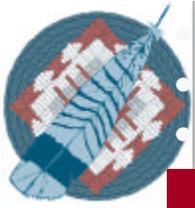
❑ Commercial and Savings Banks Maximum Loan to Value (LTV) ratios:

- Raw Land Acquisition 65%
- Land Development 75%
- Improved property 85%
- Permanent Residential SF 75-80% *w/o insurance*
- Permanent Residential SF 97%+ *w/insurance*



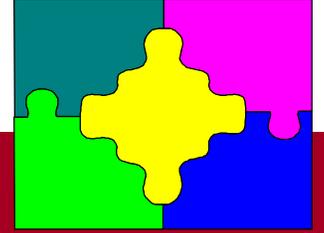
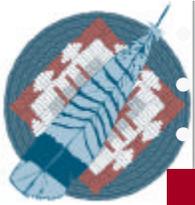
Loan to Value Ratio

- ❑ Government policies on LTV differ and are affected by:
 - Goals of program (e.g. often to “bring up” an area, government will provide funding above 100% LTV, to seed private investment)
 - Repayment and risks desired
 - Desire to leverage private funds
 - Target population
 - Price of homes and ability of target market to cover closing costs



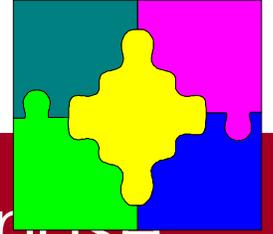
Loan to Value

- ❑ Current bank products typically permit loan to value to 95% on first mortgage (97% in some cases) with MI, up to 100% on combined amortizing mortgages, and above 100% with soft non-amortizing debt.
- ❑ Value is established by licensed appraiser **selected by lending institution.** (*note: appraisal not required for some HUD guarantee programs*)



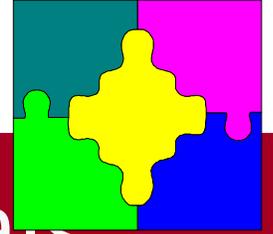
Lien Priority/Good Title

- Title Insurance (*for no less than the principal amount of the mortgage*) (*note: some HUD loan guarantee programs do not require title insurance*)
- No legal proceedings against property
- Review of property survey
- Security position (*typically government money takes position behind private financing, even if private financing is lesser amount*)
- Property/Liability/Flood hazard insurance equal at least to the value of the mortgage
- Timeline and process for BIA approval and TSR, Slide 16
if required



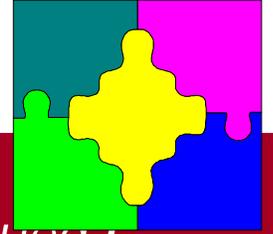
Ability to Use Property for Proposed Purpose

- Tribal zoning or land use ordinances
- Review of Property Survey
- Access to utilities
- Identification and explanation of any easement on property or easements required on other properties
- Environmental concerns (asbestos, lead paint, underground storage tanks, radon, etc..) Fonsi, NEPA
- Restrictions placed on property use based on sources/types of public finance that may survive foreclosure



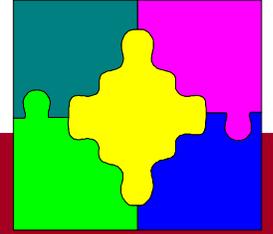
Quality of Design and Materials

- Rehabilitation/construction standards meet tribal building/zoning codes or a national uniform standard adopted by the tribe
- Project design by licensed architect familiar with housing type and market conditions
- Major capital items in working repair. Current rehab/construction sufficient to keep in working condition. Current condition verified by engineer/architect report
- Design and materials meet local market standards, preferences, and climatic conditions



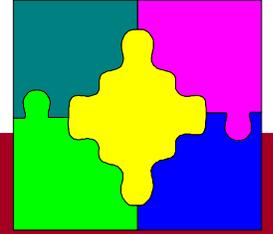
Quality of Design and Materials *(continued)*

- Termite Inspection report
- For moderate or substantial rehabilitation both “as is” and “post rehabilitation” appraisals required (*note - appraisals not required for some HUD mortgage guarantee programs*)
- Qualified construction/rehabilitation inspection required



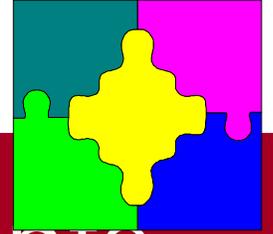
Market Analysis

- ❑ Markets with vacancy rates over 10% or oversupply of (projected) units, high number of foreclosures, or with large number of units scheduled for construction beyond projected absorption rates require exceptions to be approved
- ❑ What are tribal members used to paying for housing costs
- ❑ Markets with high percentage rental (particularly in single family housing stock) will require more detailed marketing home ownership marketing plan and, possibly, units to be pre-sold



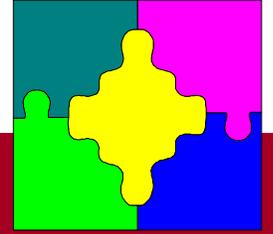
Market Analysis *(continued)*

- ❑ Access to local commercial districts, schools, day care, public transportation, parking, recreational facilities, health care, and employment opportunities are all considered
- ❑ Properties in markets heavily dependent on a single industry or military base require analysis of market affect of industry change
- ❑ Evidence of crime and drug activity requires additional security in design/management plan/
Indian housing plan



Additional Collateral Requirements

- Assignment of leases
- Mortgage Insurance
- Recourse to Developer during construction
- Third Party Guarantees
- Security Interest in personal property (under *Uniform Commercial Code*)
- Clear Title



Tribal Land Status

- Individual trust or restricted land, tribal trust land, or fee simple land
- Has tribe adopted resolutions and signed agreements providing rights of lenders to inspect property, foreclose and evict
- Availability of infrastructure - involvement and responsiveness of BIA and IHS
- Tribal laws affecting business transactions

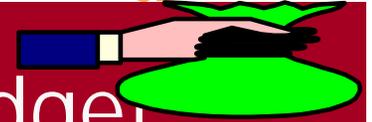


Reasonableness of Development Budget

- ❑ Public lenders often put limits on development costs and costs for individual items
- ❑ Reasonableness of contractual costs (*attorney, architect, engineer, consultant, etc.*) some government agencies keep data base
- ❑ Public lenders often put limits on developers fees
 - Note: Fees for home ownership (5-10%) are typically lower than fees for rental (8-15%)
 - Note: Developers fees should be based on business plan goals for increasing capacity



Reasonableness of Development Budget



- ❑ Acquisition (land lease) costs are often restricted and may require an appraisal to be covered
- ❑ Costs of construction financing (note: if costs are high, government/foundations/intermediaries work to create lower cost construction financing)



Reasonableness of Development Budget



- Reasonableness, reliability, and justification for hard costs
- Reasonableness of contingencies (*note: some local governments have minimum and maximum contingencies for rehab and new construction*)
- Reasonableness of construction schedule and related costs
- Reasonableness of soft costs (*many government programs put cap on architect, attorney, and other costs*)



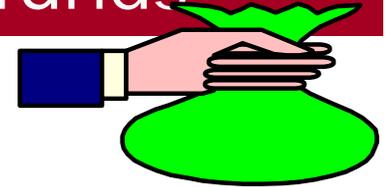
Home Buyer Debt Ratio's



- ❑ For home ownership - ratios of 28% to 33% for PITI and 35% to 40% for total housing costs and debt are typically allowed. However, one should go by local market, rather than maximum allowed



Conditions of other loans/grants/equity funds



- Term of conditions
- Required lien position
- Ability to have additional debt
- Home buyer income restrictions
- Ability of owner/developer to meet requirements
- As affects:
 - potential uses
 - reporting and monitoring requirements
 - required combined loan to value ratios
 - required Home buyer Debt Ratio's
 - resale restrictions



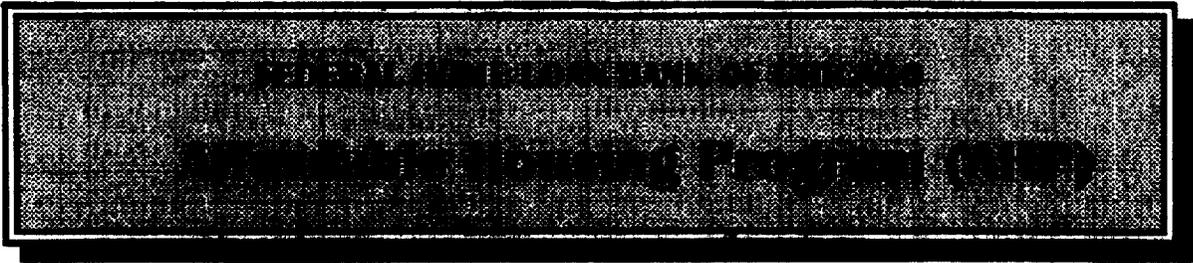
Conditions of other Loans/Grants/Equity Funds

- Fair Housing Requirements, as evidenced in marketing plan
- Affect of noncompliance on any conditions of bank loan
- How requirements interact/conflict with bank requirements
- Ability to cooperate on inspections and monitoring



Credit History of Borrower

- ❑ Typically credit score of over 550 required
- ❑ While underwriting varies by product, typically no more than 2 over 30 days delinquencies in the last year or 1 over 60 days delinquency permitted
- ❑ Will accept nontraditional methods for establishing credit (rent, phone/utility bills, etc.)
- ❑ Pre- and Post-purchase counseling & training is a requirement for most low income loan programs
- ❑ Typically programs to assist those not yet credit worthy to clean credit is desirable



AHP Description

The Affordable Housing Program (AHP) is a subsidy fund designed to assist in the development of affordable housing for low and moderate income households. The Chicago Bank contributes a minimum of 10% of its previous year's net income to the AHP each year. In 1999 the Bank will have approximately \$10 million in subsidy funds available for its competitive and non-competitive programs. The Bank's non-competitive program, Downpayment Plus, is available district-wide to all its members for downpayment and closing cost assistance.

Access to Competitive AHP Funds

Financial institutions in Illinois and Wisconsin that hold stock in the Chicago Bank can apply for AHP funds. For 1999 approximately \$8.5 million will be allocated to the competitive program. Member institutions are encouraged to work with non-profit organizations and public agencies in developing AHP applications. A district-wide competition is held twice a year to award AHP funds. **The deadline for the first round of competition for 1999 is 5:00 p.m. Thursday, April 1. The deadline for the second round of competition for 1999 is 5:00 p.m. Friday, October 1.**

The subsidy is provided in the form of a direct payment through the member to reduce the cost of the housing, or, in special circumstances, as a subsidized advance with terms ranging from one month to 20 years.

Program Requirements

1. Projects must demonstrate financial feasibility and a reasonable expectation of funding commitments from other proposed sources.
2. Projects must be ready to draw down funds within 12 months of approval or demonstrate the start of construction or rehabilitation within 12 months and draw funds within the following two years.
3. The value of the subsidy must be passed through to the end recipient.
4. The project must comply with fair housing laws and affirmatively promote fair housing.
5. Members and sponsors will be required to file periodic reports on the use of the AHP funds.
6. Unused or improperly applied AHP funds will be recaptured.

Eligible Uses of Subsidy

AHP subsidies must be used for one of two broad purposes:

1. To finance the purchase, construction and/or rehabilitation of owner-occupied housing for families with incomes at or below 80% of area median income; or
2. To finance the purchase, construction and/or rehabilitation of rental housing, at least 20% of the units of which will be occupied by, and affordable to, households with incomes at or below 50% of area median income.

Examples of eligible uses include downpayment assistance, gap financing, and mortgage rate assistance.

Scoring Criteria:

The Bank will use the following criteria to evaluate each AHP application:

- Donated Properties (5 points)
- Nonprofit or Public Sponsor (10 points)
- Targeting (20 points)
- Empowerment (10 points)
- Homeless Housing (5 points)
- Subsidy Per Unit (15 points)
- Community Stability (10 points)
- District Priority #1 - Member Financial Participation, Community Involvement and Economic Diversity (15 points)
- District Priority #2 - Special Needs or First Time Homebuyers (10 points)

Subsidy Limitations

1. Projects seeking a spread exceeding 300 basis points, including origination and servicing charges, may be excluded from the competition.
2. The Bank will limit the amount of subsidy a member may apply for to 25% of the available subsidy for any one round. Consortium and multi-member projects where AHP funds are broadly distributed over multiple jurisdictions are exempt from this restriction.
3. The Bank will limit the amount of subsidy per project to \$400,000. Consortium and multi-member projects where AHP funds are broadly distributed over multiple jurisdictions are exempt from this restriction.
4. The Bank may deny funds for projects submitted to more than one Federal Home Loan District Bank if the projects are the same or substantially similar.
5. Though institutions applying for membership may submit AHP applications, the requesting institution must be a member of the Bank at the time of disbursement.

Assistance from Community Investment Staff

The Bank's Community Investment staff is available to assist members and non profit sponsors in developing an application for AHP funds, in determining project feasibility and the most appropriate method for financing the project.

Other Programs Offered by the FHLB of Chicago

Community Investment Program (CIP): The Bank offers a below market advance program designed to finance housing for low and moderate income households, or to finance commercial and economic development projects that benefit low and moderate income households and/or neighborhoods. The Bank also issues CIP Letters of Credit (LOCs) for collateralization of public unit deposits, credit enhancement and other purposes such as performance guarantees. **For more information please refer to the CIP Fact Sheet.**

Downpayment Plus Program: The Bank provides grants of up to \$3,000 per household to cover down payment, plus closing costs, plus counseling costs for low and moderate income homebuyers. The Bank reimburses participating members who originate first mortgage loans for eligible households. **For more information, please refer to the Downpayment Plus Fact Sheet.**

For additional information or assistance, contact:

Charles M. Hill, Sr.	(312) 565-5705
Leslie Pilot-Gatton	(312) 565-5718
Scott A. Stewart	(312) 565-5725

**Federal Home Loan Bank of Chicago
Community Investment Department
111 E. Wacker Drive, Suite 700
Chicago, Illinois 60601**

Home Ownership Project

Answers?

What is the name of your project? Harvest
 Developer Name? Native American TDHE
 Home many units will your project have? 20

What is the average income you expect resident to have? \$ 19,500
 Area Median Income \$ 40,000

Source of Home Buyer First Mortgage First National Bank
 Interest Rate 6.90%
 Term 30
 Percent of Income to housing expenses 26.00%
 Percent of Income to Total Debt 33.00%

Is the Down Payment a set cash amount? If so amount. No
 Is the Down Payment a percent of first mortgage amount? If so %. No
 Is the Down Payment a percent of total purchase price? If so % 2.00%
 Will the home buyer have any monthly taxes or fees? If so, amount \$ 10.00
 Will the home buyer have monthly required reserve payments? Amount? \$ 15.00

Financing Sources

What are the subsidy sources?
 Please place in order the funds are available

Source	Amount/Unit	Total Amount	Acq. Prc.			When Available		
			development	Construction	Permanent			
1 NAHASDA	\$ 8,000	\$ 160,000	Yes	Yes	Yes			
2 AHP	\$ 7,000	\$ 140,000	Yes	Yes	Yes			
3 State Home	\$ 8,000	\$ 160,000	No	Yes	Yes			
4 Other	\$ 0	-						
5 Other	\$ 0	-						

Do any of the financing sources require home buyer repayments?
 If "Yes" which ones? (in order or lien priority)

	Interest Rate	Term	When Available	
			I-Interest Only	N-Nonamortizing
Yes				
NAHASDA	1.0%	10	I	
AHP	1.0%	5	N	
State Home	1.0%	15	N	

What are construction financing sources?

Bank National	\$ 759,036
Enterprise Foundation	\$ 200,000
State Loan	\$ 100,000

Native American Tribe

of units **20**

Project Name **Harvest**

11/11/11 11:00 AM

DEVELOPMENT COSTS

ACQUISITION	total	per unit
Land	\$ -	\$ -
Title and Recording	\$ 2,000	\$ 100
TOTAL	\$ 2,000	\$ 100

PRE-DEVELOPMENT

Appraisal	\$ 2,000	\$ 100
Soil tests	\$ 2,000	\$ 100
Filing Fees	\$ 200	\$ 10
Architect	\$ 40,000	\$ 2,000
Survey	\$ 2,000	\$ 100
Phase I/Phase II Environmental	\$ 4,000	\$ 200
Pre-development interest	\$ 282	\$ 14
Pre-development legal	\$ 4,000	\$ 200
Other	\$ -	\$ -
TOTAL	\$ 54,482	\$ 2,724

OTHER SOFT COSTS

Construction Supervision (Arch.)	\$ 20,000	\$ 1,000
Building Permits	\$ -	\$ -
Acq/Pre-Dev. Interest	\$ 282	\$ 14
Construction Interest	\$ 29,271	\$ 1,464
General Conditions	\$ 5,000	\$ 250
Insurance During Rehab	\$ 10,000	\$ 500
Market Study	\$ 4,000	\$ 200
Legal and Accounting	\$ 15,000	\$ 750
Marketing	\$ 5,000	\$ 250
Home Buyer Preparation	\$ 5,000	\$ 250
Other	\$ -	\$ -
Development Fee 6.0%	\$ 91,622	\$ 4,581
TOTAL	\$ 185,176	\$ 9,259

New Construction/Rehabilitation

Landscaping & Site Work	\$ 30,000	\$ 1,500
Water and Sewer	\$ 100,000	\$ 5,000
Construction	\$ 1,160,000	\$ 58,000
Contingency 7.5%	\$ 87,000	\$ 4,350
TOTAL	\$ 1,377,000	\$ 68,850

TOTAL Costs **\$ 1,618,658** **\$ 80,933**

If purchase price is different from TOTAL COSTS then enter amount **NO**

BUYER'S CLSING CSTS **2.0%** **\$ 32,373** **\$ 1,619**

TOTAL **\$ 1,651,031** **\$ 82,552**

Are buyer's closing costs in financing? **Yes**
OR paid by the home buyer? **No**

Construction Loan Assumptions

Percent of Developer's fee paid after construction?	100.0%
Percent of Attorney's fees paid after construction?	20.0%
Percent of Home Buyer Prep. paid after construction?	100.0%
Other Costs not needed for Construction Loan?	\$ -

FINANCING

ACQUISITION/PRE-DEVELOPMENT

NAHASDA	term	\$ mnths	\$ 56,482	int. rate	1.0%
-	term	\$ mnths	\$ -	int. rate	2.0%
-	term	\$ mnths	\$ -	int. rate	2.0%
TOTAL			\$56,482		

CONSTRUCTION FINANCING*

Bank National	term	\$ month	\$ 759,036	int. rate	8.0%
Enterprise Fo	term	\$ month	\$ 200,000	int. rate	8.0%
State Loan	term	\$ month	\$ 100,000	int. rate	1.0%
NAHASDA	term	\$ month	\$ 160,000	int. rate	2.0%
AHP	term	\$ month	\$ 140,000	int. rate	2.0%
State Home	term	\$ month	\$ 160,000	int. rate	2.0%
-	term	\$ month	\$ -	int. rate	2.0%
-	term	\$ month	\$ -	int. rate	2.0%
TOTAL			\$ 1,219,036		

PERMANENT FINANCING/TOTAL

First Mortgage	\$ 1,158,658	\$57,933
NAHASDA	\$ 160,000	\$8,000
AHP	\$ 140,000	\$7,000
State Home	\$ 160,000	\$8,000
Other	\$ -	\$0
Home Buyer DP	\$32,373	\$1,619
Closing Csts frm hme byr	\$0	\$0
TOTAL	\$ 1,651,031	\$82,552

PERMANENT FINANCING/PER UNIT AVGR

First National Bank	\$57,933
NAHASDA	\$8,000
AHP	\$7,000
State Home	\$8,000
Other	\$0
Home Buyer paid dp & cc	\$1,619
TOTAL	\$82,552

AFFORDABILITY ANALYSIS

	Payment
First Mortgage	\$57,933 \$381.55
Second Mortgage	\$ 8,000 \$ 6.67
Third Mortgage	\$ 7,000 \$ -
Fourth Mortgage	\$8,000 \$ -
Monthly Fees/Taxes	\$ 10.00
Reserve Fund	\$ 15.00
Total Housing Costs	\$413.21
MP/Income	26.00%
INCOME REQUIRED	\$19,071
Median Income	\$30,000
% Median	63.57%



TITLE VI LOAN GUARANTEE PROGRAM

Presented By

IHA MANAGEMENT SYSTEMS, INC.
PHOENIX, AZ





GUIDING PRINCIPLES

- ❑ NAHASDA STATUTE - TITLE VI
- ❑ REGULATIONS - 24 CFR 1000
SUBPART E
- ❑ NOTICE and NOFA



NAHASDA - TITLE VI

- Sec. 601 - Authority and Requirements**
- Sec. 602 - Security and Repayment**
- Sec 603 - Payment of Interest**
- Sec. 604 - Training and Information (e.g., IHAMS)**
- Sec. 605 - Limitation on Amount of Guarantees**
- Sec. 606 - Effective Date**



REGULATIONS 24 CFR SUBPART E

- Defines Eligible Issuers/ Borrowers/Lenders
- Tribal Approval and Certification of Need for Guarantee
- HUD Conditions
- Limit on Obligations
- Issuer Financial Capacity
- Repayment contract acceptable to HUD
- Other eligible costs
- Application procedure
- Application requirements
- HUD review of application
- Reasons for HUD disapproval/reduction of amount requested
- Timeframe for approval
- Amending Guarantee
- Allocation of Guarantees
- HUD monitoring



NOTICE OF TITLE VI LOAN GUARANTEE DEMONSTRATION PROGRAM

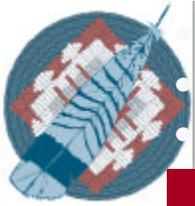
- ❑ To develop models of affordable housing, while increasing access to private capital, economic growth, and encourage new participation of financial institutions.
- ❑ Applications may be submitted to HUD any time - on a first-come, first served basis.
- ❑ Defines:
 - Eligible Activities (3)
 - Eligible Borrowers
- ❑ Application Submission Requirements:
 - Anytime
 - Contain information in 24 CFR 1000.424
 - Contain Subpart A Certifications
 - Environmental Review where applicable.



CAPACITY-BUILDING GRANT

CAP-Grant Funds Awarded to IHAMS
are to:

- ❑ Strengthen Economic Feasibility of Title VI Guaranteed Projects
- ❑ Directly Enhance the Security of Guaranteed Loans
- ❑ Finance Affordable Housing and Related Activities
- ❑ Demonstrate Economic Benefits (e.g., increased housing availability, job creation, etc.)
- ❑ Attainment of Indian Housing Plan Goals and Objectives



CAPACITY BUILDING GRANT

- ❑ NOFA Dated July 23, 1998
- ❑ 4 Million Noted In The NOFA - Reduced to 3 Million Prior To TAP Award
- ❑ IHAMS Was Selected AS The Technical Assistance Provider
- ❑ Tribes/TDHE's Can Access The Available Assistance In One Of Two Ways:





ACCESS TO TAP FUNDING

IHAMS

- IHAMS Conducts Assessment
- Develops TAP and Budget
- NONAP Approves TAP and Budget
- Provides Assistance and Training In Accordance With The Technical Assistance Plan

SUB-RECIPIENT

- IHAMS Conducts Assessment
- Develops TAP and Budget
- NONAP Approves TAP and Budget
- Tribe/ TDHE Signs Sub-recipient Agreement with IHAMS
- IHAMS Assists in RFP Development for Outside Consultant
- IHAMS Assists In Response Evaluation
- Outside Consultant Selected
- Consultant Provides Assistance In Accordance With The Technical Assistance Plan



TAP FUNDING ACCESS CONTINUED

- ❑ IHAMS Monitors Consultant's Progress
- ❑ Tribe/TDHE Requests Pass Through Funds Through IHAMS for Payment of Consultant(s)
- ❑ IHAMS Draws Down Funds through LOCCS
- ❑ IHAMS Monitors Expenditure of Pass Through Funds
- ❑ Tribe/TDHE Reports to IHAMS In Accordance With Subrecipient Agreement



TECHNICAL ASSISTANCE PLAN

- Management Strategy
- Work Plans
- Establishment of Priorities
- Location of Activities
- Anticipated Improved Performance
- Methods for Measuring Programmatic Success
- Tasks and Sub-tasks For Each Program
- Implementation Schedule
- Budgetary Needs to Accomplish Tasks
- Staffing Plan
- Administrative Budget



IHAMS STANDARD TRAINING

- PROJECT DEVELOPMENT PLANNING
- CONSTRUCTION DOCUMENT DEVELOPMENT
- CONSTRUCTION INSPECTION PROCEDURES
- HANDICAPPED ACCESSIBILITY - VISITABILITY
- ENVIRONMENTAL ASSESSMENT
- NAHASDA TRAINING



OUTSIDE FUNDING SOURCES

- ❑ Low Income Housing Tax Credits
 - Usually State Administered
 - Requires Locating Interested Investor
- ❑ Tax Exempt or Taxable Bonds
 - Sold by the Tribe or TDHE
 - Fixed or Variable Rate
 - Structured to cover some financing costs
- ❑ Pooled Financing
 - Variable Methodologies

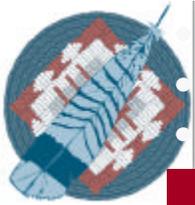


MORE OUTSIDE FUNDING

□ Rural Development

● Rural Housing Service

- ✓ Administered by the US Dept of Agriculture
- ✓ Section 502 - Homeownership Loans
- ✓ Section 504 - Home Improvement/Repair
 - Loans and Grants



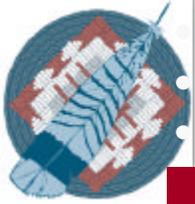
STILL MORE OUTSIDE FUNDING

□ State Housing Funds

● Primarily CDBG Grants

✓ State Administered

- Loans For Development Of:
- Homeownership Units
- Rental Units (Permanent and Transitional)
- Emergency Shelters & Temporary Housing Units

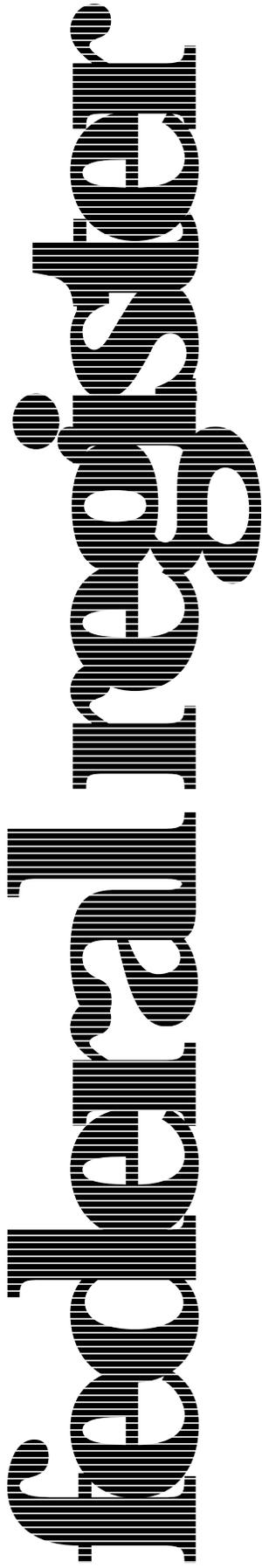


MORE ABOUT STATE HOUSING FUNDS

- Pre Development Expenses

□ Grants For:

- Development Project Planning
- Community Housing Plans
- Tenant Based Rental Assistance Programs
- Owner-Occupied Housing Rehab Programs
- Operating Subsidies for Emergency and Transitional Housing Programs



Thursday
July 23, 1998

Part III

**Department of
Housing and Urban
Development**

Office of the Assistant Secretary for
Public and Indian Housing, Notice of
Title VI Loan Guarantee Demonstration
Program; Notice

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4384-N-01]

**Notice of Title VI Loan Guarantee
Demonstration Program**

AGENCY: Office of the Assistant
Secretary for Public and Indian
Housing, HUD.

ACTION: Notice.

SUMMARY: The FY 1998 HUD Appropriations Act provided a \$5 million appropriation for the funding of a demonstration program which could guarantee up to \$45 million in Title VI loan guarantees. This notice announces HUD's loan guarantee demonstration program under Title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). Through the demonstration program, HUD is seeking to develop models which will provide innovative ways to enhance development of affordable, accessible, and visitable housing in Indian areas, while increasing access to private capital, economic growth, and the investment and participation of traditional financial institutions not customarily serving Indian reservations and other Native American areas. Indian tribes and Tribally Designated Housing Entities (TDHEs) are encouraged to form partnerships (financial, service/supportive and economic development oriented) with investors or financial institutions and submit model Title VI demonstration projects to be evaluated in accordance with criteria listed in this notice. Applications for Title VI loans may be submitted to HUD at any time during the demonstration program, and will be processed on a first-come, first-served basis.

EFFECTIVE DATE: This notice is effective July 23, 1998.

FOR FURTHER INFORMATION CONTACT: Karen Garner-Wing, Director, Office of Loan Guarantee, Department of Housing and Urban Development, 1999 Broadway—Suite 3390, Box 90, Denver, CO 80202-3390; telephone (303) 675-1600 (this is not a toll free number). Persons with speech or hearing impediments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

**I. Authority; Background; Definitions;
and Eligibility**

(A) Authority

Title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA)

(25 U.S.C. 4101 *et seq.*); Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105-65; 111 Stat. 1344, 1355, approved October 27, 1997).

(B) Background

Title VI of NAHASDA (entitled "Federal Guarantees for Financing for Tribal Housing Activities") establishes a Native American loan guarantee program. Title VI authorizes the Department to guarantee financial obligations issued by Indian tribes or their Tribally Designated Housing Entities (TDHEs) to finance affordable housing activities as defined in Title II of NAHASDA and outlined in their Indian Housing Plan (IHP). To assure the repayment of notes or other obligations, NAHASDA requires Title VI applicants to pledge their Indian Housing Block Grant (IHBG) funds and other security as required by the Department.

**(C) Applicability of 24 CFR Part 1000,
Subpart E**

HUD's regulations implementing Title VI of NAHASDA are located at 24 CFR part 1000, subpart E. Unless specifically referenced in this notice, these regulations do not apply to the Title VI Demonstration Program.

(D) Definitions

(1) Definitions in 24 CFR part 1000, subpart E. Unless otherwise defined in this notice, the definitions set forth in 24 CFR part 1000 apply to the Title VI Demonstration Program.

(2) Definition of "Visitability". The following definition also applies to the Title VI Demonstration Program:

Visitability means at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk; the entrance door and all interior passage doors provide a minimum 36-inch clear opening. Allowing use of 36-inch doors is consistent with the Fair Housing Act (at least for the interior doors), and may be more acceptable than requiring the 3 foot doors that are required in fully accessible areas under the Uniform Federal Accessibility Standards for a small percentage of units.

**(E) Eligible Activities for the Title VI
Demonstration Program**

Loans and bond issuances are authorized and guaranteed by HUD for the purposes of financing affordable housing activities as planned in the Tribes/TDHEs IHP. For the FY 1998 demonstration program, Title VI activities shall be limited in scope as

described in this notice. The activities authorized in this notice are those which include:

(1) *Indian housing assistance.* The provision of modernization or rehabilitation for housing previously developed or operated pursuant to a contract between the Secretary of HUD and an Indian Housing Authority.

(2) *Development.* The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities.

(3) *Model Activities.* Housing activities under model programs that are designed to carry out the purposes of the NAHASDA and are specifically approved by the Secretary and/or approved in connection with the IHP process.

In undertaking any of the above activities, program participants should design construction, rehabilitation or modifications to buildings and facilities to be accessible and visitable for persons with disabilities and others who may also benefit, such as mothers with strollers or persons delivering appliances. In providing technical assistance, educational opportunities, and loans, training and informational materials related to program activities should be made available in appropriate video, audio, or braille formats, if approved by HUD. If job opportunities are provided through this program, reasonable efforts should be made to employ Native Americans with disabilities in a variety of jobs. Employers should make reasonable accommodations for employees with disabilities.

**(F) Eligible Borrowers to Participate in
the Demonstration Program**

To be eligible to participate in the demonstration program, a borrower must:

(1) Be a Federally recognized Indian tribe or TDHE that is an approved recipient for IHBG funds;

(2) Have experience with complex financial transactions;

(3) Certify that the borrower was unable to obtain financing without the use of this guarantee and cannot complete such financing consistent with the timely execution of the program plans without such guarantee;

(4) Have tribal approval that authorizes the borrower to issue or undertake financial obligations;

(5) Have the capacity to repay the obligation (i.e. to meet the debt service requirement); and

(6) Pledge IHBG grants as security. Although a borrower is required by the NAHASDA to pledge current and future IHBG funds as collateral for the Title VI guarantee, the borrower will be required to furnish additional security to satisfy HUD requirements. Examples of additional security include:

(a) *Funding Reserves.* IHBG or other grant funds may be used to provide capital reserves to provide resource funds to enhance the economic feasibility of a project's early years. This capital advance can be made as a loan, with the intent to repay funds when the project begins to earn sufficient income.

(b) *Over-Collateralization.* The use of grant funds may be structured so that project-generated cash flow will be sufficient to cover debt service and directly enhance the guaranteed loan. One technique for accomplishing this approach is over-collateralization.

An example of this is where grant funds are combined and the borrower makes affordable housing loans to tribal members at an interest rate equal to or greater than the rate on the Title VI loan. The total loan portfolio would be pledged to the repayment of the Title VI loan.

(c) *Letter of Credit.* IHBG and Title VI Loan Guarantee Capacity-Building Grants (see the separate Notice of Funding Availability published elsewhere in today's **Federal Register**) may be used to cover the cost of a letter of credit, issued in favor of HUD. This letter of credit is then available to fund any amounts due on the Title VI loan provided a default should occur and debt obligations remain outstanding after 30 days.

(d) *Interest Rate Subsidy.* Title VI funds may be used to provide an interest rate subsidy to make financing affordable for low-income families or the borrower. NAHASDA funds could be used to "buy down" the interest rate or make full or partial interest payments, allowing the reduction and enhancement of the long term

affordability of homeownership for eligible families and for borrowers to carry out approved affordable housing activities.

II. Submission Requirements

Applications may be submitted to HUD at any time and must contain, at a minimum, the information required under 24 CFR § 1000.424. Applicants are reminded that § 1000.424(d)(6) requires the borrower to submit a certification of compliance with all of the requirements described in 24 CFR part 1000, subpart A, including the environmental review requirements set forth in §§ 1000.18, 1000.20, 1000.22, and 1000.24. No funds may be committed to a project (other than for certain nonphysical activities) before the completion of the environmental review and, where the Indian tribe assumes responsibility for the environmental review, before approval of the request for release of funds and related certification required by sections 105(b) and 105(c) of NAHASDA.

III. Clarifications

HUD will contact an applicant to clarify an item in the application. Applicants must submit clarifications in accordance with the request made by HUD or the Department will reject the application as incomplete.

IV. Notification of Title VI Approval or Disapproval

Upon completion of its review, HUD will notify the Title VI applicant of HUD's decision to approve or disapprove the proposed demonstration project, with an explanation of the reasons for the disapproval. Those applications that HUD approves will include a Firm Commitment notice from HUD to the applicant. Applicants will have 30 days in which to submit an appeal in the event of a disapproval. The appeal must include a narrative statement, with supporting documentation, that addresses the issues in HUD's disapproval and serves to mitigate HUD's reasons for disapproval.

V. Findings and Certifications

(A) Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The OMB approval number, once assigned, will be published in the **Federal Register**. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

(B) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

(C) Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order.

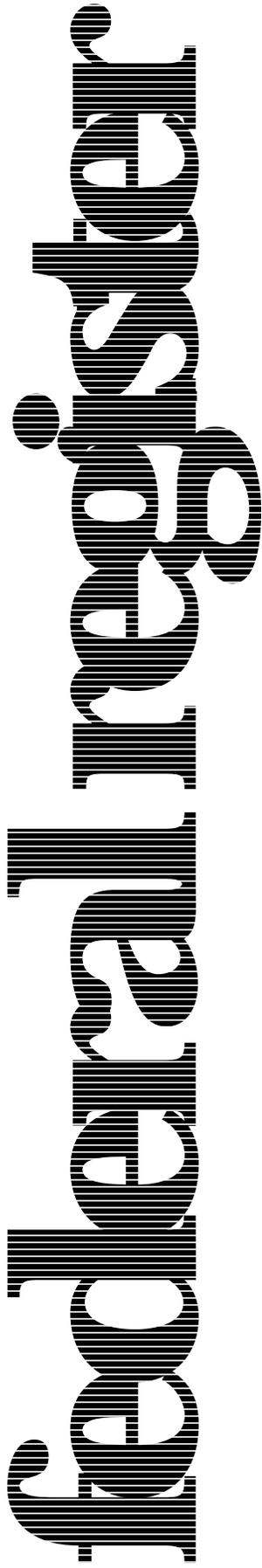
Dated: July 20, 1998.

Deborah Vincent,

General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 98-19675 Filed 7-20-98; 2:24 pm]

BILLING CODE 4210-33-P



Thursday
July 23, 1998

Part IV

**Department of
Housing and Urban
Development**

Office of the Assistant Secretary for
Public and Indian Housing, Notice of
Funding Availability for Title VI Loan
Guarantee Capacity-Building Grants;
Notice

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4384-N-02]

**Notice of Funding Availability for Title
VI Loan Guarantee Capacity-Building
Grants**

AGENCY: Office of the Assistant
Secretary for Public and Indian
Housing, HUD.

ACTION: Notice of funding availability
(NOFA).

SUMMARY: This NOFA announces the availability of \$4 million for assistance to organizations providing capacity building technical assistance to Indian tribes or Tribally Designated Housing Entities (TDHEs) that have been granted a loan guarantee under the Title VI Demonstration Program. Under the demonstration program (which HUD is announcing through a separate notice published elsewhere in today's **Federal Register**), HUD will guarantee the financial obligations issued by Indian tribes and TDHEs to finance affordable housing activities authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). This document sets forth the application instructions for the grants made available under the NOFA.

APPLICATION DUE DATES: Completed applications (an original and one copy) must be submitted no later than 4:00 pm, Mountain time, on August 24, 1998 to the address shown below.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all applicants, HUD will treat as ineligible for consideration any application that is not received by the application deadline. Applicants should submit their materials as early as possible to avoid any risk of loss of eligibility because of unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent by facsimile (FAX) transmission.

ADDRESSES AND APPLICATION SUBMISSION PROCEDURES: *Addresses:* Completed applications (one original and one copy) must be submitted to: National office of Native American Programs—Office of Loan Guarantee, Department of Housing and Urban Development, 1999 Broadway—Suite 3390, Box 90, Denver, CO 80202-3390; ATTN: Title VI Demonstration.

Application Procedures: Mailed Applications. Applications will be considered timely filed if post marked on or before 4:00 p.m. on the application due date and received at the

address above on or within five (5) days of the application due date.

Applications Sent by Overnight/ Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications. Hand carried applications delivered before and on the application due date must be brought to the specified location and room number between the hours of 8:30 am to 4:00 pm, Mountain time.

FOR FURTHER INFORMATION AND TECHNICAL ASSISTANCE CONTACT: Karen Garner-Wing, Director, Office of Loan Guarantee, Department of Housing and Urban Development, 1999 Broadway—Suite 3390, Box 90, Denver, CO 80202-3390; telephone (303) 675-1600 (this is not a toll free number). Persons with speech or hearing impediments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Authority; Background; Purpose; Definitions; Amounts Allocated; and Eligibility

(A) Authority

Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105-65, 111 Stat. 1344, 1357; approved October 27, 1997) (FY 1998 HUD Appropriations Act).

(B) Background

Title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (entitled "Federal Guarantees for Financing for Tribal Housing Activities") authorizes HUD to guarantee financial obligations issued by Indian tribes or their Tribally Designated Housing Entities (TDHEs) to finance affordable housing activities. To assure the repayment of notes or other obligations, NAHASDA requires Title VI applicants to pledge their Indian Housing Block Grant (IHBG) funds and other security as required by HUD. The FY 1998 HUD Appropriations Act provided \$5 million for the funding of a demonstration program which could guarantee up to \$45 million in Title VI loan guarantees. HUD's Title VI Loan Guarantee Demonstration program is being announced through a separate

notice published elsewhere in today's **Federal Register**.

(C) Purpose

(1) The FY 1998 HUD Appropriations Act provided \$25 million to test comprehensive approaches for developing jobs through economic development, developing affordable low- and moderate-income rental and homeownership housing, and increasing the investment of both private and nonprofit capital in rural and tribal areas of the United States. Of the \$25 million, \$4 million is being made available under this NOFA.

(2) The funds available under this NOFA will be competitively awarded to one or more technical assistance providers that will use the grant funds to provide capacity-building technical assistance to Indian tribes or TDHEs with an obligation approved under the Title VI Demonstration Program. The purposes of grants awarded under this NOFA are to: (a) strengthen the economic feasibility of projects guaranteed under Title VI of NAHASDA; (b) directly enhance the security of guaranteed loans; (c) finance affordable housing activities and related projects that will provide near-term results; (d) demonstrate economic benefits such as homeownership opportunities, increased housing availability, housing accessibility and visitability, and job creation related to the approved project; and (e) attainment of Indian Housing Plan goals and objectives.

(3) As a technical assistance provider, the organization will:

(a) Act as a pass-through agent to distribute the grant funds to Indian tribes and/or TDHEs that have hired a technical service provider to oversee the successful completion of their Title VI project; and/or;

(b) Act as a technical service provider to Indian tribes and/or TDHEs that request the organization's services in overseeing the successful implementation of their Title VI project, and/or;

(c) Act as a pass-through agent to distribute the grant funds to Indian tribes and/or TDHEs for eligible costs directly related to the approved Title VI project (but which are not specifically covered in NAHASDA) or other related activities as deemed appropriate by HUD. Examples of eligible costs include, but are not limited to: types of creative financing such as payment of private financial guaranty insurance policies, letters of credit or other forms of credit enhancement for obligations to be guaranteed, the payment of interest

due and costs such as underwriting and note servicing.

(D) Definitions

Capacity-building is the transferring of skills and knowledge in planning, developing and administering activities funded under this NOFA. For purposes of this NOFA, capacity-building may include provision of loans and grants as well as training and technical assistance activities.

Visitability means at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk; the entrance door and all interior passage doors provide a minimum 2 feet, 10 inches clear opening. Allowing use of 2'10" doors is consistent with the Fair Housing Act (at least for the interior doors), and may be more acceptable than requiring the 3 foot doors that are required in fully accessible areas under the Uniform Federal Accessibility Standards for a small percentage of units.

(E) Amounts Allocated

This NOFA makes available a total of \$4 million in FY 1998 funding on a competitive basis.

(F) Eligible Applicants

(1) Eligible applicants are private organizations (for profit and nonprofit) with experience in providing technical assistance and capacity-building skills in planning and developing affordable housing. Applicants must also have experience in assisting Indian tribes, TDHEs, and/or other entities having similar physical, social, or economic conditions to those that exist in Indian country.

(2) A technical assistance provider awarded a grant under this NOFA must demonstrate experience in providing technical assistance in housing development to Indian tribes, TDHEs, or other entities facing similar economic and social conditions to those that exist in Indian country.

(G) Eligible Activities

(1) Funding under this NOFA will be used to enhance and strengthen an approved Title VI demonstration project. All applicants must meet and comply with the requirements of this NOFA and the Title VI Demonstration Program (see notice published elsewhere in today's **Federal Register**). HUD desires to see the funds used to finance affordable housing activities and projects that will provide near-term results and demonstrate economic benefits (such as homeownership opportunities, increased availability of affordable/accessible housing, job

creation and attainment of Indian Housing Plan goals and objectives). Eligible activities include:

(a) Providing technical assistance which will enhance the completion of the Title VI demonstration project, including:

(i) Planning, training and pre-development assistance to tribes/TDHEs to expand their scope of expertise, to implement larger-scale and model Title VI projects;

(ii) Self-help assistance, including skill in fiscal management related to the Title VI demonstration project;

(iii) Dissemination of capacity-building information and citizen participation activities (including information on Title VI loans); and

(iv) Coordination of existing resources to maximize housing or economic opportunities funded under the provisions of this NOFA and/or the Title VI Demonstration Program.

(b) Providing loss mitigation techniques.

(c) Providing related activities (public improvements, economic development, public services, and administrative costs) that directly support the housing activities listed in the Title VI Demonstration Program. The provision of these activities may not constitute more than twenty-five percent (25%) of the recipient's budget in the aggregate, and must clearly support and serve the Native American community served by the housing activities. Such activities include, but are not limited to:

(i) Construction of publicly- or privately-owned utilities needed to serve the housing site(s) for which the Title VI demonstration project was funded;

(ii) Provision of supportive housing services that are directly supportive of the housing activities proposed in the Title VI demonstration project, including but not limited to, legal assistance, housing counseling, classes on purchasing a home, home maintenance and repair training, tenant services;

(iii) Tribal/TDHE costs of administering the funding and carrying out of activities related to the Title VI demonstration project (which are not specifically permitted by NAHASDA), but at a rate not to exceed 10% of the Title VI funds provided; and

(iv) Provision of financial or technical assistance related to the Title VI loan to start or expand businesses, for the purposes of creating jobs or providing goods or services for tribal residents living in the Indian area.

(2) In undertaking activities under this NOFA, applicants should design construction, rehabilitation or

modifications to buildings and facilities to be accessible and visitable for persons with disabilities and others who may also benefit, such as mothers with strollers or persons delivering appliances. In providing technical assistance, educational opportunities, and loans, training and informational materials related to program activities should be made available in appropriate video, audio, or braille formats, if approved by HUD. If job opportunities are provided through this program, reasonable efforts should be made to employ Native Americans with disabilities in a variety of jobs. Employers should make reasonable accommodations for employees with disabilities.

II. Program Requirements

(A) Compliance with Civil Rights Laws. Indian tribes and TDHEs must comply with the nondiscrimination requirements of 24 CFR 1000.12. All other applicants must comply with the nondiscrimination requirements set forth in 24 CFR 5.105(a).

(B) Economic Opportunities for Low and Very Low-Income Persons (Section 3). Recipients of HUD assistance must comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low-Income Persons), and the HUD regulations at 24 CFR part 135, including the reporting requirements in subpart E. Section 3 provides that recipients shall ensure that training, employment and other economic opportunities, to the greatest extent feasible, be directed to: (1) low and very low income persons, particularly those who are recipients of government assistance for housing; and (2) business concerns which provide economic opportunities to low and very low income persons.

(C) Relocation. Any person (including individuals, partnerships, corporations or associations) who moves from real property or moves personal property from real property as a direct result of a written notice to acquire or the acquisition of the real property, in whole or in part, for a HUD-assisted activity is covered by acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and the implementing governmentwide regulation at 49 CFR part 24. Any person who moves permanently from real property or moves personal property from real property as a direct result of rehabilitation or demolition for an activity undertaken with HUD

assistance is covered by the relocation requirements of the URA and the governmentwide regulation. (Note that coverage under the URA does not include displacement funded by any Federal loan guarantees.)

(D) *OMB Circulars.* The policies, guidances, and requirements of OMB Circular No. A-122 (Cost Principles for Nonprofit Organizations) and 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations) apply to the award, acceptance and use of assistance under this NOFA, and to the remedies for noncompliance, except when inconsistent with the provisions of the FY 1998 HUD Appropriations Act, other Federal statutes or the provisions of this NOFA. Copies of the OMB Circular may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 10503, telephone (202) 395-7332 (this is not a toll free number).

(E) *Program Award Period.* Grant Agreements shall be for a period of up to 24 months. HUD, however, reserves the right to:

(1) Terminate grant awards in accordance with the provisions of 24 CFR part 84 anytime after 12 months.

(2) Extend the performance period of individual awardees up to a total of 12 additional months.

(F) *Delivery of Services System.* Technical assistance providers shall be required to:

(1) Provide technical assistance to Indian tribes and/or TDHEs.

(2) Obtain approval from the National Office of Native American Programs (NONAP) of its administrative and operating plans.

(3) Where necessary, cooperate and coordinate with other technical assistance providers to ensure clients are provided with the full range of technical services.

(G) *Technical Assistance Plan (TAP).* After selection, but prior to funding the award, technical assistance providers shall develop a Technical Assistance Plan (TAP) to be submitted to the NONAP for review and approval. A TAP shall be developed for each Indian tribe/TDHE receiving technical assistance (TA), and shall be prepared in consultation with the Indian tribe/TDHE and HUD. HUD will complete an environmental review where required in accordance with 24 CFR part 50 prior to approving the TAP. The TAP shall describe the following elements:

(1) Management strategy;

(2) Work plans;

(3) Establishment of priorities;

(4) Location of activities;

(5) Anticipated improved performance;

(6) Methods for measuring programmatic success;

(7) Tasks and sub-tasks for each program;

(8) Implementation schedule;

(9) Budgetary needs to accomplish tasks;

(10) Staffing plan; and

(11) Administrative budget.

(H) *Negotiations.* Technical service providers shall participate in negotiations with grant applicants and Title VI demonstration program participants.

(I) *Financial Management and Audit Information.* A grant recipient under this NOFA must provide a certification by an independent public accountant stating that the financial management system employed by the applicant meets the standards for fund control and accountability required by 24 CFR part 84, as applicable. The certification must provide the name, telephone number, and address of the independent public accountant.

(J) *Training Sessions.* Recipients may provide training sessions for Indian tribes/TDHEs where appropriate.

(K) *Pass-Through Grants.* Recipients must establish written criteria regarding pass-through procedures. HUD must approve this written criteria.

(L) *Environmental Review.* HUD's notification of award to a selected applicant will constitute a preliminary approval by HUD subject to approval of the Technical Assistance Plan and a HUD environmental review, where required. Selection for participation (preliminary approval) does not constitute approval of proposed sites for activities. Each preliminarily-selected applicant must assist HUD in complying with environmental review procedures, conducted by HUD where required in accordance with 24 CFR part 50. An applicant may not acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to these activities, until written approval is received from HUD. The results of the environmental review may require that proposed activities be modified or proposed sites rejected.

(M) *Flood Insurance.* In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128), HUD will not approve applications for grants providing financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the

National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of approval of the application.

(N) *Coastal Barrier Resources Act.* In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), HUD will not approve grant applications for properties in the Coastal Barrier Resources System.

III. Application Selection Process

(A) *Rating and Ranking.* (1) *General.* All applicants for funding under this NOFA will be evaluated against the criteria described below. The rating of the applicant or the applicant's organization and staff for technical merit or threshold compliance, unless otherwise specified, will include any sub-contractors, consultants and sub-recipients. If no applicants address the selection criteria described below, HUD will issue a revised NOFA requesting new applications for Title VI Demonstration Program capacity building grants.

(2) *Threshold.* If an applicant (a) has been charged with a violation of the Fair Housing Act by the Secretary; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice; (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act or Section 504 of the Rehabilitation Act; or (d) has been debarred, the applicant is not eligible to apply for funding under this NOFA until the applicant resolves such charge, lawsuit, letter of findings, or debarment to the satisfaction of the Department.

(3) After a determination of completion, the applications will be reviewed, rated and ranked, and notification of award of grant funds sent to the applicant. HUD will then fund the highest rated application from within the jurisdiction of each Area Office of Native American Programs in rank order. If any funds remain, HUD will then fund all of the remaining applications in rank order, regardless of which Area ONAP they are from. HUD reserves the right not to make awards under this NOFA.

(4) *Adjustment of Grant Awards.* If HUD determines that an application rated, ranked and fundable could be funded at a lesser grant amount than requested, consistent with the feasibility of the funded project or activities and the purposes of this NOFA, HUD reserves the right to reduce the amount of the grant award.

(B) *Factors for award.* (1) Each rating factor and the maximum number of points is reflected below. The maximum number of points to be awarded is 100. Once scores are assigned, all applications will be ranked in order of points assigned, with the applications receiving more points ranking above those receiving fewer points.

(2) A rating plan shall establish a value to each criteria below.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience and Staff (40 points). This factor addresses the applicant's organizational and prior experience with Indian tribes, TDHEs, or other entities facing similar economic and social conditions in (a) administering similar types of funding; (b) the demonstrated capacity to carry out the proposed activities; and (c) previous experience in administering and/or overseeing loan or obligation programs by HUD or other Federal agencies, or the private sector. The rating of the applicant or the applicant's organization and staff for technical merit will include any faculty, subcontractors, consultants, subrecipients, and members of consortia which are firmly committed (i.e., has a written agreement or a signed letter of understanding with the applicant agreeing in principle to its participation and role in the project). HUD will also consider past performance in carrying out HUD-funded or other projects similar in size and scope to the project proposed.

Rating Factor 2: Soundness of Approach (40 points). This factor addresses the appropriateness and effectiveness of the proposed activities in substantially addressing eligible activities within the content of the objectives of this NOFA and the Title VI Demonstration Program notice, including any pass-through funds. The factor also addresses the workplan, management strategy, budget, and staffing proposed to conduct the work. In evaluating this factor, HUD will consider:

(a) The relationship of the proposed activities (including proposed pass-through funding activities) in developing or implementing affordable housing projects in the Indian areas;

(b) The extent to which the applicant can demonstrate that the technical assistance will improve the ability of the Indian tribe or TDHE to complete the project on a timely basis;

(c) The extent to which the proposed activities bring additional financial or other resources to Indian areas;

(d) The extent to which the proposed activities increase economic

opportunities, as defined in this NOFA, to residents of Indian areas;

(e) The extent to which the proposed activities provide increased housing and economic opportunities for persons with disabilities;

(f) The applicant's workplan for conducting the proposed activities;

(g) The applicant's management strategy for conducting the proposed activities;

(h) The applicant's budget for conducting the proposed activities; and

(i) The applicant's staffing for conducting the proposed activities.

Rating Factor 3: Promoting Partnerships (10 points). This factor addresses the extent to which the applicant can demonstrate past experience in financing housing and economic development projects that include partnership arrangements. In evaluating this factor, HUD will award a greater number of rating points to those applicants that conducted projects in areas with similar economic, social, and physical conditions as those that exist in Indian areas. The applicant's past experience will be evaluated based on the following criteria:

(a) The number of partners for each project;

(b) The financial layering;

(c) The total dollar value of each project; and

(d) The number of completed housing and economic development projects that involved partnership arrangements.

Rating Factor 4: Coordination (10 Points). This factor addresses the extent to which the applicant proposes to coordinate the delivery of services with other entities providing assistance in Indian areas. In evaluating this factor, HUD will consider the extent to which the applicant will:

(a) Coordinate its proposed activities with other entities working in the Indian areas being served by the applicant;

(2) Take specific steps to share information with other entities serving Indian areas on the successful implementation of Title VI projects; and

(3) Take specific steps to develop linkages with other activities, programs, or projects (on-going or proposed) in Indian areas through meetings, information networks, planning processes, or other mechanisms to coordinate its activities so solutions are holistic and comprehensive.

IV. Application Submission Requirements

The application must include an original and one copy of the items listed below, and must be signed by an authorized official:

(A) Form SF-424, Application for Federal Assistance.

(B) Transmittal letter which identifies the amount of funds requested and the applicant and partners (if any).

(C) Table of Contents (please number pages of the submission and list them accordingly in the Table of Contents).

(D) Narrative statement and supporting documentation addressing the Factors for Award described in Section III of this NOFA. The narrative response should be numbered in accordance with each factor for award. This narrative statement will be the basis for evaluating the application. The suggested approach described in the responses to Rating Factor 2 will be the starting point for negotiating the grant agreement and the individual TAP required for each Indian tribe/TDHE receiving assistance.

(E) A statement as to whether the applicant proposes to use pass-through funds for activities under the proposed program, and, if so, the amount and proposed uses of such funds.

(F) Budget identifying costs for implementing the plan of suggested TA activities by cost category (in accordance with the following):

(1) Direct Labor by position or individual, indicating the estimated hours per position, the rate per hour, estimated cost per staff position and the total estimated direct labor costs;

(2) Fringe Benefits by staff position identifying the rate, the salary base the rate was computed on, estimated cost per position, and the total estimated fringe benefit cost;

(3) Material Costs indicating the item, quantity, unit cost per item, estimated cost per item, and the total estimated material costs;

(4) Transportation Costs, as applicable.

(5) Equipment charges, if any. Equipment charges should identify the type of equipment, quantity, unit costs and total estimated equipment costs;

(6) Consultant Costs, if applicable. Indicate the type, estimated number of consultant days, rate per day, total estimated consultant costs per consultant and total estimated costs for all consultants;

(7) Subcontract Costs, if applicable. Indicate each individual subcontract and amount;

(8) Other Direct Costs listed by item, quantity, unit cost, total for each item listed, and total other direct costs for the award;

(9) Indirect Costs should identify the type, approved indirect cost rate, base to which the rate applies and total indirect costs.

These line items should total the amount requested for the TA program. The grand total of all TA program funds requested should reflect the grand total of all funds for which application is made.

(G) Certifications of Compliance with the following:

(1) Section 3 of the Housing and Urban Development Act of 1968;

(2) 24 CFR part 87 (New Restrictions on Lobbying). Applicants must file the certification regarding appropriated funds, and if nonappropriated funds have been spent on lobbying, the SF-LLL;

(3) Applicant/Recipient Disclosure/Update Report (this is form 2880).

(4) Fair Housing Act, Title VI of the Civil Rights Act of 1964 or the Indian Civil Rights Act as applicable, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

V. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies.

Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. Examples of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested.

Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 7 calendar days of the date of receipt of the HUD notification. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

VI. Findings and Certifications

(A) *Paperwork Reduction Act Statement.* The information collection requirements contained in this NOFA have been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The OMB approval number, once assigned, will be published in the **Federal Register**. An agency may not conduct or sponsor, and a person is not required to respond to,

a collection of information unless the collection displays a valid control number.

(B) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

(C) *Federalism, Executive Order 12612.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of HUD, the States, and local governments.

(D) *Prohibition Against Lobbying Activities.* Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104-65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF-LLL disclosing such payments must be submitted.

Housing entities established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded

from coverage of the Byrd Amendment, but housing entities established under State law are not excluded from the statute's coverage.

(E) *Section 102 of the HUD Reform Act; Documentation and Public Access Requirements.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(F) *Section 103—HUD Reform Act.* HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of

applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708-3815. (This is not a toll-free number.)

Dated: July 20, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 98-19676 Filed 7-20-98; 2:24 pm]

BILLING CODE 4210-33-P

The US Department of Agriculture Rural Utilities Service (RUS)

✓ Water and Environmental Programs (WEP)

“Improve public and environmental health and promote economic development in rural America.”

✓ USDA’s Rural Development State and local offices administer the program.

✓ Water and Waste Disposal Loan and Grant program

“ Invests funds in the most economically distressed communities for critically needed water and waste disposal facilities. ”



HOW MAY FUNDS BE USED?

Loan and grant funds may be used to:

- ▶ Construct, repair, modify, expand or improve water supply/distribution systems, waste collection/treatment systems
- ▶ Acquire land, water sources and water rights
- ▶ Pay costs such as legal and engineering fees, when necessary, to develop the facilities

Direct Water and Waste Disposal Loans

Eligible applicants

- ✓ **Public entities, such as municipalities, counties, special-purpose districts, and Indian tribes, corporations operated on a not-for-profit basis.**
- ✓ **Applicants must be unable to obtain funds from other sources at reasonable rates and terms**

Direct Water and Waste Disposal Loans

Eligible projects

- ✓ Water and wastewater systems, solid waste disposal and storm drainage,

Eligible areas

- ✓ Rural areas and to cities and towns with a population of **10,000** or less.

Direct Water and Waste Disposal Loans

Priority

- ✓ Public entities, in areas with less than **5,500** people, to restore a deteriorating water supply, or to improve, enlarge, or modify a water facility or an inadequate waste facility.
- ✓ Also, preference is given to requests that involve the merging of small facilities and those serving low-income communities.

Direct Water and Waste Disposal Loans

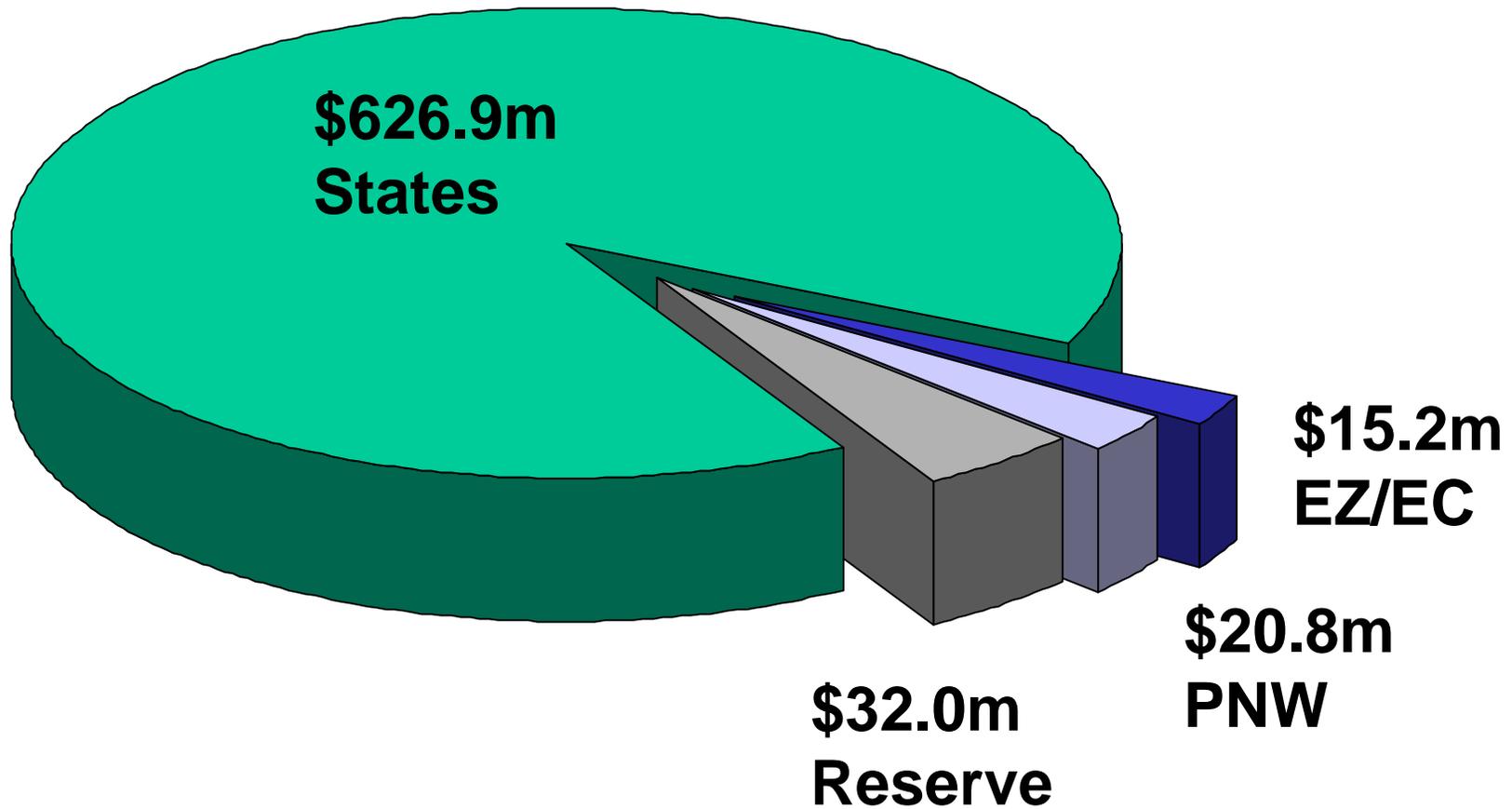
Rates and Terms

- ✓ The maximum term for all loans is 40 years; however,
- ✓ No repayment period will exceed state statutes or the useful life of the facility.
- ✓ Interest rates may be obtained from Rural Development field offices.

Water and Waste Disposal Grants

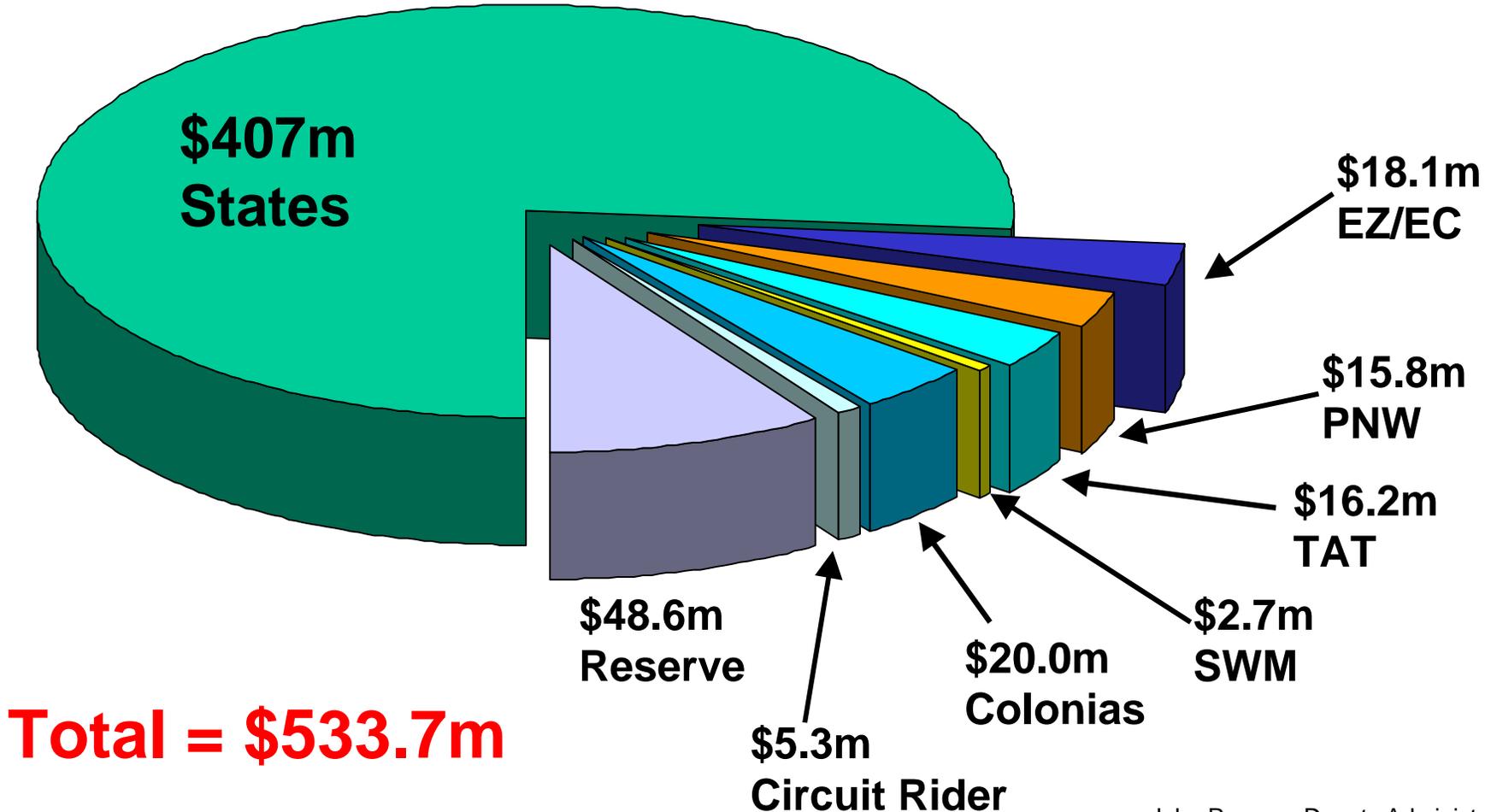
- ✓ Available to reduce water and waste disposal costs to a reasonable level for users of the system.
- ✓ Grants may be made, in some instances, up to 75 percent of eligible project costs.
- ✓ Eligible applicants are the same as for loans.

WEP Loan Funds 2/9/1999



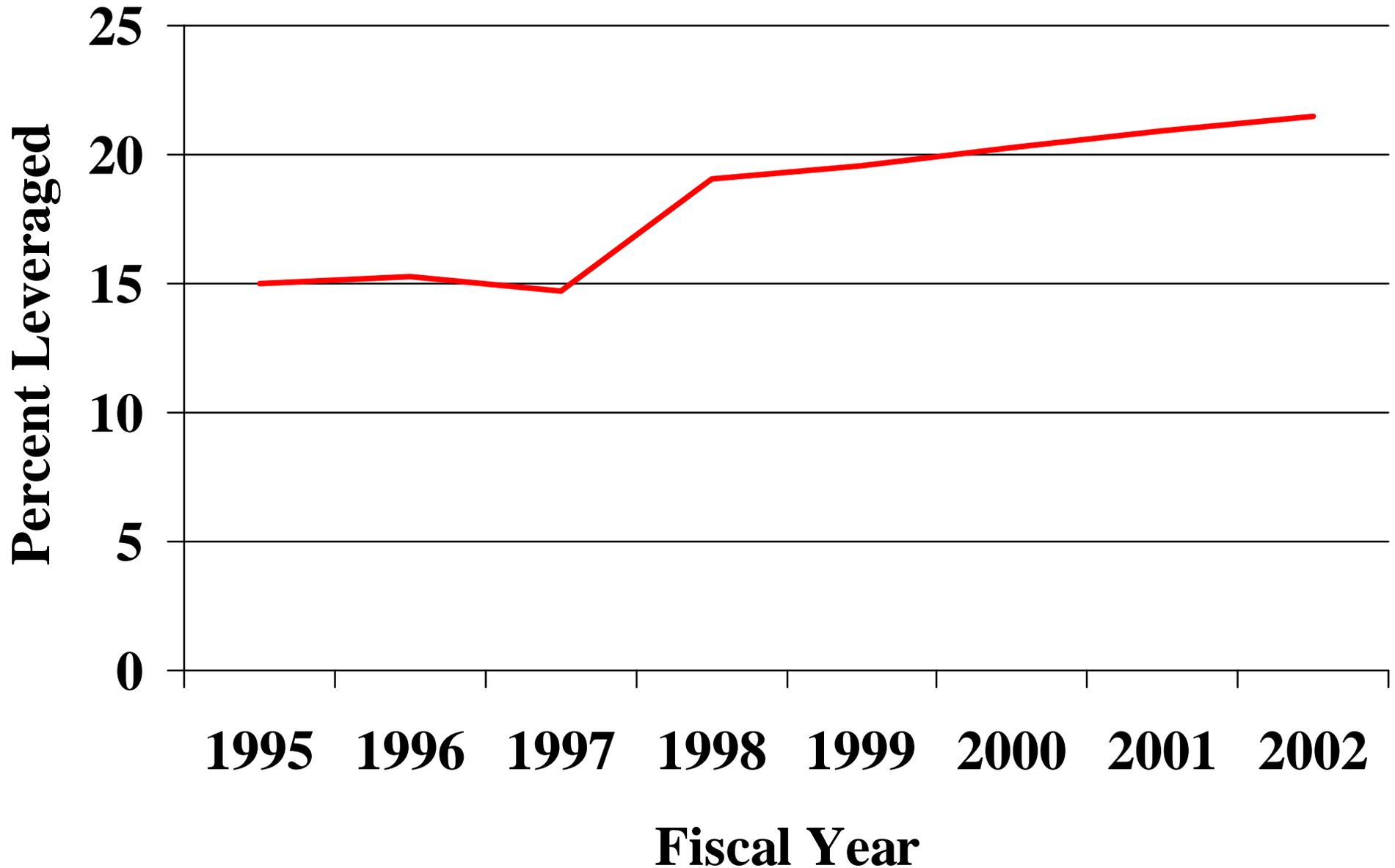
Total = \$694.8

WEP Grant Funds 2/9/1999



John Romano, Deputy Administrator
Rural Utilities Service, USDA

Water and Environmental Programs Projected Leverage Rate



John Romano, Deputy Administrator
Rural Utilities Service, USDA

one million

two million

three million

50 U. S. Senators

John P. Romano

WHAT IS WATER 2000?

Water 2000 is the Clinton Administration's initiative to invest in bringing safe, reliable drinking water into the many rural American homes that lack it, as soon as possible. To the surprise of most urban and suburban Americans, at least **2.2 million non-metropolitan residents have critical drinking water availability, quality, and dependability problems.**

THE AVERAGE WATER 2000 PROJECT:

✓ SERVES A COMMUNITY OR UNINCORPORATED AREA OF 10,000 PEOPLE OR LESS

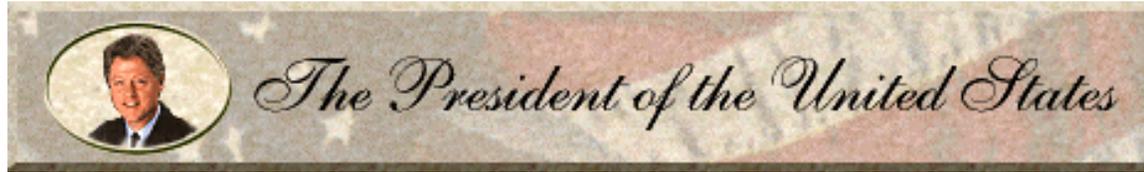
✓ HAS A 50 PERCENT CHANCE OF BEING BELOW THE NATIONAL POVERTY LEVEL OF \$16,450

✓ COVERS A SERVICE AREA WITH A MEDIAN INCOME OF ABOUT \$18,000

✓ INCLUDES FUNDS LEVERAGED FROM OTHER SOURCES TOTALING OVER 25% OF TOTAL PROJECT COST - NEARLY \$400,000

✓ PROVIDES SAFE, DEPENDABLE WATER TO ABOUT 600 RURAL USERS, OF WHOM APPROXIMATELY 13% ARE RECEIVING PUBLIC WATER FOR THE FIRST TIME





“Interestingly enough, the number one health problem in the developing world is still the absence of clean, safe water. If we can just get clean water to everybody in these poor countries, we can save more children’s lives than any other single thing we can do. And yet there are still places in the United States of American in rural areas where people do not have access to safe drinking water. We are determined to correct that problem. So we will keep work on that as well. There’s a lot more to do...”

President Bill Clinton

July, 1996

DEEP TARGETING

The average median household income for a family of four in communities receiving Water 2000 investments is only about \$18,000 (the national poverty level is currently \$16,450).

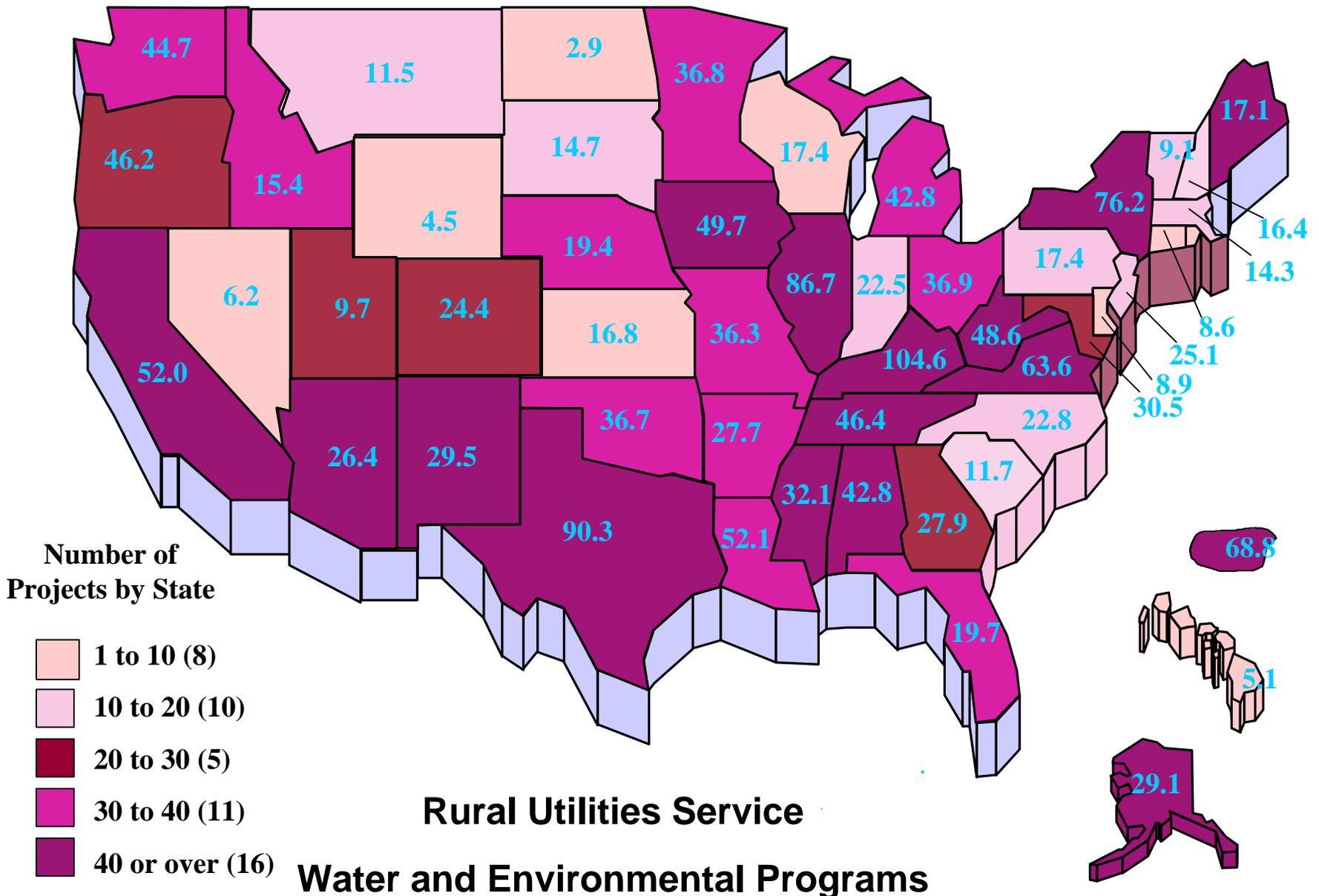
Expanded Assistance to Tribal Projects

Investment in American Indian tribal safe and clean water projects has increased dramatically under Water 2000-- over \$46 million in loans and grants in four fiscal years under Water 2000. This compares with an average of about \$4.8 million annually in the four previous years.

Environmental Justice

A significant number of Water 2000 beneficiaries are minority, low income communities that have experienced varying degrees of dangerous waste dumping from public and private sources. Such heavily burdened communities--many of them home to African-American, Hispanic, Native American and Native Alaskan families--receive at least partial protection from continued environmental and public health degradation when public investments help them secure new water sources, improved source protection and expanded water treatment and distribution.

Funding in Millions for All Water 2000 Projects for Fiscal Years 1995 Through 1998



**Rural Utilities Service
Water and Environmental Programs
October 1998**

John Romano, Deputy Administrator
Rural Utilities Service, USDA

NONMETRO HOUSEHOLDS LACKING COMPLETE PLUMBING - 1970 -1990*

YEAR	OCCUPIED HOUSING UNITS (HOUSEHOLDS)			
	TOTAL	INCOMPLETE PLUMBING		
		PERCENT	TOTAL	PERSONS
1970	14,677,000	14.1	2,069,000	6,207,000
1980	18,977,000	3.8	721,000	2,163,000
1990	20,946,000	1.7	356,000	1,068,000



*Excerpt from April 29, 1994, White House
Memorandum to Federal Agencies:*

“The United States government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty.”

“Too often people forget about the dire economic circumstances of so many Native Americans. One of the first places to start is by investing in good, safe drinking water. When we talk about Water 2000 and the need to do more, let’s keep in mind the needs of Native American communities.”



Vice President Al Gore

July 13, 1998

WATER 2000

IN INDIAN COUNTRY

" Interestingly enough, the number one health problem in the developing world is still the absence of clean, safe water. If we can just get clean water to everybody in these poor countries, we can save more children's lives than any other single thing we can do. And yet there are still places in the United States of America in rural areas where people do not have access to safe drinking water. We are determined to correct that problem. So we will keep working on that as well. There's a lot more to do . . . "

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WATER 2000

IN INDIAN COUNTRY

"Too often, people forget about the dire economic circumstances of so many Native Americans. One of the first places to start is by investing in good, safe drinking water. When we talk about Water 2000 and the need to do more, let's keep in mind the needs of Native American communities."

Vice President Al Gore

July 13, 1998

WATER 2000

IN INDIAN COUNTRY



United States Department of Agriculture
Rural Development
Rural Utilities Service

October 1998

WHAT IS WATER 2000???

A MESSAGE FROM AGRICULTURE SECRETARY DAN GLICKMAN . . .

Water 2000 is the Clinton Administration's initiative to invest in bringing safe, reliable drinking water into the many rural American homes that lack it, as soon as possible. To the surprise of most urban and suburban Americans, at least 2.2 million non-metropolitan residents have critical drinking water availability, quality, and dependability problems.

Hundreds of Native American tribal communities are prime targets for our Water 2000 investments. Since President Clinton's April, 1994 meeting with tribal leaders in Washington, a growing number of tribes are working with USDA financial and technical assistance to help themselves gain the benefits that safer and cleaner water can bring.

The Administration, working with the Congress, is committed to targeting Federal resources to the tribal and other communities with limited resources that most need basic water infrastructure improvements. The future public health and economic opportunities of more than two million people are linked closely to our success in meeting this challenge. An investment in dramatically improving a community's ability to deliver safe and clean water is an investment in improving basic public health, enhancing fire protection, attracting new homes and businesses, and conserving natural resources.

We launched Water 2000 in August of 1994. Since the beginning of fiscal year 1995 on October 1, 1994, the U. S. Department of Agriculture -- Water 2000's lead federal agency -- has invested more than \$46 million in the high priority safe and clean water projects of 36 Native American and Native Alaskan communities in 13 states. This level is far beyond what the USDA invested during the four years previous to 1994.

However, it is only a beginning -- we have much more work to do with tribal leaders throughout Indian Country. Within Water 2000 guidelines, the USDA will continue to make grants and act as a "lender of last resort" to target investment to rural communities that need it most.

We hope this brochure will spark your interest in contacting us, through our USDA-Rural Development state directors (list attached), to learn more about our Water 2000 initiative and what you might be able to accomplish for your community with USDA grant and loan funding. We look forward to working with you.



HIGHLIGHTS AFTER

4

YEARS

AMBITIOUS GOALS

Water 2000 confronts a difficult challenge, and represents **doing the right thing by making sound, supportable investments in people that need them most.** The initiative assists a broad cross section of Rural America, but focuses strongly on people without **any** drinking water flowing into their homes. At the time of the 1980 Census, approximately 2.1 million Americans were in this category. By the 1990 Census, the number dropped to about 1.07 million. The USDA estimates that by the end of 1998, it will be down to 750,000. No reliable number is available on how many of these people live in Indian Country, but the number is thought to be substantial. All assessments indicate that people without any drinking water live in some of the most remote, low income, geologically rugged areas of the nation. Serving them with safe, clean public water requires hard work, considerable engineering expertise and careful, targeted investment.

DEEP TARGETING

The average median household income (MHI) for a family of four in communities receiving Water 2000 investments is approximately \$18,500 (the national poverty income level is currently \$16,450). In the Native American and Alaskan Native communities we are serving, the average MHI is substantially below the national poverty level. These are communities that would have serious difficulties assembling funding for large water infrastructure projects from other sources. We are pleased, under Water 2000, to act as their "investor of last resort", because their public health needs are great.

BROAD IMPACT ON PEOPLE

It is estimated that, once they are all constructed, the Water 2000 projects that have been funded through September 1998 (projected) will serve over 65,000 people in Native American and Alaskan Native communities with safer, cleaner water from well maintained and operated public systems.

EXPANDED ASSISTANCE TO TRIBAL PROJECTS

USDA investment in tribal safe and clean water projects has almost tripled under Water 2000, to an average of \$11.5 million annually in grants and loans over the past four years, versus \$4.4 million annually over the four previous years.

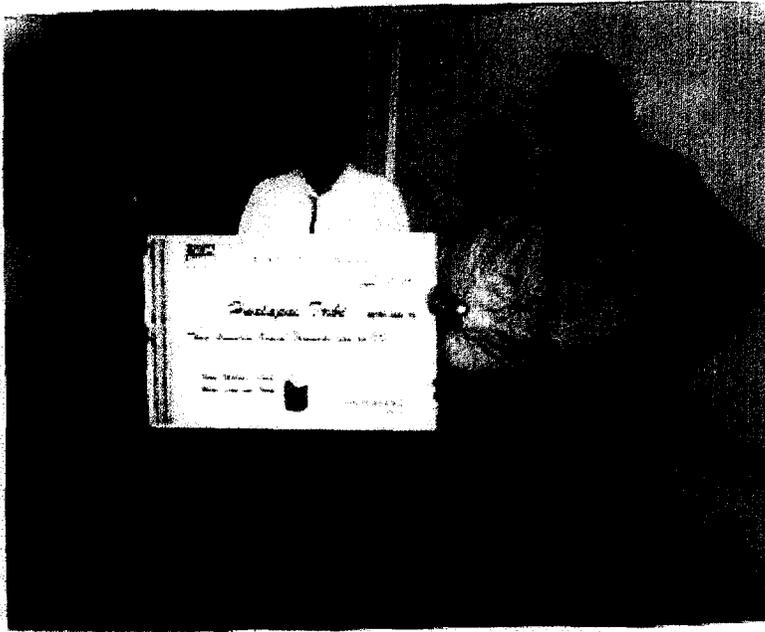
GOVERNMENT REINVENTION

The prime engine of Water 2000 is the USDA's Water and Waste Disposal (WW) loan and grant program. The WW track record -- more than \$20 billion loaned and granted to rural American communities since 1940, with strong targeting based on income and public and environmental health needs -- is one of the very best in the federal catalogue. Still, as part of the Water 2000 initiative, the program has been revamped and improved. The WW program's re-written, streamlined, improved regulations appeared in final form in the Federal Register in June of 1997. The new WWD regulations are 40 percent slimmer in volume, easier to read and understand, and better organized than the previous regulations. They represent the best in reinvented, more customer-friendly government.

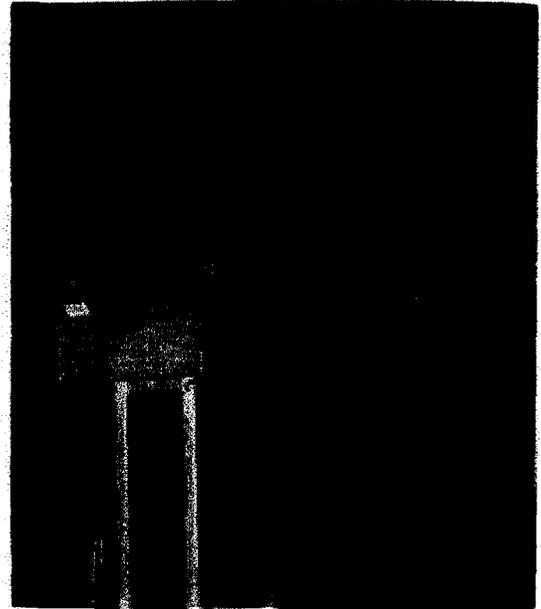
ENVIRONMENTAL JUSTICE

A significant number of Water 2000 beneficiaries are minority, low income communities which have experienced varying degrees of toxic waste dumping from public and private sources. Such heavily burdened communities -- many of them home to African American, Hispanic, Native American, and Native Alaskan families -- receive at least partial protection from continued environmental and public health degradation when public investments help them secure new water sources, improved source protection, and expanded water treatment and distribution.

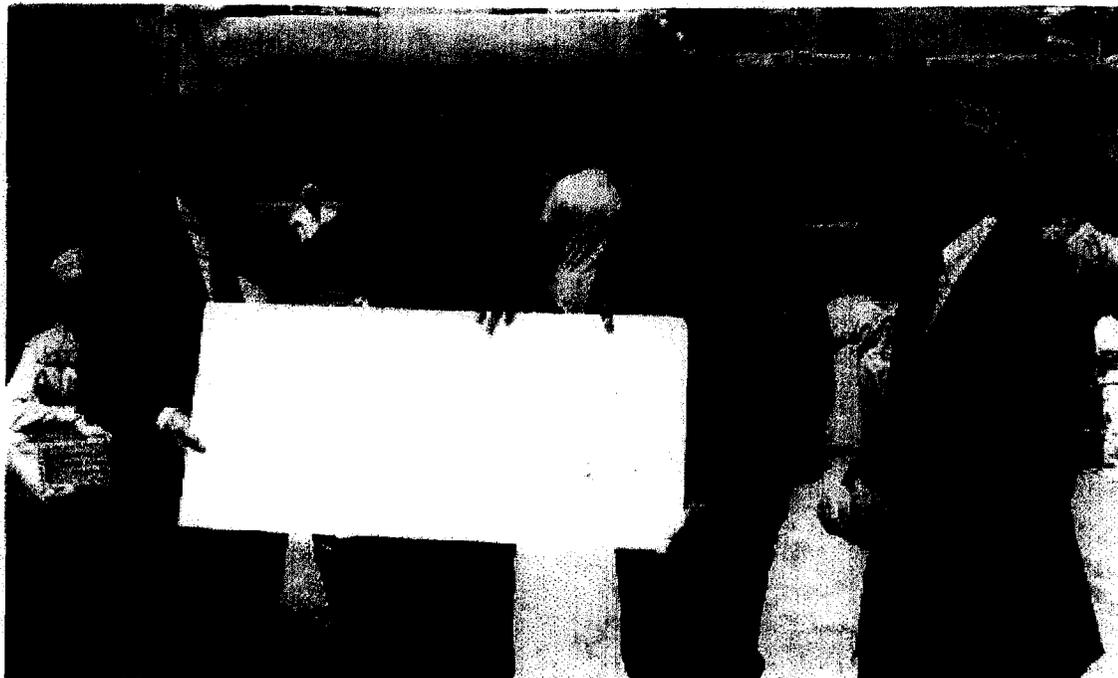
**RECENT EXAMPLES OF WATER 2000 INVESTMENTS
IN TRIBAL PROJECTS**



Alan Stephens and John Romano of USDA-Rural Development present a check to Hualapai Vice Chairman Edgar Walema and other tribal leaders, to construct a drinking water line to the tribe's Grand Canyon West project, October, 1997



USDA-Rural Development's Charles Mertens congratulates Chairman Raphael DeCoteau of the Turtle Mountain Chippewa Tribe, at the funding announcement for a major water/sewer project, May, 1998



Steve Anaya and Bart Chilton of USDA-Rural Development present Acoma Pueblo Leaders with a check for drinking water system construction at the ancient "Sky City" location in July, 1997.



**United States Department of Agriculture
Rural Development**

Rural Business-Cooperative Service • Rural Housing Service • Rural Utilities Service
Washington, DC 20250

INFORMATION MEMORANDUM

**TO: MEMBERS AND REPRESENTATIVES OF
FEDERALLY-RECOGNIZED INDIAN TRIBES AND
ALASKAN NATIVE VILLAGES**

**FROM: WALLY BEYER
ADMINISTRATOR
RURAL UTILITIES SERVICE**

**SUBJ: INVESTING IN SAFE AND CLEAN WATER
PROJECTS IN INDIAN COUNTRY**

DATE: March 1, 1999

We hope this brochure makes clear that the USDA's Rural Development mission area is actively seeking to expand our partnerships with federally-recognized tribes, and our grant/loan investments in your safe and clean water development projects.

Our strong interest in this area is driven by the goals and principles outlined by President Clinton in his April 29, 1994, Memorandum on Government to Government Relations with Native American Tribal Governments. (Attachment A)

We take the President's commitment very seriously. In the course of putting that commitment into practice, we have almost tripled our level of investment in tribal safe drinking water and sanitary sewer projects since May 1994.

Attached you will find the list of tribal safe and clean water projects funded with grants and low interest loans from the USDA for federal fiscal years 1995, 1996, 1997, and 1998. (Attachment B)

The White House
Washington, DC
April 29, 1994

**MEMORANDUM FOR THE HEADS OF EXECUTIVE
DEPARTMENTS AND AGENCIES**

**SUBJECT: Government-to-Government Relations with Native
American Tribal Governments**

The United States government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty.

Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the federal government operates within a government-to-government relationship with federally-recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

- (a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally-recognized tribal governments.
- (b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of federal government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities. The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON

WATER AND WASTE LOANS AND GRANTS TO INDIAN TRIBES AND RURAL ALASKAN VILLAGES 10/94-3/99
--

ST	Borrower	FUND		GRANT
		FY	CODE LOAN	
AK	AKIAK NATIVE COMMUN	97	0	\$405,500
	ALAKANUK CITY OF	99	0	\$1,050,000
	ALAKANUK CITY OF	94	0	\$1,000,000
	ALLAKAKET, CITY OF	97	0	\$235,800
	ALATNA, VILLAGE OF	95	0	\$498,200
	ANGOON, CITY OF	95	0	\$120,000
	ATMAUTLUAK, VILLAGE	97	0	\$221,000
	BEAVER TRIBAL	97	0	\$35,000
	BETHEL, CITY OF	98	0	\$2,300,000
	BETHEL, CITY OF	94	0	\$705,000
	CHALKYITSIK VILLAGE	96	0	\$680,000
	CHEFORNAK, CITY OF	97	0	\$280,000
	CHEFORNAK, CITY OF	98	0	\$1,600,000
	CHEVAK, CITY OF	94	0	\$1,153,000
	COFFMAN COVE	99	0	\$700,000
	DEERING, CITY OF	98	0	\$600,000
	EGEGIK, CITY OF	97	0	\$275,000
	EVANSVILLE TRADITI-	97	0	\$185,000
	GOODNEWS BAY, CITY	97	0	\$610,000
	GRAYLING, CITY OF	96	0	\$112,000
	HEALY LAKE VILLAGE	95	0	\$249,000
	KETCHIKAN GATEWAY	94	0	\$1,460,000
	KONGIGANAK TRAD'L	98	0	\$300,000
	KOTLIK, CITY OF	97	0	\$533,000
	KOTZEBUE, CITY OF	94	0	\$1,293,000
	KOTZEBUE, CITY OF	97	0	\$280,000
	KOTZEBUE, CITY OF	97	0	\$950,000
	KOYUKUK, CITY OF	97	0	\$90,000
	KOYUKUK, CITY OF	98	0	\$100,000
	KWINHAGAK, NATIVE	97	0	\$275,000
	KWINHAGAK, NATIVE	99	0	\$612,500
	MARSHALL, CITY OF	97	0	\$60,000
	MARSHALL, CITY OF	99	0	\$550,000
	MAT-SU BOROUGH	97	0	\$37,500
	MEKORYUK, CITY OF	94	0	\$300,000
	MEKORYUK, CITY OF	97	0	\$750,000
	MEKORYUK, CITY OF	98	0	\$350,000
	MOUNTAIN VILLAGE	98	0	\$551,000
	NAPAKIAK, CITY OF	94	0	\$270,000
	NAPAKIAK, CITY OF	97	0	\$425,000
	NAPAKIAK, CITY OF	98	0	\$170,000
	NATIVE VILLAGE OF	97	0	\$275,000
	NIGHTMUTE, CITY OF	99	0	\$500,000
	NIKOLAEVSK VILLAGE	99	0	\$152,500
	NIKOLAEVSK VILLAGE	94	0	\$1,508,100
	NONDALTON, CITY OF	96	0	\$348,500
	NULATO,CITY OF	94	0	\$1,115,000
	NULATO,CITY OF	96	0	\$395,400
	NUNAPITCHUK, CITY OF	97	0	\$1,150,000
	NUNAPITCHUK, CITY OF	98	0	\$329,000
	PITKAS POINT VILLAG	95	0	\$40,000
	SAVOONGA, CITY OF	94	0	\$400,000
	SELDOVIA, CITY OF	94	0	\$1,100,000

	SHELDON POINT, CITY	97	0		\$90,000
	SHELDON POINT, CITY	99	0		\$98,000
	SHISHMAREF, CITY OF	95	0		\$175,000
	SOUTH NAKNEK VILLAG	95	0		\$600,000
	ST. MICHAEL, CITY OF	94	0		\$817,000
	ST. PAUL, CITY OF	94	0		\$848,900
	STEVENS VILLAGE IRA	97	0		\$55,000
	TOKSOOK BAY, CITY OF	94	0		\$150,000
	TUNTUTULIAK	97	0		\$750,000
	TUNUNAK TRD'L ELDER	95	0		\$595,500
	TYONEK,NATIVE V. OF	94	0		\$9,260
	UNALAKLEET, CITY OF	94	0		\$608,000
	UNALAKLEET, CITY OF	97	0		\$262,500
	UNALAKLEET, CITY OF	97	0		\$239,400
	WAINWRIGHT, CITY OF	96	0		\$1,375,000
	WAINWRIGHT, CITY OF	97	0		\$440,000
	WHITTIER, CITY OF	94	0		\$492,500
AZ	COCOPAH INDIAN	97	0		\$375,000
	COCOPAH INDIAN	97	91	\$200,000	\$200,000
	COCOPAH INDIAN	98	0		\$84,000
	COCOPAH INDIAN	98	0		\$310,700
	COCOPAH INDIAN	98	91	\$25,000	
	COCOPAH INDIAN	98	91	\$125,000	\$375,000
	HOPi TRIBE, THE	95	93	\$702,560	\$2,107,677
	HUALAPAI INDIAN	97	91	\$90,000	\$300,000
	HUALAPAI INDIAN	98	91	\$31,000	\$210,000
	NAVAJO TRIBAL	96	91	\$249,000	\$248,000
	NAVAJO TRIBAL	96	93	\$262,000	\$261,000
	NAVAJO TRIBAL	97	92	\$40,000	\$40,000
	NAVAJO TRIBAL	97	93	\$89,000	\$135,500
	NAVAJO TRIBAL	97	93	\$172,000	\$77,900
	NAVAJO TRIBAL	98	91	\$31,500	\$94,500
	NAVAJO TRIBAL	99	0		\$267,500
	WHITE MOUNTAIN	96	91	\$1,300,000	\$1,300,000
	WHITE MOUNTAIN	96	92	\$840,000	
	WHITE MOUNTAIN	97	91	\$1,100,000	\$1,100,000
	WHITE MOUNTAIN	97	91	\$211,100	\$211,100
	WHITE MOUNTAIN	98	92	\$312,000	\$312,000
CA	LOS COYOTES BAND OF	98	0		\$597,300
	TORRES-MARTINEZ	96	0		\$197,000
	TORRES-MARTINEZ	97	0		\$53,000
MN	BOIS FORTE	97	93	\$185,500	\$554,500
	UPPER SIOUX COMMUNI	98	91	\$113,000	\$339,000
ND	SPIRIT LAKE TRIBE	96	92	\$215,000	
	TURTLE MT. BAND OF	96	91	\$461,000	
	TURTLE MT. BAND OF	97	91	\$1,589,600	
	TURTLE MT. BAND OF	98	0		\$531,600
	TURTLE MT. BAND OF	98	0		\$132,300
	TURTLE MT. BAND OF	98	0		\$1,812,000
	TURTLE MT. BAND OF	98	91	\$1,288,000	
NE	OMAHA TRIBE OF NEBR	95	91		\$506,700
NM	ACOMA PUEBLO OF	97	91	\$375,000	\$1,125,000
	ZUNI, PUEBLO OF	99	91	\$914,200	\$2,742,600
SD	LOWER BRULE SIOUX	96	91	\$145,238	\$150,950
WI	RED CLIFF	97	91	\$943,000	
WY	SHOSHONE TRIBE	98	91	\$100,000	\$200,000
	TOTAL			\$12,109,698	\$54,242,887

Fund Code (0=Grant Only, 91=Water, 92=Sewer, 93=Water & Sewer)
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Rural Development

Rural Utilities Service

Water and Waste Disposal Programs

The Rural Utilities Service (RUS) administers a water and wastewater loan and grant program to improve the quality of life and promote economic development in rural America. RUS is a new Agency created in October 1994 by the reorganization of the U.S. Department of Agriculture (USDA). The program was previously administered by the Rural Development Administration and the Farmers Home Administration, which were abolished by the reorganization. At the State and local levels, the program is administered by field offices of USDA's Rural Development mission area. RUS is coordinating the Water 2000 initiative, which has as its goal to provide clean, safe and affordable drinking water to all rural homes by the year 2000.

Water and Waste Disposal Direct and Guaranteed Loans

Purpose: Direct loans may be made to develop water and wastewater systems, including solid waste disposal and storm drainage, in rural areas and to cities and towns with a population of 10,000 or less. Funds are available to public entities, such as municipalities, counties, special-purpose districts, and Indian tribes. In addition, funds may be made available to corporations operated on a not-for-profit basis.

Priority will be given to public entities, in areas with less than 5,500 people, to restore a deteriorating water supply, or to improve, enlarge, or modify a water facility or an inadequate waste facility. Also, preference will be given to requests which involve the merging of small facilities and those serving low-income communities. Applicants must be unable to obtain funds from other sources at reasonable rates and terms. The maximum term for all loans is 40 years; however, no repayment period will exceed state statutes or the useful life of the facility. Interest rates may be obtained from Rural Development field offices.

Guaranteed loans may be made for the same purpose as direct loans. They are made and serviced by lenders such as banks and savings and loan associations. Normally, guarantees will not exceed 80 percent on any loss of interest and principal on the loan.

Water and Waste Disposal Grants

Purpose: Reduce water and waste disposal costs to a reasonable level for users of the system. Grants may be made, in some instances, up to 75 percent of eligible project costs. Eligible applicants are the same as for loans.

Technical Assistance and Training Grants

Purpose: Make grants to nonprofit organizations to provide technical assistance and/or training to associations located in rural areas and to cities and towns with a population of 10,000 or less.

Assistance may be provided to identify and evaluate solutions to water and waste disposal problems, to improve the operation and maintenance of existing water and waste disposal facilities, and to assist associations in preparing applications for water and waste disposal facilities.

Solid Waste Management Grants

Purpose: Make grants to public and private nonprofit organizations to provide technical assistance and/or training to associations located in rural areas and to cities and towns with a population of 10,000 or less to reduce or eliminate pollution of water resources, and to improve planning and management of solid waste facilities. Assistance may be provided to enhance operator skills in operations and maintenance, identify threats to water resources, and reduce the solid waste stream.

Rural Water Circuit Rider Technical Assistance

Purpose: Provide on-site technical assistance to help assure cost-effective operation of rural water systems. RUS has assisted rural water systems, via contracting, with day-to-day operational, financial and management problems. The assistance is provided at no charge and may be requested by officials of rural water systems or by Rural Development personnel. It complements supervisory assistance provided by Rural Development personnel.

Applications

Information about the water and waste disposal programs and advice on how to assemble information to determine engineering feasibility, economic soundness, cost estimates, organization, financing and management matters, may be obtained from Rural Development field offices. These offices are usually listed in local telephone directories under "U. S. Department of Agriculture."

For More Information Write

Your local or State USDA Rural Development office (see U.S. Government listing of phone directory), or the National Office at:

USDA Rural Utilities Service
Attention: Dick Mansfield
Stop 1548
Washington, D.C. 20250-1548
Phone: (202) 690-2670
FAX: (202) 720-0718 E-Mail:
Dmansfie@rus.usda.gov.

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To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C. 20250, or call 1-800-245-6340 (voice) or (202) 720- 1127 (TDD). USDA is an equal employment opportunity employer.

PA 1611

Revised July 1997

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Revised 2/11/99

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United States Department of Agriculture
Rural Utilities Service

Water and Waste Disposal Programs
Fiscal Year 1999

Assistant Administrator
Water and Environmental Programs
USDA - RUS
Washington, D.C. 20250
Telephone: (202) 720-9583

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United States Department of Agriculture

Rural Utilities Service

Water and Waste Disposal Programs

The Rural Utilities Service (RUS), the Rural Business-Cooperative Service, and the Rural Housing Service comprise USDA's **Rural Development** mission area. As the name suggests, the three agencies' programs are designed to meet the needs of people who live in rural areas – including infrastructure, housing, health and medical, education, and employment. The Rural Utilities Service's **Water Programs Division** has four programs, which provide financial and technical assistance for development and operation of safe and affordable water supply systems and sewage and other forms of waste disposal facilities:

- **Water and Waste Disposal Loans and Grants**
- **Emergency Community Water Assistance Grants**
- **Technical Assistance and Training Grants**
- **Solid Waste Management Grants**

These programs are administered by USDA Rural Development offices. There are 47 State Offices, as well as Local or Area Offices. Brief descriptions of the programs are provided below.

WATER AND WASTE DISPOSAL LOANS AND GRANTS¹

RUS provides loans, guaranteed loans, and grants for water, sewer, storm water, and solid waste disposal facilities in rural areas and towns of up to 10,000 people.

Who May Receive Assistance?

- ❖ Recipients must be public entities. These can include municipalities, counties, special purpose districts, Indian tribes, and corporations not operated for profit, including cooperatives. A new entity may be formed to provide the needed service if an appropriate one does not already exist.

¹ Authorized by Section 306 of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1926).

- ❖ Applicants must:
 - (1) Be unable to obtain needed funds from commercial sources at reasonable rates and terms.
 - (2) Have the legal capacity to borrow and to repay loans, to pledge security for loans, and to operate and maintain the facilities.
 - (3) Propose facilities that are consistent with any development plans of the State, multijurisdictional area, counties, or municipalities where the project is to be located. All facilities must comply with Federal, State, and local laws, including those involving zoning regulations, health and sanitation standards, and water pollution control.
- ❖ Grants may be provided when necessary to reduce user costs to a reasonable level. They can cover up to 75 percent of eligible facility development costs.
- ❖ Loan guarantees are ordinarily for 80 percent of any loss incurred by the lender; however, a 90 percent guarantee may be issued in unusual circumstances. Lenders pay a 1 percent guarantee fee, which may be passed on to the loan recipient.
- ❖ Colonias along the U.S.-Mexico border may be eligible for grants under a \$20 million set aside.

How May Funds Be Used?

- ❖ Loan and grant funds may be used to:
 - (1) Construct, repair, modify, expand, or otherwise improve water supply and distribution systems and waste collection and treatment systems, including storm drainage and solid waste disposal facilities. Certain other costs related to development of the facility may also be covered.
 - (2) Acquire needed land, water sources, and water rights.
 - (3) Pay costs such as legal and engineering fees when necessary to develop the facilities.

What Are The Loan Terms?

- ❖ The law authorizing the program allows a maximum repayment period of 40 years. However, the repayment period cannot exceed the useful life of the facilities financed or any statutory limitation on the applicant's borrowing authority.

What Is The Interest Rate?

- ❖ Three interest rates are used. They are set periodically based on an index of current market yields for municipal obligations. The most current rates are available on the RUS Water and Environmental Programs Home Page on the Internet at <http://www.usda.gov/rus/water/>.
 - (1) **Poverty Rate** - The poverty interest rate is currently 4.5 percent. The poverty rate applies when:
 - (a) the primary purpose of the loan is to upgrade existing facilities or construct new facilities required to meet applicable health or sanitary standards; and
 - (b) the median household income (MHI) of the service area is below the poverty line for a family of four² or below 80 percent of the Statewide Nonmetropolitan MHI (SNMHI).
 - (2) **Market Rate** - The market rate is set quarterly based on the average of the "Bond Buyer" 11-Bond Index over a four week period prior to the beginning of the quarter. It applies to loans for projects where the MHI of the service area exceeds the SNMHI.
 - (3) **Intermediate Rate** - The intermediate interest rate is the poverty rate plus half of the difference between the poverty rate and the market rate, but not to exceed 7 percent. It applies to loans that do not meet the criteria for either the poverty rate or the market rate.
- ❖ Borrowers may choose the interest rate in effect on the date of loan approval or on the date of loan closing.

² As defined in Section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

Is Collateral Required?

- ❖ Loans are secured so as to adequately protect the Government's interest. Bonds or notes pledging taxes, assessments, or revenues may be accepted if they meet statutory requirements. A mortgage or other lien may also be taken on the applicant's property when State laws permit.

Where Should Applications Be Filed?

- ❖ Applications may be filed with the USDA Rural Development office serving the applicant's area. Detailed information and applications are available through USDA Rural Development State, Local, and Area Offices. State Office locations and telephone numbers may be obtained from the office of the Assistant Administrator, Water and Waste, at (202) 720-9583. They are also available on the Internet.

What Should Be Included In An Application?

- ❖ Primary Documents:
 - (1) Form SF 424.2, "Application for Federal Assistance (For Construction)."
 - (2) State intergovernmental review comments and recommendations (Clearinghouse Comments). For States without a Clearinghouse, the USDA Rural Development office will instruct the applicant on the appropriate process.
 - (3) Supporting documentation needed to determine eligibility, such as financial statements, audits, organizational documents, existing debt instruments, and engineering reports. Applicants will be advised what documentation is necessary.

Funds Available.

		FY 99	FY 98
❖	Direct Loans	\$706,077,482	\$691,004,098
❖	Guaranteed Loans	\$75,000,000	\$75,000,000
❖	Grants	\$528,363,000	\$509,800,000

Emergency Community Water Assistance Grants³

Emergency Community Water Assistance Grants may be available to rural communities when disaster strikes. Congress may appropriate funds for the program after a flood, earthquake, or other disaster if Federal assistance is warranted.

Who May Receive Assistance?

- ❖ Applicants must demonstrate that a significant decline in quantity or quality of water occurred within two years of the date the application was filed with RUS.
- ❖ Public bodies and nonprofit corporations serving rural areas, including cities or towns whose population does not exceed 10,000 people may be eligible. Public bodies include Indian Tribes on Federal and State reservations and other Federally recognized Indian Tribal groups.

How May Grant Funds Be Used?

- ❖ Funds may be used to:
 - (1) Extend, repair, or perform significant maintenance on existing water systems; construct new water lines, wells or other sources of water, reservoirs, and treatment plants; replace equipment; and pay costs associated with connection or tap fees.
 - (2) Pay related expenses such as legal and engineering fees and environmental impact analyses, or acquire rights associated with developing sources of, treating, storing, or distributing water.
 - (3) Achieve compliance with the requirements of the Federal Water Pollution Control Act (33 U.S.C. 1 et seq.) or with the Safe Drinking Water Act when noncompliance is directly related to a recent decline in quality of potable water.

³ Authorized by Section 306A of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1926a)

What Is The Maximum Grant?

- ❖ Grants cannot exceed \$500,000.
- ❖ Grants for repairs, partial replacement, or significant maintenance on an established system cannot exceed \$75,000.
- ❖ Subject to the above limitations, grants may be made for 100 percent of eligible project costs.

Where Should Applications Be Filed?

- ❖ Applications are filed with any USDA Rural Development State or District office.

What Should Be Included In An Application?

- ❖ Primary Documents:
 - (1) Form SF 424.2, "Application for Federal Assistance (For Construction)."
 - (2) State Intergovernmental Review.
 - (3) Supporting documentation, which includes a preliminary engineering report, population and median household income of the service area, nature of the emergency that caused the problems associated with the project, and evidence that the significant decline in quantity or quality of water occurred within two years of filing the application.

Technical Assistance And Training Grants⁴

Technical Assistance and Training Grants are made available from at least one percent and not more than three percent of the funds appropriated for Water and Waste Disposal Grants.

⁴ Authorized by Section 306 (a)(14) of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1926 (a)(14)).

Who May Receive Assistance?

- ❖ Private nonprofit organizations may receive grants. They must have tax exempt status granted by the Internal Revenue Service (IRS).
- ❖ Applicants must have the proven ability, background, experience, legal authority, and actual capacity to provide technical assistance and/or training to associations.⁵

How May Grant Funds Be Used?

- ❖ Funds may be used to:
 - (1) Identify and evaluate solutions to water and/or waste related problems of associations in rural areas.
 - (2) Assist entities with preparation of applications for Water and Waste Disposal loans and grants.
 - (3) Provide training to association personnel in order to improve the management, operation and maintenance of water and/or waste disposal facilities.
 - (4) Pay expenses related to providing the technical assistance and/or training.

What Is The Maximum Grant?

- ❖ Grants may be made for up to 100 percent of eligible project costs.

When Should Applications Be Filed?

- ❖ Preapplications must be filed between October 1 and December 31 of each fiscal year.

Where Should Applications Be Filed?

- ❖ Applicants proposing to provide technical assistance and/or training in only one State will apply through the appropriate USDA Rural Development State Office.

⁵ An association is an entity, including a small city or town, that is potentially eligible for water and waste disposal assistance under 7 CFR 1942.17 or 1942.356.

- ❖ Applicants proposing to provide technical assistance and/or training in more than one State will apply through the Administrator, Rural Utilities Service, Washington, D.C. 20250.

What Should Be Included In An Application?

- ❖ Primary documents include:
 - (1) SF 424.1, "Application for Federal Assistance (For Non-construction)."
 - (2) Evidence of applicant's legal existence and authority.
 - (3) Evidence of tax exempt status from the Internal Revenue Service.
 - (4) Narrative of the proposed technical assistance and/or training services to be provided, method for selecting association(s) to receive the service, applicant's experience, service area, related costs, applicant's financial information, etc.

Funds Available.

- ❖ FY 99 - \$16,215,000 FY 98 - \$15,000,000

Solid Waste Management Grants⁶
--

Solid Waste Management Grants are made available from an amount that is usually stipulated by Congress when it appropriates funds for Water Programs Grants.

Who May Receive Assistance?

- ❖ Private nonprofit organizations that have been granted tax-exempt status by the IRS and public bodies, including local government-based multi-jurisdictional organizations, may be eligible for assistance.
- ❖ Applicants must have proven ability, background, experience, legal authority, and actual capacity to provide the proposed services.

⁶ Authorized by Section 310B(b) of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1932).

How May Grant Funds Be Used?

- ❖ Funds may be used to:
 - (1) Evaluate landfill conditions to determine threats to water resources.
 - (2) Provide technical assistance and/or training to help communities reduce the solid waste stream; enhance operator skills in operation and maintenance of active landfills, or assist operators of landfills which are closed, or will be closed soon, with the development and implementation of the plans for closing and future land use.

What Is The Maximum Grant?

- ❖ Grants may be made for up to 100 percent of eligible project costs.

Where Should Applications Be Filed?

- ❖ Applicants proposing to provide technical assistance and/or training in only one State will apply through the appropriate USDA Rural Development State office.
- ❖ Applicants proposing to provide technical assistance and/or training in more than one State will apply through the Administrator, RUS, Washington, D.C. 20250.

What Should Be Included In An Application?

- ❖ Primary documents include:
 - (1) SF 424.1, "Application for Federal Assistance (For Non-Construction)."
 - (2) Evidence of applicant's legal existence and authority.
 - (3) Evidence of tax exempt status from the IRS.
 - (4) Narrative of the proposed technical assistance and/or training services to be provided, method for selecting association(s) to receive the services, applicant's experience, service area, related costs, applicant's financial information, etc.

Funds Available.

- ❖ FY 99 - \$2,700,000 FY 98 - \$2,600,000

Where Can Additional Information or Material Be Obtained?

- ❖ Forms, documents, and information may be obtained from any of the 47 USDA Rural Development State, Local, or Area Offices, USDA Service Centers, or the Administrative Services Division, RUS, Washington, D.C. 20250.
- ❖ Any questions can be answered by the State Director, USDA Rural Development, or by the Water Programs Division, Washington, D.C. at (202) 720-9583.
- ❖ A considerable amount of information is available on the Water Programs Internet home page. The address is:

<http://www.usda.gov/rus/water/>



THE VICE PRESIDENT
WASHINGTON

**Remarks as Prepared for Vice President Al Gore
Water 2000 Announcement
Monday, July 13, 1998**

We're here today to talk about our progress in protecting the public health in rural America -- and to announce an important new investment in Water 2000, a program we started in 1994 to provide safe, clean, and reliable drinking water to all Americans.

It's hard for some of us to imagine that in the United States, in 1998, millions of Americans live each day without a resource as basic as safe and reliable drinking water. But as you just heard from Carole Buckland, that is too often the case. And for too many people, when the water does come out of the pipes, it looks like this. This water came from a substandard public water system in Mayflower, Arkansas, three years ago. Thanks to our Water 2000 initiative, that system has been upgraded and modernized, and last year it began pumping out clean water.

But still, in too many rural communities, the drinking water infrastructure is either falling apart or virtually non-existent. In too many rural communities, tap water simply isn't safe water. And it is often the most vulnerable Americans -- infants, young children, and the elderly -- who are the hardest hit by tainted drinking water.

Since President Clinton created Water 2000, we have invested nearly \$1.7 billion to improve and protect drinking water in more than 1,300 rural communities nationwide. That has meant a new safe drinking water system on the White Mountain Apache Indian Reservation in Eastern Arizona -- where public health officials found the water to be worse than that of many developing countries. It has meant that the Southern Iowa Rural Water Association had the money to bring safe water to thousands of homes. It means that hundreds of thousands of American children will grow up stronger and healthier, with clean water to drink every day.

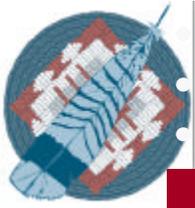
Now we are taking the next step. Today, I am pleased to announce that our Agriculture Department is awarding more than \$155 million in loans and grants to help ensure safe, clean drinking water in states across America. This is by far the largest investment ever made in safe, clean water for America's rural communities. With this new investment, we are sending a clear message to rural America: providing you with clean, sparkling water is a national priority -- and this administration has made it our priority.

And we want to provide even more assistance. The budget we sent to Congress includes significant new resources to carry out our Clean Water Action Plan, so we can finish the job of restoring our rivers, lakes, and coastal waters. So far, Congress has refused to fully fund this

vital initiative. It's time for Congress to commit the resources we need to get the job done.

I want to close with the story of Robert Avant, who is here in the audience today. A number of years ago, Robert was a school bus driver in rural Panola County, Mississippi. One day, he was driving his bus across a bridge when the bridge literally fell apart. Luckily, no one was hurt. That experience made him realize that government had to do better, so he ran for local office. Robert Avant still drives a school bus... when he's not busy as the President of the Board of County Supervisors. And, last year, as a county supervisor, he secured over \$2 million in Water 2000 loans and grants to build a public water system where there had never been one before. Soon, the poorest part of Panola county will soon have reliable, clean, and safe drinking water. Robert, please stand.

In closing, I thank Robert Avant and the hundreds of people like him who are working with us to make clean, safe drinking water a reality for all Americans.



Self-Help Housing

- ❑ Roots of Self-Help Housing
- ❑ Working Together
- ❑ Independence & Interdependence
 - ✓ Self & Mutual



Self-Help Housing

❑ Benefits to Families and Communities

- ✓ Lower housing costs to families
- ✓ Sweat equity as down payment
- ✓ Group interdependence
- ✓ Neighborhood stability

❑ Sweat Equity

- ✓ Avenue to homeownership

❑ Self-Help Families Build to Stay

- ✓ Study results



Self-Help Housing

□ Practical Issues and Considerations

● Land

- ✓ Acquiring building sites

● Financing

- ✓ Construction
- ✓ Mortgage

● Design

- ✓ Easy to build
- ✓ Innovative?



Self-Help Housing

□ Practical Issues and Considerations (cont'd)

● Assessing family

- ✓ Qualify for financing
- ✓ Construction ability
- ✓ Work hours requirements
- ✓ Overall readiness for homeownership

● Knowledgeable Construction Staff

- ✓ credibility as teacher
- ✓ group dynamics
- ✓ hands-on



Self-Help Housing

□ Practical Issues and Considerations (cont'd)

● Construction Progress

- ✓ Family building tasks
- ✓ Subcontracting
- ✓ Managing construction process
- ✓ Enforceable group agreement



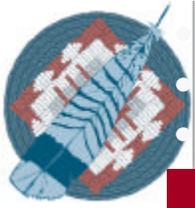
Self-Help Housing

- Practical Issues and Considerations (cont'd)
 - Clarity
 - ✓ Design
 - ✓ Financing
 - ✓ Construction



Self-Help Housing

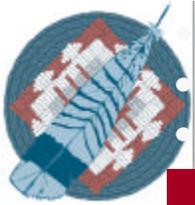
- Making Self-Help Housing Work
 - Families
 - Community
 - Partners
- Nonprofits
 - Independent
 - Resource Flexibility
- Board Members



Self-Help Housing

“All we ever wanted was a place for our children to come home to....and they still do.”

Margarita Melendez



CASE STUDY IN HOMEOWNERSHIP

SETTING UP YOUR HOMEOWNERSHIP PROGRAM

THE OSPREY SPIRIT II PROGRAM

The Couer d'Alene Tribe

□ Ken Stocks





















MINNESOTA CHIPPEWA TRIBAL HOUSING CORPORATION

■ 501(3c) Non-Profit Organization
Incorporated under IRS Guidelines in 1976

■ FHA Lender Approved in 1985

CORPORATE MISSION STATEMENT

To provide adequate, affordable, safe,
habitable housing for Native Americans
enrolled in the Minnesota Chippewa Tribe
and residing in the State of Minnesota

MORTGAGES AVAILABLE

- Single Family Low Interest Loans
- Moderate Income Loans
- Rental Development Loans



CORPORATION ASSETS

■ Mortgage Assets	\$29,146,000
■ Originated Mortgages	1,461
■ Satisfied Mortgages	623
■ Outstanding Mortgages	838

STAFF

- Clerical Staff
- Loan Processors
- FHA Fee Inspectors
- FHA D.E. Underwriter
- Loan Closer
- Loan Servicing



REASONS FOR DEVELOPMENT

- Lack of adequate financing through our corporation.
- Unavailability of private financing for loans on tribal trust property.
- Create opportunities for utilization of HUD 248, 184, 203(b) & 203(k) programs.
- Encourage tribal members to return to their homelands by making mortgage financing available.

REASONS...

- Expand financial resources through the leveraging of other public/private dollars.
- Social and economic changes created immediate and dramatic increases:
 - jobs
 - higher wages
 - employment stability.

TARGETED POPULATION

- Families with incomes above the level of 80% of median income.
 - Families currently unserved through existing local T.D.H.E. Programs.
 - Credit worthy applicants.
 - Applicants with stable employment.
 - Applicants unable to obtain conventional financing.
- 

ASSESSING THE NEED

- Evaluation of the existing Mortgage Programs of the Corporation.
- Evaluation of the combined needs of housing on the six member reservations.
- Extensive waiting lists on each of the six T.D.H.E.'s.

OBJECTIVES

- Provide mortgage financing on tribal trust land.
- Financing for people not of low income.
- Create additional homes.
- Obtain mortgage insurance.
- Economic integration.



PARTICIPATING PARTNERS

- Minnesota Chippewa Tribal Housing Corporation
- Minnesota Housing Finance Agency
- Federal Home Loan Bank
- Housing & Urban Development (Regional and National)

PROGRAM FUNDING

- Corporate Revolving Funds 1.2 Million
- Funds Through FHLB 1.2 Million
- Continued funding by returning payments



SPEED BUMPS & HURDLES

- M.O.U.'S Needed to be Signed
- Amendment of Policies
- Loan Agreement Amended & Approved by MHFA Board
- Certification of Staff
- Approved as a Non-Member Borrower of FHLB

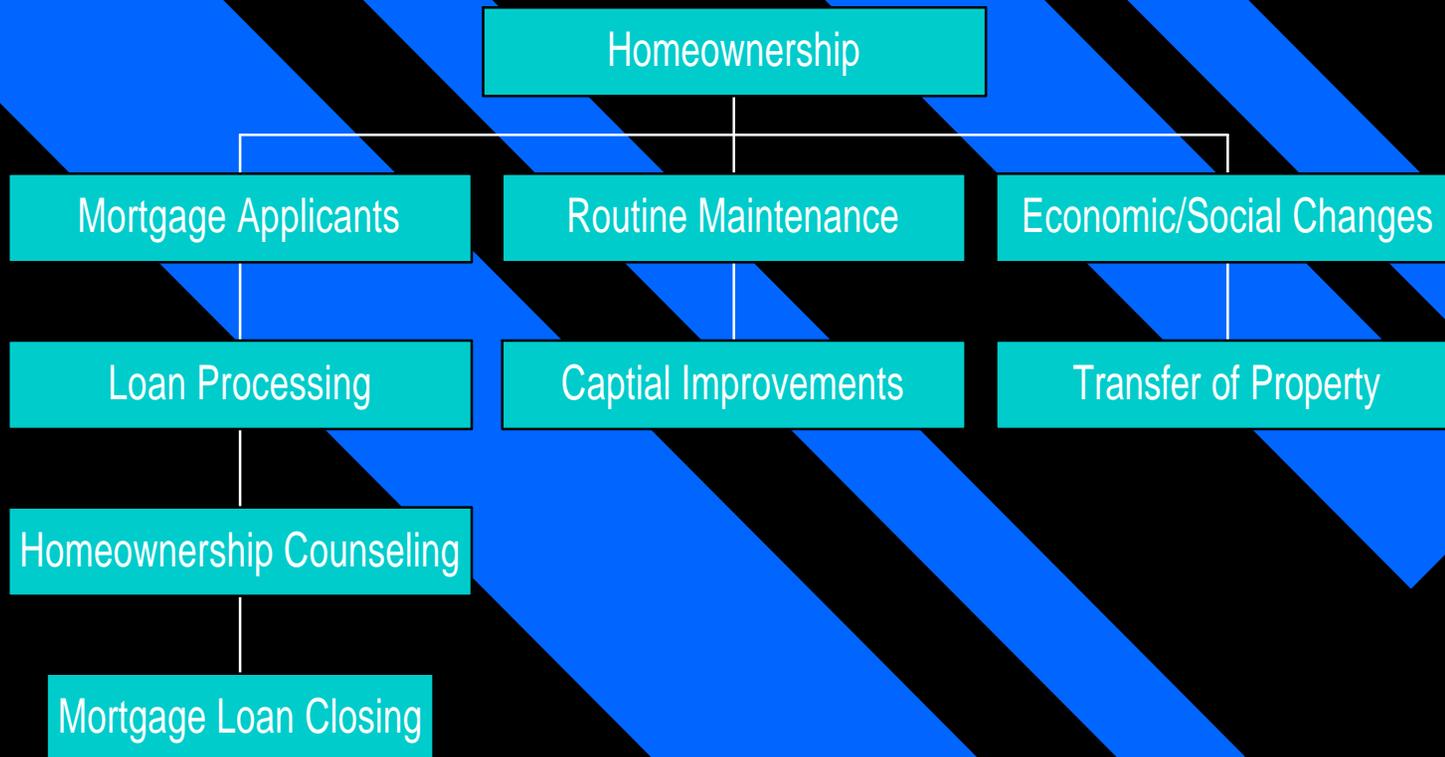
ACHIEVEMENTS

- Began as a Demonstration Project in October 1995
- Closed first loan February 1996
- Converted to a permanent mortgage financing resource in 1998
- 32 loans closed to date
- Mortgage Assets as of 3/99 - \$2,085,809

UNRESOLVED ISSUES

- Unable to underwrite 184 loans on local level
- Inability to sell individual loans on the secondary market
- Re-sale difficulty
- Limited buyers
- Fair Market Value
- Refinancing
- Equity
- Reverse Mortgages





ALEXANDER & KARSHMER

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* A PROFESSIONAL CORPORATION

Shared Visions: The Native American Homeownership,
Legal and Economic Development Summit I
Chicago, Illinois
March 30-April 1, 1999

U.S. Department of Housing and Urban Development
Office of Native American Programs

Litigation Update

By Curtis G. Berkey, Esq.

This Report summarizes all of the U.S. Supreme Court decisions and significant federal, tribal and state court decisions concerning housing matters during the period April 1, 1998 to April 1, 1999. During this period, the Supreme Court decided four (4) cases involving tribal rights, continuing the recent trend of activism in federal Indian law. In addition, the Court has three Indian law cases now under review. These cases are summarized here because the decisions of the Supreme Court often establish or refine fundamental legal rules and principles that directly affect the outcome of litigation involving Indian housing issues. Of particular note, of the four cases decided in this period, Justice Clarence Thomas authored the opinion for a unanimous Court in two of them. In recent years, Justice Thomas has emerged as the leading exponent of the Supreme Court's thinking on federal Indian law.

A. Indian Law Decisions of the United States Supreme Court.

The Supreme Court's decisions address tribal sovereign immunity and state taxation of a variety of activities occurring within Indian country. Specifically, the Court issued the following decisions:

- Indian tribes have sovereign immunity from lawsuit arising from business dealings with non-Indian corporations outside the reservation boundaries (Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., 118 S.Ct. 1700 (1998)).

-
- States have authority to impose taxes on the proceeds earned by a construction company that contracted with the Bureau of Indian Affairs to construct roads on Indian reservations (Arizona Department of Revenue v. Blaze Construction Company, Inc., 119 S.Ct. 957 (1999)).
 - A county has authority to impose its real property tax on land within the reservation that had been allotted to Indians or sold to non-Indians during the allotment period and then purchased by the tribe to augment the tribal land base (Cass County, Minnesota v. Leech Lake Band of Chippewa Indians, 524 U.S. 103, 118 S.Ct. 1904 (1998)).
 - The Crow Tribe does not have the right to recover taxes a non-Indian mining company paid to Montana on coal extracted from mines held in trust by the United States for the Tribe (Montana v. Crow Tribe of Indians, 523 U.S. 696, 118 S.Ct. 1650 (1998)).

1. Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., 118 S.Ct. 1700 (1998).

The Supreme Court ruled that the Kiowa Tribe, as an incident of its inherent sovereignty, is immune from a suit by Manufacturing Technologies which alleged that the Tribe defaulted on a promise to pay the company \$285,000. The promissory note was signed outside the Tribe's reservation and the Tribe was obligated to make the payments outside the reservation. The Tribe had not waived its immunity from suit in its dealings with the company. Following established precedent, the Court found that the Tribe's immunity extended to tribal commercial activities outside the reservation. The decision was 6-3, with Justice Kennedy writing the majority opinion. Justice Stevens dissented, joined by Justices Thomas and Ginsburg. The Court's decision reversed a decision of the Oklahoma Court of Civil Appeals that Indian tribes are subject to suit in state court for breaches of contract involving off-reservation commercial dealings.

Although the Court expressed some discomfort with the rationale for the tribal immunity rule, it nonetheless concluded that "the doctrine of tribal immunity is settled law and controls this case." 118 S.Ct. at 1703. The Court reaffirmed the rule that "[t]ribes enjoy immunity from suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation." 118 S.Ct. at 1704. Significantly, the Court rejected the arguments of the

company that tribal immunity should not apply when tribes undertake commercial dealings. But the Court further noted that Congress has authority to alter tribal sovereign immunity "through explicit legislation." 118 S.Ct. at 1705. The Court said: "[W]e defer to the role Congress may wish to exercise in this important judgment." 118 S.Ct. at 1705. The constitutional limits of Congress' authority in this regard were not discussed.

2. Arizona Department of Revenue v. Blaze Construction Company, Inc., 119 S.Ct. 957 (1999).

On March 2, 1999, the Supreme Court unanimously ruled that the Arizona Department of Revenue could impose its gross receipts tax on the revenues earned by Blaze Construction Company in its contracts with the Bureau of Indian Affairs. Blaze Construction is incorporated under the laws of the Blackfeet Tribe of Montana, and for seven years had contracted with the BIA to build, repair and improve roads on the Navajo, Hopi, Fort Apache, Colorado River, Tohono O'Odham and San Carlos Apache Reservations. Blaze also had construction contracts with certain tribal housing authorities, but Arizona eventually dropped its claim to tax the proceeds from those contracts. The power of Arizona to tax such proceeds was therefore not decided in this case. Justice Thomas wrote the opinion for the Court.

The Court first found that Blaze should be treated as a "non-Indian" for purposes of this case, even though it was incorporated under Blackfeet law, because none of its work was conducted on the Blackfeet Reservation. This meant that the case would be decided by application of the following rule: tax immunity of private federal contractors is appropriate only when the tax falls on the United States itself or on an agency so closely connected to the Government that the two cannot realistically be seen as separate entities for tax purposes. Because the incidence of the tax fell on Blaze, and not the federal government, and because Blaze did not claim to be an agency of the federal government, the Court concluded that Arizona's tax passed the test.

The Court refused to apply the balancing test that generally applies when states are attempting to tax on-reservation activity. The Court offered the following rationale for its refusal to weigh tribal interests against state interests in this context: "The need to avoid litigation and ensure efficient tax administration counsels in favor of a bright-line standard for taxation of federal contracts, regardless of whether the contracted-for activity takes place on Indian reservations." 1999 WL 100899, *3. The Court also noted that

"the political process is uniquely adapted the accommodating the interests implicated by state taxation of federal contractors." Id.

3. Cass County, Minnesota v. Leech Lake Band of Chippewa Indians, 524 U.S. 103, 118 S.Ct. 1904 (1998).

In another unanimous opinion by Justice Thomas, the Court ruled that Cass County could assess and collect its real property tax on land within the reservation of the Leech Lake Band of Chippewa Indians held by the Tribe in fee simple ownership. Because of the allotment process implemented by the Nelson Act of 1889, the Leech Lake Band by 1977 owned only about 5% of its original reservation. The Band sought to re-establish its land base by purchasing back parcels that had been lost through sales to non-Indians as timber lands or homesteads. At issue in the case was the authority of Cass County to tax 8 repurchased parcels within the Reservation. The Band paid more than \$64,000 in taxes, interest and penalties under protest, and filed suit to recover this amount. (In 1995, the Band successfully applied to have several parcels taken into trust; the County has no authority to tax those parcels).

The Court upheld the County's authority to tax the Band's land. In reaching this conclusion, the Court applied the rule that state and local governments may not tax tribal land within the reservation unless Congress has authorized such taxation in "unmistakably clear" statutory language. 118 S.Ct. at 1908. The Court found such explicit congressional intent in sections 5 and 6 of the Nelson Act, which provided for the sale of tribal lands for timber production and homesteading by non-Indians. Because Congress had made the reservation lands "freely alienable," Congress in the Court's view had also "unmistakably" intended that such lands be taxable by the state or county. The fact that the Band had repurchased the property was deemed to be legally irrelevant: "The subsequent repurchase of the reservation land by a tribe does not manifest any congressional intent to reassume federal protection of that land and to oust state taxing authority -- particularly when Congress explicitly relinquished such protection many years before." 118 S.Ct. at 1910. Thus, tax-exempt status does not automatically attach when a tribe acquires reservation land. It is necessary to have the land placed in trust for tax-exempt status to attach.

4. Montana v. Crow Tribe of Indians, 523 U.S. 696, 118 S.Ct. 1650 (1998).

In this suit, which originated in 1978, the Crow Tribe sought to recover \$58.2 million in taxes the State of Montana and Big Horn County illegally collected from Westmoreland Resources, Inc. on coal the company mined under a lease from the Tribe. The Tribe imposed its own severance tax on mined coal beginning in 1983, but it sought to recover taxes Montana and Big Horn County assessed on Westmoreland between 1975 and 1982 in violation of federal law. The Supreme Court denied the Tribe's request that the unlawfully collected taxes be paid to the Tribe. The Court rejected the Tribe's argument that coal taxes paid by Westmoreland to Montana unjustly enriched the State at the expense of the Tribe. Further, the Court rejected the argument that Westmoreland should have paid the taxes to the Tribe, because the Department of the Interior had not approved the Tribe's tax ordinance during the years in question. Finally, the Court found that the Tribe had not shown that Montana's taxes negatively impacted the marketability of the Tribe's coal. The Court did not, however, foreclose the possibility that the Tribe might be able to recover "damages based on actual losses." 118 S.Ct. at 1661.

B. Indian Law Cases Awaiting Decision by the United States Supreme Court.

The Court is also currently reviewing three Indian law cases.

In Minnesota v. Mille Lacs Band of Chippewa Indians, the Court is reviewing the decision of the Eighth Circuit Court of Appeals that upheld the hunting, fishing and gathering rights of the Mille Lacs Band under the Treaty of 1837. 124 F.3d 904 (8th Cir. 1997). The case is being closely watched because it presents the questions of whether the Tribe's treaty rights were extinguished by the equal footing doctrine when Minnesota was admitted to the Union, and whether the Tribe's treaty rights allow an equitable apportionment of harvestable resources between the Tribe and the State. The case was argued before the Court on December 2, 1998, and a decision is expected soon.

In El Paso Natural Gas v. Neztosie, No. 98-6, the Court is reviewing a decision of the Ninth Circuit Court of Appeals that suits by members of the Navajo Nation against corporations that conducted uranium mining on the Navajo Reservation must be brought in Navajo Tribal Court, and that the federal courts do not have exclusive jurisdiction over such claims under the Price-Anderson Act. 136 F.3d 610 (9th Cir. 1998). The Navajo

plaintiffs alleged that radiation from uranium mines had caused the death by cancer of at least one tribal member, and that such radiation also caused injuries and sickness by contaminated drinking water. The Court of Appeals ruled that the suits should be heard in the Navajo Tribal Court, and that the Price-Anderson Act, which limits the tort liability of the nuclear industry, does not strip the tribal court of its jurisdiction over the claims. This case was argued before the Court on March 2, 1999, and a decision is expected in several months.

In Amoco Production Company v. Southern Ute Indian Tribe, No.98-830, the Court is reviewing the decision of the Tenth Circuit Court of Appeals that upheld the right of the Southern Ute Tribe to sue various oil companies for their extraction of coal bed methane which had been reserved to the United States and the Tribe in the Coal Lands Acts of 1909 and 1910. The Court of Appeals ruled that the Tribe could sue the companies for damages because the Tribe owned the coal bed methane. The Supreme Court's review is limited to the issue of whether the federal statutes reserve coal bed methane on behalf of the Tribe. The briefs will be filed by April 16, and oral argument will be set shortly thereafter.

C. Federal, Tribal and State Court Decisions on Indian Housing.

During the past year, these courts issued rulings addressing the sovereign immunity of tribal housing authorities, the liability of tribal housing authorities for tortious conversion, the jurisdiction of the federal courts to hear construction disputes with tribal housing authorities and related matters.

1. Dillon v. Yankton Sioux Tribe Housing Authority, 144 F.3d 581 (8th Cir. 1998).

In this suit, a non-Indian employee who was fired by the Yankton Sioux Housing Authority brought a discrimination claim under various civil rights statutes. The Court of Appeals affirmed the decision of the district court dismissing the suit for the reason that the tribal housing authority, as a tribal agency, is immune from suit without its consent. The Court first concluded that the Authority is a tribal agency that shares the Tribe's sovereign immunity from suit. The Court rejected the argument that the Tribe had waived the Authority's immunity in the resolution that created it. The resolution provided that the Tribe "hereby gives its irrevocable consent to allowing the Authority to sue and be sued in its corporate name, upon any contract . . . and hereby authorizes

the Authority to agree by contract to waive any immunity from suit which it might otherwise have." The Court concluded that this language was not sufficient to waive the Authority's immunity. Rather, an express written contract waiving sovereign immunity is required before the Authority can be sued. In other words, the tribal law authorized the Authority to waive its immunity, but there was no evidence in this case that the Authority had in fact done so.

Finally, the Court rejected the argument that the Authority had waived its immunity by entering into a contract with HUD which contained a promise to abide by the civil rights statutes. The Court concluded that neither the agreement nor the HUD regulations contain any explicit waiver of sovereign immunity. The Court noted, however, that the terminated employee may pursue any claims he may have in tribal court under the Indian Civil Rights Act and "other applicable law."

2. Ninigret Development Corporation v. Narragansett Indian Wetuomuck Housing Authority, 1999 WL 14254 (D. Rhode Island 1999).

This case involved a dispute between a construction company and the tribal housing authority over a contract to build three projects on tribally-owned land outside the Tribe's reservation. As construction of several community centers proceeded, disputes arose over pricing, the scope of work, and the technical requirements of the construction specifications. After construction stopped, the company brought suit in federal court against the Authority. The construction contract contained a clause that required all disputes to "shall first be presented to the Tribal Council for resolution, and in the event of non-resolution, then to the Tribal Court, which will appoint an Arbitration Board." The contract further provided that "upon exhaustion of final remedy in Tribal Court leading to a non-resolution and as a civil option, the Parties may, with written agreement from both, institute a Civil Action in Federal District Court." The case required the district court to interpret the meaning of these provisions.

The federal district court ruled that it had jurisdiction over the suit because the question of whether a tribe may compel a non-Indian to submit to the civil jurisdiction of a tribal court is a "federal question" that federal courts may decide. The court enforced the requirement in the contract that disputes must be first submitted to the Tribal Council for resolution. As a result, it dismissed the plaintiff's claims.

The court rejected the company's argument that it should not be required to go to the Tribal Council because it was fraudulently led to believe that the Tribe had a tribal court that could hear the matter if the Tribal Council could not resolve it. The court relied on the principle that tribal dispute resolution systems need not "follow the American blueprint for a court system," or adopt the separation of powers doctrine. 1999 WL 14254, * 7. The court noted that the U.S. Supreme Court has made clear that nonjudicial tribal institutions are recognized as "competent law-applying bodies." *Id.* The court also found that there was no evidence that the Tribal Council was biased against the company. For these reasons, the court concluded that the company had no right to assume that the Tribe's dispute resolution system would mimic the federal court system. The dispute resolution procedure provided in the contract was found to be valid and enforceable.

3. Kanzleiter v. Colville Indian Housing Authority, 25 Ind. L. Rep. 6181 (Confederated Tribes of the Colville Reservation Tribal Court, June 18, 1998).

In this case, the Colville Tribal Court ruled that the Colville Housing Authority was liable in money damages for its seizure and destruction of an abandoned vehicle owned by a tribal member who resided in housing managed by the Authority. The Authority arranged for a towing service to remove the vehicle, which subsequently sold it for scrap metal. The court found that the Authority had violated the Tribe's abandoned vehicle ordinance by relying on the tribal police for the determination that the vehicle had been abandoned in accordance with tribal law, and to notify the vehicle's owner that it would be towed. The court further found that the Housing Authority had no power to grant title to the vehicle to the tow service, and that it was therefore liable for tortious conversion. The court awarded the owner \$96, the salvage value of the vehicle.

4. Ivory v. Hopp, 25 Ind. L. Rep. 3167 (C.D. Cal. 1998).

The parties to this lawsuit are sublessees of property within a mobile home park owned and operated by the Chemehuevi Indian Tribe within the Tribe's reservation. The plaintiffs sued the defendants for constructing a mobile home in a manner that obstructed their view of Lake Havasu. Each sublease signed by the parties contained a provision declaring the tribal law would govern any disputes that arise. The district court dismissed the case for the reason that both the sublease and general principles of tribal sovereignty require that the suit first be brought in tribal court. The court noted that Public Law 280

does not give California jurisdiction to apply its regulatory laws within the reservation, nor does it divest the Tribe of its inherent authority to regulate the activities of non-Indians on Indian land.

D. Cases Raising Housing-Related Issues.

1. Pink v. Modoc Indian Health Project, Inc., 157 F.3d 1185 (9th Cir. 1998).

In this case, the Court of Appeals ruled that a terminated employee could not sue a non-profit tribal health organization under Title VII of the Civil Rights Act of 1964. The plaintiff sought damages for sexual harassment, gender, race and national origin discrimination and wrongful termination. The court dismissed her complaint because the health organization can be deemed a "tribe" for purposes of Title VII. That law exempts Indian tribes from its coverage. The health organization was treated as a tribe because it was incorporated by two tribes, it served as an "arm of the sovereign tribes, acting as more than a mere business." 157 F.3d at 1188. The health organization board of directors consisted of two representatives from each of the tribes that incorporated the organization. Because the tribal health organization was "organized to control a collective enterprise," it came within the tribal exemption in Title VII.

**THE USE OF TAX-EXEMPT BONDS AND TAX CREDITS TO
FINANCE HOUSING PROJECTS IN INDIAN COUNTRY**

**Shared Visions: The Native American Homeownership, Legal and
Economic Development Summit I, Sponsored by HUD**

Chicago, Illinois

March 30 - April 1, 1999

Presented by
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1. Introduction

This article outlines some of the financing tools and resources that are used increasingly by tribes to increase the stock of affordable housing and related development as well as provides a brief summary of some of the basic provisions of the Native American Housing and Self-Determination Act of 1996 ("NAHASDA").

2. Tax-Exempt Debt Issued by the Tribe or its Political Subdivision (Governmental Bonds)

Tribal governments may qualify for reduced tax exempt rates of interest -- *i.e.*, receipt of the interest payments made on the debt are excludable from the gross income of the lender for federal income tax purposes. This exemption enables a lender to offer the tribe a lower rate of interest because the lender is not taxed on interest paid on the debt. Tax exempt rates are often as much as 2 percent (200 basis points) lower than taxable rates.

Pursuant to the federal Indian Tax Status Act of 1986, as amended, Internal Revenue Tax Code of 1986, as amended (the "Code") Section 7871 ("Code Sec. 7871"), Indian tribal governments are treated as states for certain federal tax purposes, including issuance of tax exempt bonds.

In general, bonds of an Indian tribal government will qualify as tax-exempt bonds only if "substantially all of the proceeds" will be used "in the exercise of any essential governmental function." Code Sec. 7871(c).

Pursuant to the Omnibus Budget Reconciliation Act of 1987 (the "1987 Act"), Congress revised the Code to make clear that the term "essential governmental function" does not include any function which is not customarily performed by state and local governments with general taxing powers. Code

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Sec. 7871(e). Legislative history accompanying the 1987 Act indicates that schools, roads and governmental buildings are activities "customarily" financed with tax-exempt bonds. House Ways and Means Committee Report No. 100-391, 100th Cong., 1st Sess. at 1139 (1987). A facility will satisfy the "essential governmental function" standard if "the facility is comparable to facilities that are customarily acquired or constructed and operated by States and local governments." H.R. Rep. No. 100-495, 100th Cong., 1st Sess. at 1012, Fn. 1 (1987).

Thus, examples of projects which should qualify as "essential governmental functions" for the purpose of tax-exempt Indian tribal bond financing include, among other possibilities:

- Tribal governmental administrative offices and equipment;
- Tribal police and fire facilities (including vehicles);
- Tribal health clinics and hospitals;
- Tribal housing projects;
- Tribal infrastructure: roads, sidewalks, bridges, sewers;
- Tribal utilities: electricity, water and sewer;
- Tribal convention or trade show facilities;
- Tribal sports facilities and performing arts centers
- Tribal schools, libraries and museums;
- Tribal facilities for child welfare or family services;
- Tribal jails; and
- Tribal parks.

As you can see from the above list, qualifying as an Indian tribal government under Code Sec. 7871 can have a tremendous impact on a Tribe and the projects it may wish to undertake.

Most of the existing recognized Indian tribal governments are listed in Revenue Procedure ("Rev. Proc.") 83-87. Tribal entities not listed in Rev. Proc. 83-87 may apply for recognition by the Internal Revenue Service ("IRS") ruling in accordance with Rev. Proc. 84-37.

Most of the existing recognized Indian tribal subdivisions governments are listed in Rev. Proc. 84-36. Tribal entities not listed in Rev. Proc. 84-36 may apply for recognition by the IRS ruling in accordance with Rev. Proc. 84-37.

Rev. Proc. 84-37 sets forth procedures under which a governmental unit of an Indian tribe can request a determination qualifying it for treatment as a state under Code Sec. 7871. It states that each request should include how the entity satisfies the statutory definition of an Indian Tribal government and the actual or proximate date on which the entity satisfied the statutory definition of an Indian tribal government or was delegated one or more of the sovereign powers of an Indian tribal government.

An "Indian tribal government" means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska natives, that is determined by the Secretary of the Treasury, *after consultation with the Secretary of the Interior*, to exercise governmental functions. Code Sec. 7701(a)(40)(A). The three generally accepted sovereign powers of states are the power to tax, the power of eminent domain and the police power.

Tribal instrumentalities, such as utilities commissions, housing authorities and the like can issue tax-exempt debt "on behalf of" tribes. While such debt is issued in the name of the tribe, the recourse can be limited to the revenues or assets of the instrumentality that issues it.

Generally, a tribal government's debt qualifies for tax exempt treatment only if substantially all of the loan, lease purchase or bond proceeds (collectively, "obligations") will be used in the exercise of an essential governmental function. These obligations are "governmental bonds" under Section 103 of the Code and require that the housing be owned by the tribe or one of its political subdivisions, or a tribally chartered corporation wholly owned by the tribe or one of its political subdivisions and must either be managed by the tribe or a tribal subdivision or, if managed by another entity, the management contract must comply with special federal rules set forth in final regulations and Revenue Procedure 97-13.

These rules limit the maximum term (including renewal options) of a management contract, based upon the nature of the management fee. Under new Federal Regulations that became effective May 16, 1997, if at least 80% of the manager's compensation in each annual period is stated as a fixed fee, the contract may extend for 10 years, while if at least 95% of the compensation in each annual period is stated as a fixed fee, the contract may extend for 15 years. A one time incentive award equal to a single stated dollar amount will be treated as part of the fixed fee portion of the contract if such fee is triggered by attainment of either (but not both) a gross revenue or expense target.

If less than 80% of the manager's annual compensation is based on a periodic fixed fee, only contracts with maximum terms of no more than 5 years are permitted. The tribe must have the ability to terminate the management contract, without cause or penalty, at the end of three years. In addition, at least 50% of the management fee in each year must be a fixed fee. The remainder may be stated as a percentage of gross revenues or some other variable amount, but no amount may be based on a share of net profits.

Tribes may also take steps to further reduce borrowing costs by designating the obligations as so-called "bank qualified" obligations under Section 265(b) of the Code. In order to obtain this designation the tribe must reasonably anticipate that it will not issue more than \$10 million of tax exempt obligations in the calendar year, the debt must be for essential governmental functions and the tribe must designate the debt as a "qualified tax exempt obligation" under Section 265(b) of the Internal Revenue Code in a resolution or ordinance.

3. Tax Exempt Debt Issued by an Issuer Other Than the Tribe

A. State Wide Issuer. In many states a state agency is given the statutory authority to issue tax-exempt bonds and loan the proceeds to tribal entities. In Oregon, for example, the Housing and Community Services Department has statutory authority to loan proceeds of its elderly and disabled bond proceeds to tribes pursuant to Oregon Revised Statutes Chapter 456 and administrative regulations promulgated thereunder. In these situations, if the state or political subdivision is authorized to issue 501(c)(3) or private activity bonds (discussed below), they could loan the proceeds to a tribal entity which could, in turn, if permitted under their authority, loan the proceeds to a 501(c) or for-profit entity including a for-profit entity of which the tribal housing authority might be a general partner. The more restrictive federal tax code requirements discussed below relating to income requirements and other matters would then need to be followed. It should be emphasized that unlike all other state and local governments, tribes and their political subdivisions were not given the authority under Section 7871 of the Code to issue private activity bonds for for-profit or 501(c)(3) owned housing.

B. Local Issuers. Local housing authorities, cities, counties and hospital facilities authorities may also have the statutory authority to issue governmental, 501(c)(3) or private activity bonds and loan the proceeds to a tribal entity or entity of which the tribe is a general partner or involved via a management contract or other arrangement.

C. Tribal Housing Authorities Organized under State Law. In certain states, such as Oklahoma, tribes may organize housing authorities under state law. While such entities may be subject to state law procedural requirements and financial accountability rules that tribes may not wish to submit to, their status as political subdivisions of a state offer significant advantages in the financing of housing projects on tribal land: they may issue tax-exempt debt under the same circumstances as state and local housing authorities. Thus, they can issue debt to finance multi-family housing projects that will be owned by partnerships or 501(c)(3) organizations, and they may issue debt to make loans to finance single family housing.

Creation of such an entity, where state law permits, does not prevent a tribe from continuing to operate or creating an additional housing authority under tribal law. The state law entity could be used exclusively for tax-exempt financing purposes, while the tribally created housing authority can be used for all other housing related purposes.

4. Taxable Debt

If authorized by tribal law, tribes or other political subdivisions can issue taxable bonds or enter into taxable loans not subject to federal tax law restrictions. Particularly if issued in conjunction with tax-exempt bonds, such bonds may carry an interest rate that is more favorable than a standard commercial loan. Small taxable bonds issued for project costs that do not qualify under the tax exempt rules (e.g., for commercial space in a tribally owned housing project) can be a useful tool and are often referred to in the marketplace as "taxable tails".

5. Federal Tax Code Requirements for "For-Profit" and "501(c)(3)" Tax Exempt Bond Projects

If a tribe wishes to use federally tax-exempt bond financing to finance housing projects that will be owned by any entity other than the tribe or a tribal authority, it must work with a non-tribal state or local issued authority that has the power to issue such debt and loan the proceeds to the project owner. As with tax credit projects, many federal tax code provisions apply.

A. Multifamily Residential Housing Bonds (for-profit development).

(1) Volume Allocation. Private activity bonds loaned to a for-profit developer will require an allocation of bond volume cap from the state or local issuing body. Volume cap is limited, and in most jurisdictions is in short supply. Volume Allocation may be the killer requirement. The Code imposes private activity bond volume ceilings for each state equal to the greater of \$150 million or \$50 per capita

(2) Costs of Issuance Limit. Only 2% of the proceeds of such bonds may be used to pay for costs of issuance of the transaction. Any excess costs of issuance must be paid for from some other source.

(3) Rehab Requirement. Such bonds may not be used to acquire existing property unless significant rehabilitation (equal to at least 15% of the amount of bond proceeds used to acquire the building) will occur within two years of the project acquisition date.

Such bonds are subject to strict low-income tenant requirements. Either a minimum of 20% of the units must be rented to tenants with incomes of 50% or less of the area median income, or 40% of the units must be rented by tenants with incomes of 60% or less of area median income. These requirements will last until the later of (a) 15 years after 50% of the units in the project are occupied, (b) all federal tax-exempt debt issued to finance or refinance the project has been retired, or (c) the termination of any Section 8 assistance with respect to the project. Tenant income is calculated differently for purposes of the bond rules than it is for purposes of the federal low-income housing tax credit rules. If a low-income tenant's income rises beyond 140% of the applicable income limitation, the next available unit of comparable or smaller size must be rented to a qualifying low-income tenant.

Owners may elect, in the alternative, to rent a minimum of 15% of the units to tenants with income not greater than 40% of the area median income, if gross rent restrictions are also imposed on the low-income units. In such cases, low-income tenant income is permitted to rise to 170% of the applicable income limit without triggering the requirement to rent the next available unit to a low-income tenant.

The income restrictions terminate if the project is lost through foreclosure, deed in lieu of foreclosure, or destruction, so long as neither the original owner nor a related party reacquires the project, and so long as the bonds that financed or refinanced the project are retired within a reasonable time.

All units must have complete kitchens suitable for cooking meals on a regular basis and separate bathrooms. A recent private letter ruling suggests that a kitchen may be considered complete if it contains a microwave oven rather than a conventional stove, at least if the inhabitants of the unit are elderly or disabled and a conventional stove might pose a safety hazard. Apartments must not be rented on a transient basis except in the case of certain transitional housing for the homeless. PLR 97400007 further suggests that the residents may not receive services beyond housing, food and laundry (e.g., any healthcare or activities services).

B. 501(c)(3) Bonds. Nursing homes, dormitories and motels may not be financed using such bonds. Assisted living facilities may be financed only if the individual units satisfy the requirements listed above.

State and local government bodies, but not tribes, also have the ability to issue bonds for housing projects that will be owned by non-profit 501(c)(3) organizations, rather than tribes, tribal housing authorities or for-profit entities. These bonds are subject to different requirements than those applicable to for-profit multi-family housing bonds. They may never be used in conjunction with tax credits.

The project must be owned exclusively by 501(c)(3) organizations: such bonds can not be used for projects owned by partnership or partnership type entities in which a 501(c)(3) organization is a member with a for-profit entity. At least 95% of the proceeds of the bonds must be used to pay the costs of property that will not be used by entities other than 501(c)(3) organizations and governmental bodies. The bonds will lose their tax-exempt status if the non-profit loses its tax exempt status.

No volume cap is needed: the IRS has not attempted to restrict the amount of tax-exempt debt that may be issued to finance 501(c)(3) projects.

No income restrictions need be complied with, provided that an independent justification for the ownership of the project (aside from the provision of low-income housing) is identified as being within the organization's exempt purpose.

Project units need not have complete kitchens or separate bathrooms. Income restrictions will not apply if tenants have special needs, i.e., are elderly or disabled.

Like private activity bonds, no more than 2% of the proceeds of 501(c)(3) bonds may be used to pay for costs of issuance.

Not all 501(c)(3) organization projects must meet low-income limits: generally, projects that satisfy some other charitable purpose (i.e., provision of housing to the aged or handicapped) are exempt from them.

The standards for 501(c)(3) bond-financed housing that is intended to qualify solely on the basis of tenant incomes are in flux; the IRS has changed the rules three times in the last three years. The IRS is currently operating under a proposed Announcement (95-37), which they have directed its agents to use on a provisional basis until modified, replaced or withdrawn. Projects that don't comply with the "safe harbor" (i.e., tests which, if met, will qualify a project without a determination of further facts and circumstances) may nevertheless be treated as within the charitable purpose of the 501(c)(3) organization under a facts and circumstances test. The Announcement sets forth safe harbors regarding the circumstances under which the IRS will conclude that a housing project is used to provide low-income housing:

- (1) 75% of the units must be rented to tenants whose incomes are no greater than 80% of the area median, adjusted for special conditions.
- (2) The remaining 25% of the units may be rented at market rents to tenants without regard to income limits.
- (3) Either 20% of the units must be occupied by tenants with household incomes not exceeding 50% of the area median or at least 40% must be occupied by tenants with incomes not exceeding 60% of the area median, in each case adjusted for special conditions.
- (4) The very low-income units may be counted toward satisfaction of the 75% test.
- (5) Tenants will continue to qualify as low or very low-income unless their income increases to exceed 140% of the applicable income limit.
- (6) Low-income units must be affordable, either by complying with governmentally imposed rent limits or other rent restrictions acceptable to the IRS.
- (7) Organizations have one year after being placed in service to comply.

Special rules apply to bonds used to finance the acquisition of existing housing projects. Either the 501(c)(3) organization must perform rehab on the acquired project, over a period not exceeding two

years, in an amount not less than the greater of the adjusted basis of the building or \$5,000 per unit, or, the project must comply with special low-income requirements, i.e. either 20% of the units must be rented to tenants with incomes not exceeding 50% of the area median income or 40% must be rented to tenants with incomes not exceeding 60% of the area median income.

If 501(c)(3) Bonds are used to finance housing for the elderly without regard to tenant incomes, no income limits apply under federal tax rules. Each unit must be occupied by at least one member of the target group. The project must satisfy what the IRS considers to be the three basic needs of such groups relating to housing: health, financial security and special physical, social and recreational needs.

The need for special health services will be satisfied if the project has made arrangements with hospitals, physicians and/or nursing homes to ensure that the health care needs of its residents are attended to. The need for financial security will be met if the project is committed to maintain occupants in residence if they become unable to pay monthly charges subsequent to their admission to the facility, either through drawing on its own reserves (to the extent consistent with the financial stability of the project), through seeking whatever support is available under tribal, local and Federal welfare programs or through soliciting contributions from the general public, or by using some combination of these means. The need for special services will be satisfied if the project is designed with the special physical, social and recreational needs of the target population in mind.

6. Tax Credits

A. General

The use of low-income housing tax credits ("LIHTC") as a means to provide equity for housing projects has been increasing in the housing finance world generally. The tax credit is beneficial for the purchaser or investor for a period of ten years. It creates a dollar-for-dollar reduction of the purchaser's income tax liability. Tax credits are allocated to a project as discussed below and then "purchased" by those for-profit entities that have a federal tax liability which they wish to reduce. Because the credit does not begin, basically, until the project is placed in service, purchasers will not want to invest all of their money at the beginning of the project. In contrast, the tribe will want the funds early on for construction, creating a tension between the desire of the tax credit purchaser/investor to put in their money late and the tribe's need for construction financing. In order to receive tax credits, numerous federal tax law requirements must be met.

In addition to LIHTC, low-income housing projects may generate taxable losses in the early years which result in a reduction of the taxpayer's regular tax liability in proportion to their marginal tax rate. Certain low-income housing projects which involve the substantial rehabilitation of a certified historic structure may also generate a substantial one-time historic rehabilitation tax credit in the year the project is placed in service. However, any historic rehabilitation tax credit allowed will reduce the eligible basis of the project for purposes of computing the LIHTC.

The LIHTC is transferable along with a qualified low-income housing project during the 10-year credit period. The transferee can claim the annual LIHTC for the remainder of the 10-year credit period (less any accelerated LIHTC claimed by individual taxpayers on a one-time basis). The OBRA of 1993 provides that the transferor and transferee may agree to use either the exact number of days or the mid-month convention to determine the division of the LIHTC in the month of disposition.

Potential recapture of LIHTC claimed in prior years may result from (1) a failure to comply with the requirement to maintain the project as a qualified low-income housing project, (2) a reduction in the low-income occupancy of the project, or (3) an unauthorized transfer or disposition of the project or an interest in the project during the 15-year compliance period. Recapture is limited to the "accelerated portion" of the LIHTC allowed in prior years plus interest from the year or years allowed. The "accelerated portion" is equal to one-third (1/3) of the LIHTC allowed in prior years if the recapture event occurs during the first 11 years and declines ratably during the 12th through 15th years of the compliance period. Recapture can be avoided in connection with the transfer of a project if the transferor posts a bond in an amount prescribed under Treasury Department guidelines and provides reasonable assurances of continued compliance by the transferee for the remainder of the 15-year compliance period. Bond factors are published on a quarterly basis.

B. LIHTC Project Eligibility

(1) **Minimum Set-Aside and Extended Use Requirements:**

In order for a residential rental project to constitute a qualified low-income housing project for LIHTC purposes, the project must irrevocably elect to meet one of the following minimum set-aside requirements:

- (a) at least 20% of the residential units must be made available to tenants with incomes at or below 50% of the area median income, or
- (b) at least 40% of the residential units must be made available to tenants with incomes at or below 60% of the area median income, or
- (c) at least 15% of the residential units must be made available to tenants where certain deep rent skewing rules apply.

The minimum set-aside requirement must be met within 12 months of the date the project is placed in service and must be complied with continuously for 15 years from the start of the first taxable year in which the LIHTC is claimed.

Projects receiving allocations of LIHTC after 1989 must be subject to a 30-year extended low-income use agreement which restricts the transferability or operation of the project for other than continued low-income use after the initial 15-year compliance period. The restrictions must be recorded as restrictive covenants binding on all subsequent transferees, except through foreclosures or transfers in lieu of foreclosure.

Under the extended low-income use agreement, the property may be transferred after the expiration of the initial 15-year compliance period for continued low-income use, but the property may be converted to market rate use and disposed of only after the state housing credit agency has tried and failed to find an eligible purchaser for the property at a price based on a formula during the one-year period after receiving written notice of the owner's intent to dispose of the property. The project owner may give notice anytime after the 14th year of the compliance period. If no purchaser is located by the housing agency and the property is converted to market rate use, a three-year transition period must be observed whereby existing low-income tenants may not be evicted and rent restrictions will continue to apply to such tenants.

Section 41(h)(6) of the Code imposes a variety of requirements relating to extended use agreements that present unique issues in tribal projects.

Under an extended use agreement, "individuals" who meet the applicable income limitations must be given the right to enforce certain aspects of the extended use low-income housing commitment in "any State court." Most tribes will be willing to grant aggrieved tenants the right to enforce the provisions of the extended use commitment in tribal court, subject to the provisions of tribal law, but will not be willing to permit enforcement in state court. The right to enforce the extended use agreement in tribal court should satisfy this requirement, although some counsel may disagree.

Similarly, if a project located on reservation limits eligible tenants to tribal members and their spouses who meet the income limits, the tribes will want to restrict the category of persons who can enforce the extended use commitment to such persons, and not allow non-tribal members and spouses to enforce the commitment simply because their income meets the income limits. If credits can be allocated to such projects despite the restriction of eligible tenants to tribal members and spouses, the extended use rules should not cause a problem.

The Code provides that the extended use agreement must be "recorded pursuant to State law as a restrictive covenants." Recording pursuant to tribal law, however, should suffice.

(2) Other Project Eligibility Requirements:

Scattered site housing may be treated as a single project provided that 100% of the dwelling units are qualified low-income units and there is a common plan of financing. The allocation of LIHTC may be made on a per project rather than on a per building basis, although separate BIN numbers will continue to be required for each low-income building. The project must not be a hospital, nursing home, sanitarium, life care facility, retirement home, or trailer park. However, in certain circumstances, a retirement type facility may qualify as residential rental property notwithstanding that significant services other than housing are furnished to tenants. Project owners may allow certain rights of refusal to purchase low-income units at the expiration of the 15-year compliance period to the individual tenants, tenant cooperatives, resident management corporations, qualified nonprofit organizations, and governmental agencies without jeopardizing the availability of the tax benefits associated with the LIHTC program.

In order to qualify for LIHTC in connection with the acquisition of an existing building, such building must not have been placed in service during the preceding 10-year period. Exceptions to the 10-year placed-in-service rule exist for certain nontaxable transfers. Furthermore, provisions exist to petition the IRS for waiver of the 10-year placed-in-service rule in certain specified circumstances. For example, there is a waiver exception for existing low-income housing which is subject to a HUD insured mortgage that is eligible for prepayment if the exception is necessary to avert the conversion of the property to market rate use. There is another waiver exception for certain buildings acquired from failed financial institutions, including such property acquired and held by the RTC.

Projects constructed on trust land will be constructed on land subject to a ground lease. NAHASDA has extended the maximum term of such lease to 50 years, which will make these transactions easier to accomplish.

(3) Qualified Low-Income Housing Units:

The LIHTC is available only with respect to units that meet the definition of a qualified low-income housing unit.

A qualified low-income housing unit is a unit that is:

- (a) leased to an income eligible tenant (as defined below);
- (b) rent-restricted (as defined below);
- (c) suitable for occupancy under state and local health or building rules and regulations (although violations may be cured within a specified period of time);
- (d) used on a nontransient basis, which is defined as being subject to a lease with a minimum term of 6 months, except with respect to single room occupancy (SRO) units which may be leased on a month-to-month basis;
- (e) not leased to an all-student household (although dwelling units occupied by students receiving AFDC payments do not fail to qualify); and
- (f) available to the general public, i.e., does not discriminate in favor of or against special populations except as allowed under HUD guidelines (e.g., preferences to certain classes of tenants such as the elderly, homeless, disabled and/or handicapped, does not violate the general public use requirement). This requirement could prevent restrictions to tribal members unlike tax exempt bond financing.

(4) Area Median Income and Tenant Income Eligibility:

Area median incomes are published annually (as of February) by HUD. Median income standards are adjusted for family (household) size.

The following table reflects the adjustments for one- to four-person households:

<u>Family Size</u>	<u>Percentage of Area 50% Standard</u>	<u>Median Income 60% Standard</u>
4	50%	60%
3	45%	54%
2	40%	48%
1	35%	42%

Tenants must qualify as low-income tenants not only on initial occupancy but also on a continuing basis. Each year the project owner must certify the level of low-income occupancy. Income is defined broadly in the same manner as under HUD guidelines and is not limited to

taxable income. For example, imputed interest income on below-market rate deposits in qualified continuing care facilities is to be taken into account in determining tenant income. Tenants will still be considered to be low-income tenants provided that their income does not exceed 140% of the applicable qualifying income standard (i.e., 50% or 60% of the area median income for the current year, adjusted for family size). When the income of a tenant exceeds 140% of the qualifying income standard, that tenant's unit ceases to be a qualified low-income unit unless the project owner continues to rent units of comparable or smaller size that subsequently become vacant to tenants with qualifying income. Similarly, rent restrictions continue to apply to the unit until the tenant vacates the unit. Vacated low-income units are still considered to be qualified low-income housing units (unless rented to non-eligible tenants) assuming reasonable attempts are made to rent the units and no comparable or smaller units are rented to non-eligible tenants. The OBRA of 1993 provides that an applicant may not be denied admission to a low-income housing tax credit project because the applicant holds a voucher or certificate of eligibility under Section 8 of this Housing Act of 1937.

(5) Rent Restriction and Definition of Gross Rent:

Residential units do not constitute qualified low-income housing units unless they are rent restricted. The gross rent paid by a tenant may not exceed 30% of the qualifying income standard (i.e., 50% or 60% of area median income for the current year, adjusted for family size). The maximum gross rent allowable in the initial year serves as the minimum rental floor in subsequent years; therefore, a subsequent decrease in area median income will not result in a decrease in gross rent.

Gross rent is defined as the total rental or occupancy charges for a unit including all utilities except telephone. If utilities are paid directly by the tenants, a utility allowance must be provided which reduces the maximum rent that can be charged to tenants. The source of utility allowances depends on the nature of the building and the existence of any government regulation or rental assistance. Utility allowances must be updated whenever rents are revised. An interested party may challenge a utility allowance under a designated procedure. Gross rent does not include any federal or state rental subsidies. Gross rent does not include certain fees paid to the project owner by a government agency or a 501 (c)(3) organization under a rental assistance program where the rental assistance and supportive services are not separable.

Gross rent does not include any payments to third parties for the provision of meals, laundry, housekeeping and other services. However, payments for such services to the project owner would be includable in the definition of gross rent if such services are a condition of occupancy. If continual nursing, medical, or psychiatric care is provided it will be presumed that such services are mandatory. For projects receiving credit allocations after 1991, meals provided in a common dining facility will be presumed to be mandatory if no practical alternative exists for tenants to obtain meals other than at the common dining facility.

Project owners must determine whether or not tenants satisfy the income limitations based on actual family size, but must use unit size rather than family size as the basis for determining rent restrictions. For single room occupancy units or studios (units with no separate bedroom), the number of occupants is assumed to be one (1). For all other units, the number of occupants is assumed to be 1.5 times the number of separate bedrooms. The following table illustrates this:

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Number of Separate Bedrooms	Deemed Number of Occupants
O-BR	1
1-BR	1 1/2
2-BR	3
3-BR	4 1/2
4-BR	6

C. LIHTC Allocations and Program Administration

The LIHTC program is administered by the states through designated housing credit agencies. For example, the applicable housing credit agency in the state of Oregon is the Oregon Department of Housing and Community Services and in Washington is the Washington State Housing Finance Commission, which are the same state agencies empowered to issue tax-exempt bonds for single- and multi-family housing. Each state is granted annual credit authority of \$1.25 per capita per year.

Certain projects financed with tax-exempt bonds are eligible for LIHTC without receiving an allocation and without reducing the state's annual credit authority. In order to qualify, 50% or more of the aggregate project costs must be financed with tax-exempt bonds which are subject to state volume cap limitations. However, the project must still be consistent with the qualified plan of allocation. State housing credit agencies are required to evaluate the financial feasibility of projects and to give consideration to other available subsidies committed to the project and to adjust the amount of credit allocated to the project accordingly. State housing credit agencies are required to consider as a factor in project evaluations the degree to which each credit dollar would be used for project costs, not including the cost of intermediaries. The consideration of other sources of financing, other available subsidies, the amount of credit needed by a project to be financially feasible, and the degree to which each credit dollar would be used for project costs is typically accomplished through an equity gap analysis and the selection of a tax credit equity factor.

The OBRA of 1993 requires a housing credit agency to consider the reasonableness of the developmental and operational costs of a project as an additional factor in making its determination as to the proper amount of low-income housing tax credits to allocate to a project. However, the provision is not intended to create a national standard of reasonableness. It is intended for allocating agencies to set standards of reasonableness reflecting the applicable facts and circumstances including the location of the projects and the uses for which the projects are built.

Not less than 10% of each state's annual credit authority must be reserved for the exclusive use of qualified nonprofit organizations. The nonprofit organization must materially participate in the development and operation of the project and must own (directly or indirectly) an interest in the project throughout the 15-year compliance period. Finally, the nonprofit organization may not be affiliated with or controlled by a for-profit organization.

D. Determination of Annual LIHTC

The annual LIHTC amount during the 10-year credit period is based on a formula which consists of multiplying the "qualified basis" of each low-income building in the project (determined as of December 31 of each year during the credit period) by the annual "credit percentage". At the election of the taxpayer, the 10-year credit period may begin either in the year in which each low-income building in the project is placed in service or in the subsequent year. The project owner is deemed to defer the start of the credit period unless she affirmatively elects to start it in the year each low-income building in the project is placed in service. A first year credit adjustment is required to reflect the actual low-income occupancy for the year (determined on a monthly basis), and the balance of the annual LIHTC amount from the first year is available in the eleventh year.

Qualified basis is the fraction of a project's eligible basis attributable to the low-income units. acquisition and rehabilitation or construction of qualified low-income housing units. The low-income fraction for a project is based on the lesser of the ratio of the number of qualified low-income housing units to the number of total residential units in the project or the ratio of the total floor area of the qualified low-income housing units to the total floor area of all residential units in the project.

The IRS has ruled that the adjusted basis of a unit in a qualified low-income building occupied by a full-time resident manager is included in the building's eligible basis, but the unit is excluded from both the numerator and denominator of the applicable fraction for purposes of determining the building's qualified basis (Rev. Rul. 92-61). Such ruling probably would extend to units occupied by full-time resident maintenance personnel or other on-site personnel. The significance of the ruling is that such resident managers or others are not subject to applicable median income limitations.

Eligible basis consists of (i) the properly capitalized and depreciable costs of new construction, (ii) the properly capitalized and depreciable costs of a substantial rehabilitation, and (iii) the cost of acquisition of certain existing buildings if a substantial rehabilitation is performed, and is determined at the end of the first taxable year of the credit period. In certain qualified census tracts or difficult to develop areas designated by HUD, the eligible basis of new construction or substantial rehabilitation expenditures will be deemed to be equal to 130% of the amount that the eligible basis would otherwise be. This effectively increases the maximum potential annual credit allocation, although the final allocation will be subject to the state housing credit agency's project evaluation and equity gap analysis. Eligible basis consists only of properly capitalized and depreciable costs, including furnishings and other personal property, but excluding land and other separately capitalized costs (whether amortizable or non-amortizable) such as organization costs, syndication costs, marketing and other pre-opening costs, permanent financing costs, and excluding project reserves and deductible expenses. Eligible basis must be reduced by the amount of any historic rehabilitation tax credit allowed which is attributable to residential rental property. In connection with certain transitional housing for the homeless, eligible basis may include any portion of a building used to provide supportive service.

The annual "credit percentage" which is used to determine the annual LIHTC amount, depends on several factors, including the nature of the project (i.e., new construction, rehabilitation or acquisition), the nature of the financing (i.e., with or without a federal subsidy), and the date the project is placed in service or the date which a reservation contract is entered into.

A 70% present value credit (which represents an annual credit percentage of approximately 9%) is allowed in connection with the new construction or substantial rehabilitation of qualified low-income

housing, units provided they are not financed with tax-exempt bonds, below-market rate federal loans or other federal subsidies.

A 30% present value credit (which represents an annual credit percentage of approximately 4%) is allowed in connection with the new construction or substantial rehabilitation of qualified low-income housing units financed with tax-exempt bonds, below-market rate federal loans or other federal subsidies, or the acquisition of existing qualified low-income housing units not previously placed in service in the preceding 10 years provided such units are to be substantially rehabilitated. The 70% and 30% present value credit percentages are published monthly by the Treasury Department based on a formula.

A project owner is allowed to elect either to use the credit percentage published for the month in which the owner enters into a credit reservation contract with the allocating housing agency (provided a written election is made within the first 5 days of the following month) or to use the credit percentage published for the month each building is placed in service. The credit percentage will remain the same for the entire 10-year credit period.

A substantial rehabilitation is a rehabilitation in which the rehabilitation expenditures during a given 24-month period equal or exceed the greater of \$3,000 per low-income unit or 10% of the unadjusted basis of the building as of the beginning of the applicable 24-month period. The credit period with respect to acquisition costs may not begin prior to the credit period for the related rehabilitation costs.

E. Treatment of Other Subsidies

The amount of any federal grant must be excluded from eligible basis. Non-federal grants arguably are not excluded from eligible basis, although the IRS has raised concerns regarding this result. Accordingly, most non-federal grants have been restructured as deferred loans. The project owner may elect to exclude the amount of any tax-exempt financing or below-market rate federal loan from the eligible basis of new construction or substantial rehabilitation and apply the 70% present value credit to the remaining eligible basis in lieu of applying the 30% present value credit to the entire eligible basis.

Repayment of tax-exempt financing or below-market rate federal loans before the date the project is placed in service does not result in the reduction in the amount of any LIHTC available.

Below-market rate federal loans include Farmers Home Administration Section 515 loans and any loans made or subsidized, directly or indirectly, with funds from Community Development Block Grants, Urban Development Action Grants, Housing Development Grants, Rental Rehabilitation Grants, or other federal grant or loan programs where the interest rate to the project is below the Applicable Federal Rate (which depends on the date and term of the loan). As enacted, the Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA") will make it impossible for most projects in Indian country to qualify for the 9% tax credit, unless the owners elect to reduce their eligible basis by the amount of assistance received under NAHASDA. Prior to the enactment of NAHASDA, most housing assistance to projects in Indian country was funneled through programs (i.e., IHOME) which are exempt from the adverse treatment to which other types of federally subsidized housing projects were subject under the tax credit. Assistance under NAHASDA, as currently written, is not exempt under the Act.

Grants or below-market rate loans from state or local government agencies funded from the proceeds of tax-exempt bonds will be considered to be federal subsidies. Where state or local funding sources include general revenues, other revenues (e.g., earnings on security deposits or broker deposits) and tax-exempt bond proceeds, grants and loans should be funded only out of general or other revenues to the extent possible.

The OBRA of 1993 provides that a building will not be treated as federally subsidized solely by reason of receiving below market financing derived from Federal HOME Program funds if at least 40% of the residential units are occupied by individuals with income at or below 50% of the area median income (or at least 25% of such units in projects located in certain high cost areas, although the 130% high cost area adjustment to eligible projects which may be otherwise available is not available in this context). A below-market rate loan will not be considered to be a below-market rate federal loan solely by reason of receiving an interest subsidy under the FHLB Affordable Housing Program. Certain Community Development Block Grants are also excluded from being treated as below-market rate federal loans. State or local below-market rate loans do not reduce the amount of the LIHTC. LIHTC is denied to projects receiving Section 8 moderate rehabilitation assistance (other than those funded under the Stuart B. McKinney Homeless Assistance Act of 1988) but not to those receiving Section 8 tenant or project-based assistance (i.e., vouchers or certificates). The LIHTC attributable to acquisition costs of existing qualified low-income housing units is based on the 30% present value credit and therefore is unaffected by how they are financed (other than by federal grants if acquisition credit on existing buildings are anticipated). The determination of whether new construction or rehabilitation is federally subsidized is made without regard to the source of financing for the acquisition of land or an existing building.

F. Compliance Monitoring

The RRA of 1990 mandated compliance monitoring of LIHTC projects by state housing credit agencies beginning as of January 1, 1992. A monitoring procedure must be included in a qualified allocation plan and such monitoring must apply to all LIHTC projects, including projects with LIHTC allocations prior to 1992. Proposed rules for compliance monitoring of LIHTC projects were published by the IRS on December 27, 1991. Final rules were published on September 2, 1992, and were effective on June 30, 1993. However, the requirement that qualified allocation plans provide a monitoring procedure is effective January 1, 1992. Under the proposed regulations, a monitoring procedure must contain certain recordkeeping and retention provisions, certification and review provisions, auditing provisions, and provisions for notifying project owners and the IRS of noncompliance or lack of certification. The provisions specified in the regulations are minimum requirements. A compliance procedure may contain additional or more strict provisions or requirements.

G. Application of IRC Section 183 Not-For-Profit Rules to LIHTC Projects

In general, IRC Section 183 disallows losses, deductions or credits attributable to activities not engaged in for-profit activities. No explicit reference is contained in IRC Section 42 or its legislative history regarding its interaction with IRC Section 183. However, the legislative history of the LIHTC program indicates that Congress contemplated that tax benefits (including credits, losses and deductions) would be available to taxpayers investing in low-income housing, even though such would not otherwise provide a potential for economic return.

Historically, the IRS has not attempted to apply IRC Section 183 to subsidized housing in fact, has issued a series of favorable private letter rulings for housing, and, low-income housing projects under

IRC Section 42. However, the private letter rulings have no precedential value for taxpayers other than the one requesting the ruling and the rulings generally only addressed the non applicability of IRC Section 183 to the LIHTC available under IRC Section 42 and not to the availability of losses and deductions attributable to LIHTC projects.

On June 10, 1992, the IRS adopted final regulations (Regs. Section 1.42-4) which provide that, in the case of a qualified low-income building with respect to which the LIHTC is allowable under IRC Section 42, IRC Section 183 does not apply to disallow losses, deductions or credits attributable to the ownership and operation of the building. The regulations are retroactive for all qualified low-income buildings placed in service after December 31, 1986.

The regulations are appropriate in light of the rent restrictions required under IRC Section 42 and the provisions which encourage the participation of nonprofit sponsors in the LIHTC program. The regulations provide some additional flexibility in structuring LIHTC investments. They could be interpreted to support disproportionate sharing of economic benefits (if any) in favor of the sponsor or favorable buy-out provisions in favor of the sponsor. However, the regulations specifically state that losses, deductions or credits attributable to the ownership and operation of a qualified low-income building may be limited or disallowed under other statutory provisions or principles of tax law. The regulations cite as examples the general business credit limitations, interest expense limitations, at-risk limitations, and the passive activity limitations and case law examples dealing with the analysis of sham transactions, economic substance and ownership.

In light of the regulations and the fact that most LIHTC project's are owned and operated in a partnership setting, the most important limitations on the availability of the related tax benefits are in the regulations under IRC Section 704(b) dealing with partnership allocations.

H. Partnership Allocations

It is not possible to transfer or sell low-income housing tax credits separate and apart from the LIHTC project. The credits are available only to the owner or owners of the LIHTC project. However, it is possible to transfer a LIHTC project together with the credits either prior to or during the 10-year credit period and all or the remaining portion of such credits will be available to the transferee provided the transferee complies with the requirements of the LIHTC program. The goal of allocating tax benefits and economic benefits disproportionately among different parties can be accomplished (within reasonable limitations) by using a partnership vehicle for the ownership of a LIHTC project. For federal income tax purposes, a partnership is treated as a conduit or pass-through entity whereby all partnership tax items are taxed to the individual partners and are allocable among the partners pursuant to a partnership agreement, subject to regulations which determine the validity of partnership allocations.

While either a general partnership or limited partnership can be used, a limited partnership is usually the vehicle of choice because it affords the general partner-sponsor control of day-to-day matters and the limited partner(s) -investor(s) pass through of tax benefits with limited liability. A typical LIHTC partnership will often provide that 99.9% of all tax credits and taxable losses will be allocable to the investor(s) and .01% to the sponsor, and that 50% of all cash flow from operations and proceeds from sale or refinancing of the project will be allocable to the investor(s) and 50% to the sponsor. The validity of such allocations must be determined pursuant to the regulations under IRC Section 704(b).

The applicable regulations do not specifically address the allocation of low-income housing tax credits among partners. The only provisions that address the allocation of tax credits generally were drafted prior to the enactment of the LIHTC program.

Most commentators believe that the applicable regulations that control are those that address the allocation of credits other than the investment tax credit. These regulations indicate that credits which are attributable to partnership expenditures should be allocated in the same manner as losses and deductions attributable to the expenditures which give rise to such credits. Thus, since the LIHTC is attributable to expenditures for the acquisition and substantial rehabilitation or new construction of low-income housing, the LIHTC should be allocated among the partners of a partnership in the same manner as the ordinary losses, depreciation and other deductions from the ownership and operation of the low-income housing.

Based on the above conclusion that the LIHTC should be allocated in accordance with partnership losses and deductions, the focus in determining the validity of allocations in a LIHTC partnership is on the validity of the loss allocations during the entire term of the partnership, but particularly during the 10-year credit period. The technical requirement is that loss allocations must have substantial economic effect.

Under the applicable regulations, loss allocations (and, hence, LIHTC allocations) are valid (i.e., have substantial economic effect) as long as the partnership agreement contains certain mandatory provisions regarding the proper maintenance of partner capital accounts and the distribution of proceeds on liquidation of the partnership in accordance with partner capital account, and the capital accounts of partners receiving loss allocations are not reduced below zero.

In the event that loss allocations would or likely could reduce partner capital accounts below zero, such allocations which actually would reduce partner capital accounts below zero will still be considered to be valid (i.e., have substantial economic effect) provided that (1) the partners receiving such allocations are obligated to restore the deficit (if any) that remains in their capital account upon liquidation of the partnership, or (2) the losses are attributable to nonrecourse deductions (i.e., deductions attributable to nonrecourse liabilities of the partnership) and the partnership contains certain mandatory provisions regarding the allocation of nonrecourse deductions and the allocation of partnership minimum gain among the Partners.

Deficit restoration obligations are not acceptable to most investors because they tend to ameliorate their limited liability as limited partners. However, it may be advisable to provide investors the right to adopt optional limited (as opposed to unlimited) deficit restoration obligations under the partnership agreement in the event the partnership may unexpectedly in the future have some recourse indebtedness or temporarily may not technically have partnership minimum gain to support the allocation of nonrecourse deductions. In light of the unacceptability of deficit restoration obligations, the importance of having nonrecourse financing and the appropriate provisions in the partnership agreement cannot be overemphasized. The key provisions are referred to as qualified income offset and minimum gain chargeback provisions.

In summary, once the capital accounts of the investor partners are reduced to zero, any further loss allocations to such partners will be invalid and will be subject to reallocation to other partners with positive capital accounts or to the general partner unless the partnership has both nonrecourse financing proper qualified income offset and minimum gain chargeback provisions. Ideally, partner capital accounts and partnership minimum gain should be projected over the anticipated holding period (e.g., the 15-year

compliance period) based on projected partnership losses and distributions to identify any potential allocation problems.

Some investors insist that all partnership allocations from the ownership and operation of a LIHTC project be consistent during the holding period to provide even greater certainty that such allocations will be deemed to be valid. The applicable regulations provide that, in the absence of having substantial economic effect, an allocation will be deemed to have substantial economic effect if it is made in accordance with the partners' interests in the partnership. If all allocations are consistent, such allocations are likely to be in accordance with the partners' interests in the partnership. Therefore, it is not unusual to see 99.9% of all items of income, gain, loss, deduction and credit and all distributable cash flow from operations allocated to the investor(s)-partner(s) in a LIHTC partnership. Since the typical LIHTC partnership arrangement permits the general partner-sponsor to retain 50% of the distributable cash flow from operations, the general partner-sponsor's share of such cash flow can be paid in the form of a deductible incentive management fee rather than a non-deductible partnership distribution. For example, the payment of an incentive management fee equal to 49.5% of distributable cash flow (where all partnership items are allocated 99.9% and 1%, respectively, between the investor(s)-partner(s) and the general partner-sponsor) directly and indirectly results in both parties receiving approximately 50% of the distributable cash flow. ($100\% - 49.5\% = 50.5\% \times 99\% = 50\%$; $49.5\% + (50.5\% \times 1\%) = 50\%$).

The theory is that the payment of a reasonable incentive management fee will not be considered to be a partnership allocation or distribution, but will reduce the amount of distributable cash flow and reduce the amount of partnership taxable income or increase the amount of partnership taxable loss allocable to the investor(s)-partner(s). The result is that the general partner-sponsor is subject to tax on the incentive management fee income and the investor(s)-partner(s) receive an additional tax benefit from the deductible fee. The arrangement is particularly attractive to a nonprofit sponsor who is not taxed on the fee income.

Maintaining consistent allocations (i.e., 99.9% of all items) generally does not apply to residual allocations of proceeds from the sale or refinancing of the LIHTC project (which typically are allocated 50% to each party) except in certain cases involving nonprofit general partner-sponsors where consistency among all allocations including residual allocations is necessary to avoid the impact of the tax-exempt use rules which result in the imposition of a less favorable depreciation schedule to the extent of the nonprofit partner's greatest percentage allocation of items of profit (income, gain, or distribution) during the entire term of the partnership. There are several techniques which can enable a general partner-sponsor to retain a disproportionate share of cash flow from operations in excess of 50%. One technique is to provide for a fixed annual or inflation adjusted asset management or partnership management fee before applying the standard cash flow sharing or incentive management fee arrangement. The result, depending on the level of the fixed annual or inflation-adjusted fee, can be that the sponsor effectively retains significantly more than 50% of the cash flow from operations.

Another technique corresponds to the not uncommon situation where the general partner-sponsor advances a portion of its maximum allowable development fee back to the partnership as a loan. The maximum allowable development fee must be paid in full on or before the last day of the first taxable year of the credit period to be includable in eligible basis and a portion must be loaned back to the partnership because of insufficient funds.

The portion of the maximum allowable development fee which is loaned back to the partnership (frequently referred to as the deferred development fee loan) can be repaid first out of available

partnership cash flow, together with interest at a rate equal to or greater than the applicable federal rate, before the distribution of cash flow to partners.

I. Jurisdictional Issues. Section 42(h)(7)(D) of the Code provides that housing credit agencies may allocate credit dollar amounts only to projects "located in the jurisdiction of the governmental unit of which such agency is a part." For certain purposes of federal law, Indian reservations are not located within the "jurisdiction" of a state, but rather are sovereign nations not subject to state jurisdiction.

The state of North Dakota filed a private letter ruling request on a similar issue with the IRS in 1995. The letter ruling request was withdrawn for reasons unrelated to the substantive issue involved, although informal conversation with IRS personnel indicated that the IRS viewed an Indian reservation as being within the jurisdiction of a state for purposes of both the tax credit rules and the volume cap rules relating to the issuance of private activity single family and multifamily volume cap rules. Therefore, it appears that tax credits and volume cap can be allocated to projects located in Indian country.

7. Credit Enhancement/Securities Laws

With respect to publicly offered tribal debt, such as bonds, a letter of credit can be used as credit enhancement and serves two functions. It provides credit enhancement for the underlying tribal obligation, but it also provides an exemption from federal securities registration requirements. Unlike securities issued by states or their political subdivisions, securities issued by a tribe, are not exempt securities under Section 3(a)(2) of the Securities Act of 1933 unless they qualify as an exempt security by using a letter of credit, an exempt transaction (i.e., private placement to 35 or fewer accredited investors) or Rule 144A (i.e., sold to qualified institutional buyers).

8. NAHASDA Basics

A. Overview:

(1) Signed into law as Public Law 104-330, 25 USC ¶ 4101-4212 on October 26, 1996.

(2) In October 1997 Congress appropriated \$600 million for FY 98. Congress also appropriated \$5 million for the Section 184 Indian Housing Loan Guarantee Program and \$5 million for NAHASDA's Title VI Loan Guarantee program.

(3) NAHASDA eliminates most existing housing programs (e.g., IHOME, Section 8 rental assistance, etc.) and establishes a formula based block grant program to be allocated to Indian tribes or their tribally designated housing entity (TDHE).

(4) The particulars of the Indian Housing Block Grant (IHBG) formula and the rules for implementing NAHASDA were developed using the negotiated rule making process pursuant to which draft rules were proposed and finalized by the committee on October 27, 1997. The final rule has

been codified in 24 CFR 1000. Currents drafts and information on the final rule can be obtained from the HUD web page at:

<http://www.DOMINO.HUD.GOV/IHP/referenc.nsf>

(5) NAHASDA sets out a five-part "primary objective" as follows:

(a) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families;

(b) to ensure better access to private mortgage markets for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members;

(c) to coordinate activities to provide housing for Indian tribes and their members with Federal, State, and local activities to further economic and community development for Indian tribes and their members;

(d) to plan for and integrate infrastructure resources for Indian tribes with housing development for tribes; and

(e) to promote the development of private capital markets in Indian country and to allow such markets to operate and grow, thereby benefiting Indian communities. Indian area is defined as the area within which a tribally designated housing entity is authorized by one or more Indian tribes to provide assistance under this chapter for affordable housing.

(6) NAHASDA requires HUD's Office of Native American Programs ("ONAP") to make the block grants directly to the Tribe or TDHE. If, on October 1, 1997, a tribe had in existence an existing Indian Housing Authority ("IHA") and the tribe did not designate itself or any other entity to be the recipient of the block grant funds, then the existing IHA became the tribe's TDHE by default. It is important to note that in many cases the tribal ordinance establishing and governing the IHA may need revision in order to develop housing in accordance with NAHASDA (e.g., leveraging, middle income, etc.).

Each tribe or TDHE must submit an Indian Housing Plan (IHP) which is comprised of a five-year plan and a one-year plan. The five-year plan contains an overview of the recipient's mission statement, goals and objectives, and a statement of the activities planned for the five year period that will enable the recipient to meet its mission, goals and objectives. The one year plan is a detailed description of the goals and objectives of the tribe or TDHE that will be accomplished in that one year period. It includes a description of the housing needs of the low-income Indian families residing in the jurisdiction of the tribe, a statement of the financial resources comprising the operating budget of the tribal housing program, and the resources the recipient has available to perform affordable housing activities.

B. IHBG

(1) Low Income/Affordable Housing Issues.

(a) Income Requirements: Subject to certain statutory exceptions, assistance under NAHASDA "shall be limited to low-income Indian families on Indian reservations and other Indian areas." A low-income family means "a family whose income does not exceed 80 percent of the median income for the area." Median income, in turn, is defined as the greater of the median income for the Indian area, which the tribe or TDHE serves, which the Secretary shall determine, or the median income for the United States.

In addition to carrying out "affordable housing" activities as defined in NAHASDA and discussed below, Congress emphasized throughout the Act that the federal investment in Indian housing must be maintained. NAHASDA tribes and TDHEs are required to use part of their grant to continue to maintain and operate the housing developed under the 1937 Housing Act. Recipients also must protect the federal investment in Indian housing by maintaining adequate insurance coverage for all housing units that are owned, operated or assisted with NAHASDA grant amounts.

A tribe or TDHE can serve Indian families that are *not* low-income, but only in limited circumstances. The Act provides for three exceptions to the low-income family requirement: (1) homeownership activities under section 4132(2) of NAHASDA, (2) "model activities" under section 4132(6) of NAHASDA, and (3) loan guarantee activities under Title VI of NAHASDA. Section 4131(b)(2) requires that assistance for these kinds of activities can be provided to non-low-income families only "to the extent that the Secretary approves the activities ... because there is a need for housing for such families that cannot reasonably be met without such assistance." In the negotiated rulemaking process, the Secretary agreed that tribes and TDHEs "may use up to 10% of the recipient's annual grant amount for families whose income falls within 80 to 100% of the median income without HUD approval." Thus, to use more than 10% of the NAHASDA block grant to serve families in the 80-100% of median income range or to serve families with incomes more than 100% of median income, a tribe or TDHE must receive prior HUD approval.

(b) Affordable Housing: The term "affordable housing" is defined as housing that complies with the requirements for affordable housing under Title II of the Act and includes permanent housing for homeless persons who are persons with disabilities, transitional housing and single room occupancy housing. Title II states that the essential requirement for housing to be considered affordable is that the tribe or TDHE may charge low-income families rent or homebuyer payments that equal no more than 30% of the family's monthly adjusted income. The amounts that low-income Indian families pay for heating and cooling do not have to be counted in the 30%.

(2) Housing Activities Do Not Just Include Housing. Affordable housing activities under NAHASDA are broadly defined to include the following:

(a) Indian Housing Assistance. The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority.

(b) Development. The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real

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property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities.

(c) Housing Services. The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or homeownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted pursuant to this section.

(d) Housing Management Services. The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and management of affordable housing projects.

(e) Crime Prevention and Safety Activities. The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

(f) Model Activities. Housing activities under model programs that are designed to carry out the purposes of NAHASDA and are specifically approved by the Secretary as appropriate for such purpose.

(3) Lump Sum Leveraging and Investments (Grant Anticipation Notes).

C. Title VI (Federal Financing Guarantees)

Title VI of NAHASDA authorizes HUD to guarantee notes and obligations issued by tribes or their TDHEs to finance affordable housing. Such guarantees can only be used when the tribe or TDHE certifies that it has attempted to obtain financing without the use of the federal guarantee and that it cannot secure such financing without the guarantee. The Act provides for the terms and conditions of such guarantees to be determined through the rulemaking process. No guarantee, however, can be made if the total outstanding notes or obligations guaranteed would exceed an amount equal to five times the amount of the NAHASDA grant that the tribe or TDHE would receive under the formula. The use of such guarantees in the housing context could be problematic under the prohibition on federal guarantees contained in Section 149 of the Code if such guarantees are used to guarantee governmental tax-exempt bonds.

D. Title VII (Section 184)

Title VII makes amendments to other programs which remain to provide assistance for Native American housing. In particular, it amends Section 184 of the Housing and Community Development Act of 1992 to make loans guaranteed under that section more usable for Native Americans and adds Section 184 loans to the list of loans that the Government National Mortgage Association (Ginnie Mae) may purchase under its mortgage-backed securities program, thus potentially providing access to this

source of capital for housing in Indian country. As noted, NAHASDA also authorizes 50 year leasehold interests in trust or restricted land for housing purposes.



**Rural Development
Loan and Grant
Programs
In
North Dakota**

(Formerly Farmers Home Administration)

March 1997 Edition

Rural Housing Service

USDA, through Rural Development and the RHS, provides direct loans to credit-worthy applicants. Examples include loans for a family home, rural rental housing, public safety facilities, childcare centers, public building projects and others. Rural Development also guarantees loans made by commercial lenders for rural housing and community facility projects.

Single Family Programs

Guaranteed Rural Housing Loan Program

Loans are made by conventional lenders and guaranteed by RHS. Loan funds are available for use by approved lenders to broaden services to their customers. In many cases, eligible applicants are able to obtain a mortgage with very little or no down payment.

These loans are for the acquisition of an existing or newly constructed primary residence. Refinancing of existing housing loans and acquisition of second homes are not authorized. The loan can not exceed the Section 203(b) mortgage limits available in any Rural Development office.

No square footage or design feature limitations are placed on the dwellings. Modest housing will be determined by the loan limit and the amount of indebtedness that can be afforded by the borrower.

These loans are for persons who have an adjusted income not exceeding the moderate income limit for their county. The income limits vary from county to county. For a four-person family, the moderate income limits in North Dakota range from a low of \$39,100 to a high of \$51,300. Limits also vary based on family size.

Under the Rural Housing Guaranteed Loan Program, eligible rural areas are defined as rural towns and communities of 20,000 or less in population. These guaranteed loans can be made for 100 percent of market value. The

loan term will be 30 years with fixed competitive market interest rates.

All loan guarantees cover 90 percent of the actual loan amount. A guarantee fee of 1 percent of the 90 percent guaranteed will be assessed to the lender. This guarantee fee may be passed on by the lender to the borrower.

Applicants must have adequate and dependable income which meets established ratios. Principal, interest, taxes and insurance (PITI) cannot exceed 29 percent of the gross income and the total debt ratio cannot exceed 41 percent.

How to Become an Approved Lender

Before a lender can receive a commitment for a guarantee, the lender must be approved as a RHS Guaranteed Rural Housing lender.

Eligible lenders include:

- Any lender approved as a supervised or non-supervised mortgagee for Federal Housing Administration or Department of Veterans Affairs

- Any lender approved by the Federal National Mortgage (Fannie Mae)
- Any lender approved by the Federal Home Loan Mortgage Corporation (Freddie Mac)
- Farm Credit system institution with a direct lending authority
- Any lender participating in other RHS, RBS, RUS or Farm Service Agency (FSA) guaranteed loan programs

All applications are considered without regard to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (provided applicants have the capacity to enter into a legal contract).

To become a RHS approved lender, simply request a determination of eligibility.

The following information needs to be submitted for an eligibility determination:

- Evidence of approval from the above listed eligibility criteria which the lender meets (FHA, Fannie Mae, Freddie Mac, etc.)
- The lender's Tax Identification Number
- The name of an official who will serve as the RHS contact regarding the lender's guaranteed loans
- A list of names, titles and responsibilities of the lender's principal officers
- An outline of the lender's internal loan criteria for assessing credit history and repayment ability and a copy of the plan for monitoring production and servicing activities
- An executed Form AD 1047 Certificate Regarding Debarment, Suspension, or Other Matters - Primary Covered Transactions.

All lenders are encouraged to become approved under this program.

Rural Housing Service is strongly committed to providing immediate service to lenders and applicants. The lenders who have made loans through the program have found RHS service to be very acceptable.

For forms or more information contact the appropriate Rural Development office.

Direct Single Family Housing Loan Program

The Section 502 Direct Loan Program is designed to assist lower-income rural families to obtain decent, safe, and sanitary dwellings. Families adjusted income must be within the income limitations. Eligible families may receive payment assistance. Payment assistance may reduce the interest rate to as low as 1 percent. Loans can be direct or guaranteed by a local lender.

As opposed to conventional financing, RHS requires:

- Home to be modest in size, cost, and design as defined by RHS.
- No down payment; loan value is based on market value appraisal.
- No origination fee or discount points.
- Applicants will pay for the credit report, appraisal fee and loan closing costs which include attorney fees, abstracting and recording the mortgage. This may be part of the loan funds.
- Applicant will have to pay one year's insurance premium on property prior to loan closing.
- This is a special program for low and very low income applicants who do not have the ability to obtain credit from conventional financing.

Adjusted income is gross income of all adults in the household less \$480 per child and other allowable deductions.

Families with income that exceeds the income limits may be eligible to assume an existing RHS debt, or may be eligible for a Guaranteed Loan.

Payment Assistance

Eligible families may receive Payment Assistance. Payment Assistance may reduce the interest rate to as low as 1 percent. With Payment Assistance a family will not pay more than 22 percent, 24 percent, or 26 percent of their adjusted income for principal, interest, taxes, and insurance (PITI). Applicants are expected to use cash on hand to reduce the amount of the loan. Net family assets retained for this purpose should normally not exceed \$7,500 (\$10,000 for elderly applicants).

\$49,000 loan for 33 years		
Interest	7.5%	1%
Mo. Pmt.	\$335	\$146
Taxes	100	100
Insurance	20	20
Total Mo. Pmt.	\$455	\$266

Adjusted income

- $\$16,000 \div 12 \times 22\% = \294 per month Adjusted income
- $\$19,000 \div 12 \times 24\% = \380 per month Adjusted income
- $\$24,000 \div 12 \times 26\% = \520 per month (payment for PITI will be \$455/mo because payment will not exceed note rate)

Payment Assistance is subject to recapture if the borrower sells the home for a profit.

Building Limitations

For new construction or the purchase of existing houses, there are no square footage guidelines, only maximum loan/mortgage limits.

Rural Housing Loans may not exceed the Section 203(b) mortgage limits available in any Rural Development office.

Factors to consider when determining if an existing dwelling is suitable for the RHS Program:

- Replacement cost of modest homes
- Comparable sales data
- Affordability because of high operation, maintenance and utility costs

Generally, all housing must be in an approved rural site and usually within an established community, all housing must meet RHS thermal standards, and all homes financed must have the first habitable floor above the 100-year flood level.

For forms or more information contact the appropriate Rural Development office.

504 Loan and Grant Program

The objective of the RHS 504 Loan and Grant program is to assist very low income owner-occupants of single family dwellings, who lack repayment ability to qualify for Section 502 loans, to repair or improve their homes. Repairs may be made to improve or modernize the home, to make it safer and more sanitary, or to remove health and safety hazards. Grants are only available for repairs to remove health and safety hazards.

Eligibility Requirements

504 Loan

- Must own and occupy the dwelling at the time of application
- Must be a citizen and possess legal capacity to incur the loan obligation
- Adjusted income must be less than the very low limit as prescribed by RHS
- Must use cash reserves in excess of \$7,500 before loan or grant will be made
- Must meet other credit test including a Section 502 Rural Housing loan
- Must have sufficient income to repay loan

504 Grant

- Must meet the requirements for the loan above, plus
- Must be 62 years of age or older
- Must have income so low that no part of the total assistance can be repaid as a loan

Maximum Loan and/or Grant

Combination loan and grant can be made when a portion of the repairs can be repaid as a 504 loan amortized over 20 years.

- Maximum assistance outstanding to any individual for a loan may not exceed \$20,000.
- Lifetime assistance for grants may not exceed \$7,500.

Rates and Terms

- Interest rate for all 504 loans is 1 percent.
- The term will be established when loan is made, however, will not exceed the maximum term of 20 years. Loans made in combination with a grant will always be amortized for 20 years in order to

maximize the loan and minimize the grant amount.

Security

- Loans of \$2,500 or more will be secured by a real estate mortgage.
- Each grant recipient will sign a grant agreement stating that if the property is sold by the grantee or the grantee's heirs or estate before the end of a three-year period, the full amount of the grant will be repaid to RHS.

Form RD1944-3, Budget and/or Financial Statement, will be prepared for each recipient to determine repayment ability.

Loan and Grant Purposes

Grant funds may be used only to pay costs for repairs and improvements which will result in the removal of identified safety and/or health hazards. Loan and Grant funds may include but are not limited to the following:

- Install or repair sanitary water and waste disposal
- Connection fees for utilities
- Energy conservation measures
- Heating system, electrical wiring, structural supports
- Repair or replace roof
- Put on addition to home under certain circumstances
- Repair mobile home under certain circumstances to improve or modernize a dwelling under certain circumstances

Loan and Grant Funds Can NOT be Used To

- Build a new dwelling
- Change the dwelling for cosmetic or convenience purposes unless the change assists in removing a hazard (loan funds can be used for cosmetic purposes)
- Repair a dwelling that after planned repairs are completed, dwelling will continue to be major hazard
- Move a mobile home
- Pay for off-site improvements
- Refinance of unauthorized debts

For forms or more information contact the appropriate Rural Development office.

All applications are considered without regard to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (provided applicants have the capacity to enter into a legal contract).

Additional Single Family Housing Programs

Mutual Self-Help Housing Loans

These loans are made to families who form a group to work together to build their own homes. Loans are made on an individual basis, but the group must agree to work together until all houses are completed.

Technical Assistance Grants for Self-Help Housing

Funding is available for public or nonprofit groups. Applicants must show a need for self-help housing, the professional expertise to supervise a project, and a lack of funding for this assistance.

Housing Site Loans

These loans may be made to public or local private nonprofit groups for housing sites, including self-help housing. Funds are for land, access streets, and utilities. Loans are repayable over two years.

For forms or more information contact the appropriate Rural Development office.

All applications are considered without regard to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (provided applicants have the capacity to enter into a legal contract).

Multi-Family Housing Programs

Rural Rental Housing Loans

Rental housing loans can be made to individuals, trusts, associates, partnerships, limited-partnerships, State or local public agencies, consumer cooperatives, and profit and nonprofit corporations. Nonprofit corporations may be organized on a regional or multi-county basis.

The housing is for families and individuals with low, very low, and moderate incomes and for senior citizens age 62 or over. Priority is given to tenants with adjusted incomes less than 50% of the area median income.

Rental Assistance Program

Very-low-income and low-income (including elderly) families with rents that exceed 30 percent of their adjusted annual income can qualify for rental assistance. The adjusted income ceiling is determined by size of household. Priority is given to tenants with adjusted incomes less than 50% of the area median income.

Congregate Housing and Group Homes

Congregate housing and group homes are part of the rural rental housing program designed to provide living units for persons with low and moderate incomes and for those age 62 and older.

Congregate housing is residential housing consisting of private apartment and central dining facilities. Group homes are used by elderly, handicapped or disabled tenants sharing living space within a rental unit in which a resident assistance may be required.

Loans can be made to individuals, partnerships, trusts, associations, State or local public agencies, consumer cooperatives and corporations.

Farm Labor Housing Loans and Grants

Funds may be used to build, buy, improve, or repair farm labor housing and to provide related facilities. A loan may be made to an individual farm owner, association of farmers, State or political subdivision, public or private nonprofit organization, or a nonprofit organization of farm workers. A grant may be made to a State or political subdivision, a broadly based nonprofit organization, or a nonprofit organization of farm workers. Domestic farm laborers, both migrant and year-round, and their families will occupy the housing.

For forms or more information contact the appropriate Rural Development office.

All applications are considered without regard to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (provided applicants have the capacity to enter into a legal contract).

Housing Preservation Grants

The RHS Housing Preservation Grant (HPG) program is to provide funds to eligible nonprofit, public bodies or Indian Tribes. The HPG program is to repair or rehabilitate individual housing, rental properties, or co-ops owned and/or occupied by very low and low income rural persons. Successful applicants, which are referred to as grantees, will provide eligible homeowners, owners of rental properties, and owners of co-ops with financial assistance through loans, grants, interest reduction payments or other comparable financial assistance for necessary repairs and rehabilitation.

HPG assistance will be used to reduce the cost of repair and rehabilitation, to remove or correct health or safety hazards, to comply with applicable development standards or codes, or to make needed repairs to improve the general living conditions of the resident(s), including improved accessibility by handicapped persons.

Applicant Eligibility Requirements

- Be a State, commonwealth, trust territory, other political subdivision, public nonprofit corporation, or
 - Be an Indian Tribe or
 - Be a private nonprofit corporation or
 - Be a consortium of units of governments and/or private nonprofit organizations
 - Have background and experience
 - Legally obligate itself to administer HPG funds
 - Provide evidence of adequate resources
- Fees for connection of utilities, credit reports, surveys, title clearance, loan closing, inspections and architectural and other technical services

HPG funds may be used to make improvements that contribute to the health, safety and well being of the occupant or to the structural integrity or long-term preservation of the unit. Such work must not exceed 20 percent of the total funding for the unit and must be combined with eligible improvements and might include:

Uses of Housing Preservation Assistance

- Installation and/or repair of sanitary water and water disposal systems
 - Energy conservation measures such as insulation and combination screen-storm windows and doors
 - Repair or replacement of heating system
 - Electrical wiring
 - Repair of structural supports and foundations
 - Repair or replacement of roof
 - Replacement of severely deteriorated siding, porches or stoops
 - Providing handicapped accessibility
 - Repairs required by the National Register of Historic Places
 - Repairs to manufactured homes or mobile homes
 - Additions to dwellings to alleviate overcrowding or to remove health hazards
- Painting
 - Paneling
 - Carpeting
 - Improving clothes closets or shelving
 - Improving kitchen cabinets
 - Air conditioning
 - Landscape plantings

HPG funds may not be used for:

- Construction or completion of new dwellings
- Refinancing debts of the homeowner other than obligations incurred for eligible items entered into after date of agreement with HPG grantee
- Repairing or rehabilitating property located in the Coastal Barrier Resources System

Fund Availability and Maximum Amounts

Funding is based on an annual appropriation. No more than 50 percent of the State's allocation may be obligated to a single entity.

Applications

Preapplications are made through RHS Regional Offices. The preapplication process deadline is published in the Federal Register each year.

For forms or more information contact the appropriate Rural Development office.

All applications are considered without regard to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (provided applicants have the capacity to enter into a legal contract).

Community Facility Loans

Community Facility Loans are used in developing essential facilities to serve rural areas and towns of up to 50,000 in population. Guaranteed and direct loans are available through the United States Department of Agriculture, Rural Housing Service, which is part of Rural Development.

How may funds be used?

Loan funds may be used to construct, enlarge, or improve community facilities for health care, public safety, and public services. This can include costs to acquire land for the facility, pay professional fees and purchase equipment. Examples of essential community facilities include:

Health Care:

- Medical and vocational rehabilitation centers, nursing homes, clinics, ambulatory care centers, hospitals

Telecommunications:

- Educational and medical telecommunication links

Public Safety:

- Ambulance and rescue vehicles, police and fire stations, fire trucks, communications centers, civil defense building

Public Services:

- Child and adult care centers, city halls, courthouses, airports, street improvements, sidewalks, off-street parking facilities, bridges, college classrooms and dormitories, libraries, museums, schools, fairgrounds, natural gas distribution systems, and multi-purpose community buildings

Who may apply?

Eligible applicants will have the legal authority to borrow and repay the loan, to pledge security for loans, and to construct, operate and maintain the facilities. They will be financially sound and able to organize and manage the facility effectively. Direct loans are made to applicants who are unable to

obtain commercial credit and meet the remaining conditions for a loan. An eligible applicant can include one of the following:

- A Public Body such as a city or county
- Special purpose district
- Indian Tribe
- Nonprofit corporation

What are the terms?

Repayment will be based on the useful life of the facility or the statutory limitation of the applicant, with a maximum term of 40 years.

What is the interest rate?

Interest rates for direct loans are developed from municipal obligations and consider the facilities impact on prime or unique farmland and the median household income of the service area. Interest rates for guaranteed loans may be fixed or variable and are determined by the lender and borrower, with approval from USDA.

What security is required?

Statutory requirements need to be met for the loan which can include a real estate mortgage and lien on equipment, bonds, or assessments. Tax-exempt bonds may be issued to secure direct loans, however cannot be used for guaranteed loans.

An eligible lender designated to make guaranteed loans can include one of the following:

- A bank or savings and loan
- A mortgage company that is part of a bank holding company

- Farm credit bank of the Federal Land Bank Association
- An insurance company regulated by the National Association of Insurance Commissioners

A guaranteed loan may be made by Rural Development to cover up to 90 percent with most loans covering 80 percent of the principal borrowed. The guarantee covers the lender for the principal and interest on a loan.

For forms or more information contact:

Rural Development
PO Box 1737
220 East Rosser Ave
Bismarck ND 58502-1737
Phone: (701) 250-4773
Toll Free: 1-800-582-7584
TTY: 701-250-4794
Fax: (701) 250-4670

All applications are considered without regard to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (provided applicants have the capacity to enter into a legal contract).

Community Facility Loans for Child Care Facilities

Rural Development as part of the United States Department of Agriculture (USDA) is authorized to make direct loans and to guarantee loans made by eligible lenders to borrowers in rural areas and in towns of population up to 50,000 for essential community facilities such as child care facilities.

An eligible applicant must have the legal authority to borrow and repay the loan and meet all requirements of the loan. Applicants must be unable to obtain the necessary credit from private or cooperative sources. An eligible applicant can include one of the following:

- A Public Body, such as a City or County
- Special purpose district
- Indian Tribe
- Nonprofit corporation

An eligible lender designated to make guaranteed loans can include one of the following:

- A bank or savings and loan
- A mortgage company that is part of a bank holding company
- A farm credit bank of the Federal Land Bank Association
- An insurance company regulated by the National Association of Insurance Commissioners
- Other lenders which may require approval of the Rural Development Administrator

A guaranteed loan may be made by Rural Development to cover 90 percent with most loans covering 80 percent of the principal borrowed. The guarantee covers the lender for the principal and interest on a loan.

Funds may not be used to finance:

- Facilities which are not modest in size design, and cost
- Loan finder's fees
- On-site utility systems, community antenna services, or business and industrial buildings in connection with an industrial site.

For forms or more information contact:

Rural Development
PO Box 1737
220 East Rosser Ave
Bismarck ND 58502-1737
Phone: (701)250-4773
Toll Free: 1-800-582-7584
TTY: 701-250-4794
Fax: (701)250-4670

All applications are considered without regard to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (provided applicants have the capacity to enter into a legal contract).

Community Facility Loans for Fire and Rescue

Rural Development as part of the United States Department of Agriculture (USDA) is authorized to make direct loans and to guarantee loans made by eligible lenders to borrowers in rural areas and in towns of population up to 50,000 for essential community facilities.

Essential Community Facilities can include:

- Ambulances and equipment
- Fire department buildings
- Fire trucks, apparatus and equipment

Eligible Borrower must have the legal authority to borrow and repay the loan and meet all requirements of the loan. Applicants must be unable to obtain the necessary credit from private or cooperative sources. An eligible borrower can include one of the following:

- County
- Municipality
- Special purpose district
- Indian Tribe
- Non-profit corporation

An Eligible Lender designated to make guaranteed loans can include one of the following:

- A bank or savings and loan.
- A mortgage company that is part of a bank holding company
- A farm credit bank of the Federal Land Bank Association
- An insurance company regulated by the National Association of Insurance Commissioners
- Other lenders which may require approval of the Rural Development Administrator

Rural Development may guarantee up to 80 percent of loss of principal and interest on a loan.

Funds may not be used to finance:

- Facilities which are not modest in size, design, and cost
- Loan finder's fees

On-site utility systems, community antenna services, or business and industrial buildings in connection with an industrial site

For more information contact:

Rural Development
PO Box 1737
220 East Rosser Ave
Bismarck ND 58502-1737
Phone: (701)250-4773
Toll Free: 1-800-582-7584
TTY: 701-250-4794
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All applications are considered without regard to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (provided applicants have the capacity to enter into a legal contract).

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
NORTH COUNTY JUDICIAL DISTRICT

KAREN and JOSEPH CASTILLO,	)	Civil No. N072278
)	
	)	REPLY MEMORANDUM OF POINTS
Plaintiffs,	)	AND AUTHORITIES IN
	)	SUPPORT OF MOTION TO QUASH
vs.	)	SERVICE OF SUMMONS ON
	)	DEFENDANT ALL MISSION INDIAN
	)	HOUSING AUTHORITY
ALL MISSION INDIAN HOUSING)	
AUTHORITY; CHARLES YOUNG III;	)	[C.C.P. §418.10]
AMONOCK CONSTRUCTION CO.;)	
ROE CIVIL ENGINEER; ROSS ALAN	)	Hearing: January 27, 1997
GINGERICH; PALOMAR TRANSPORT	)	Dept. H
CO.; and DOES 1-100, inclusive,)	2:00 p.m.
)	
Defendants.)	[Telephonic Ruling—No
)	Appearance Required]
_____)	

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INTRODUCTION

Specially-appearing defendant the All Mission Indian Housing Authority (hereinafter, “AMIHA”) agrees with many of the legal arguments made by plaintiffs in their opposition to AMIHA’s motion to quash. It is true that not only Congress, but also a tribe itself, may waive that tribe’s tribal sovereign immunity.¹ It is true that a general “sue-and-be-sued” clause in a tribe’s organic documents has often been read as sufficiently explicit and unequivocal as to be an effective waiver of that immunity. However, there are two legal points, one small, the other large, at which plaintiffs are in error in their Opposition, as well as one factual inaccuracy.

Although irrelevant to the merits of this motion, the plaintiffs have brought up the facts surrounding the tragic death of their son. For that reason alone, AMIHA must point out a factual inaccuracy in the Summary of Facts in their Opposition. At p. 1, lines 15-18, of their Opposition, plaintiffs state that their son “suddenly found himself on the roadway of the Pala-Temecula Highway. At that time, he was struck and killed by the semi tractor trailer being driven by defendant ROSS ALAN GINGERICH.” This leaves the impression that the front of the truck struck Jacob Castillo. This is not so. According to the Sheriff’s report of the event, the truck in question was a semi-tractor pulling two trailers, and Jacob Castillo collided with the front axle of the forward set of wheels of the second trailer, or the sixth of the seven sets of axles of the entire moving vehicle. According to the Sheriff’s report, the truck did not run into Jacob Castillo. Instead, he ran into the rear of the rear trailer of the double tractor-trailer combination.

I.

AMIHA IS NOT A CORPORATION ORGANIZED

¹ *U.S. v. Oregon*, 657 F.2d 1009, 1013 (9th Cir., 1981)

UNDER SECTION 17 OF THE INDIAN RE-ORGANIZATION ACT.

It is certainly true that, by enacting §17 of the Indian Re-Organization Act of June 18, 1934, 25 U.S.C. §477, Congress did authorize tribes to seek federal corporate charters. As the statute says, “The Secretary of the Interior may, upon petition of at least one-third of the adult Indians [of a tribe], issue a charter of incorporation to such tribe.” 25 U.S.C. §477.

However, from this plaintiffs infer that AMIHA must exist by virtue of such a charter. This is not true. Tellingly, plaintiffs do not provide any such charter, and they cannot do so because none exists. Instead, AMIHA is purely a creature of tribal law, not federal charter, because AMIHA is organized solely and exclusively under the authority of each of its member tribes which enacted an appropriate ordinance to create AMIHA. As the federal court has held,

AMIHA was organized by 17 California Mission Indian Tribes in southern California to provide low-income housing for Indian families on Indian reservations. The real property which is the subject of this suit is unallotted tribal land held in trust by the United States for the Soboba Band of Mission Indians. AMIHA leases the land from the respective tribes and, in turn, subleases individual homesites to eligible Indian families.

All Mission Indian Housing Authority v. Silvas, 680 F.Supp. 330, 331 (C.D.Cal. 1987)

If the plaintiffs still believe that the Secretary of the Interior issued a federal charter under 25 U.S.C. §477 to create AMIHA, then AMIHA challenges them to produce a copy of that federal charter.

The tribal and non-federal nature of AMIHA is reflected in the federal statute which establishes the modern federal Indian housing program and federal funding for it. The Indian Housing Act of June 28, 1988, P.L. 100-358, 42 U.S.C. §1437aa, et seq., includes a definition of “Indian Housing Authority”:

The term “Indian housing authority” means any entity that—

(A) is authorized to engage in or assist in the development of lower income housing for Indians; and
(B) is established—
(i) by exercise of the power of self-government of an Indian tribe independent of State law . . .
25 U.S.C. §1437a(11)

As shown by the Pala Band’s Ordinance No. 5, a copy of which is provided by plaintiffs, the Pala Band acted under its own independent sovereign authority to enact that ordinance and thereby to join AMIHA’s other member tribes in creating AMIHA. No mention at all is made anywhere in the ordinance of any federally-chartered corporation organized under 25 U.S.C. §477.

For these reasons, AMIHA submits that the plaintiffs are simply wrong in attempting to portray AMIHA as a federally-chartered corporation existing under §17 of the Indian Re-Organization Act of June 18, 1934, 25 U.S.C. §477. It isn’t and never has been. Accordingly, AMIHA asks the Court to ignore all references in the plaintiffs’ Opposition to such corporations, to 25 U.S.C. §477, and to cases interpreting that statute.

II.

THE LANGUAGE OF THE PALA BAND’S ORDINANCE DOES NOT WAIVE AMIHA’S SOVEREIGN IMMUNITY AS TO THIS TORT CLAIM.

Plaintiffs point to the following language from Article V.2.a. of the Pala Band’s Ordinance No. 5 as supplying the necessary express and unequivocal waiver of tribal sovereign immunity in this case:

The [Tribal] Council hereby gives its irrevocable consent to allowing the Authority to sue and be sued in its corporate name, upon any contract, claim, or obligation arising from its activities under this ordinance, and hereby authorizes the Authority to agree by contract to waive any immunity from suit which it might otherwise have . . .

It is true that several courts have held that such language in an Indian Housing Authority's ordinance does waive the Indian Housing Authority's tribal sovereign immunity *as to the particular claims being brought against the Indian Housing Authority in those cases*. See, e.g., *Namekagon Development Co., Inc. v. Bois Forte Reservation Housing Authority*, 517 F.2d 508, 5210 (8th Cir., 1975). However, *all* those cases were cases in which a contractor which had entered into a contract with the Indian Housing Authority for the construction of homes brought a claim based on such a construction contract. All such cases were thus *contract* cases, not *tort* cases, such as the present case. In support of this distinction, AMIHA offers the following arguments.

A. The sovereign immunity of AMIHA is co-extensive with that of the United States.

As noted in AMIHA's opening brief, AMIHA shares the tribal sovereign immunity and status of its member tribes. It is routinely held that this tribal sovereign immunity which AMIHA shares is "co-extensive" with federal sovereign immunity:

The common law immunity afforded Indian tribes is coextensive with that of the United States . . .

Evans v. McKay, 869 F.2d 1341, 1345 (9th Cir., 1989)

An Indian tribe's immunity is coextensive with the United States' immunity . . .

Wichita & Affiliated Tribes of Oklahoma v. Hodel,
788 F.2d 765, 773 (D.C. Cir., 1986)

B. All waivers of sovereign immunity must be construed narrowly and in favor of the sovereign.

. . . the Government's consent to be sued "must be 'construed strictly in favor of the sovereign' . . ." [cit. om.]

U.S. v. Nordic Village, Inc., 503 U.S. 30, 34 (1992)

“Waivers of immunity must be ‘construed strictly in favor of the sovereign,’ [cit.om.]and not ‘enlarge[d] . . . beyond what the language requires.’ [cit.om.]

U.S. Department of Energy v. Ohio, 503 U.S. 607, 615 (1992)

C. Such strict construction requires that the express terms of any waiver of sovereign immunity must be respected and must limit the scope of the waiver.

When any sovereign waives any aspect of its sovereign immunity, the sovereign defines and limits the scope of that waiver. Application of this principle is clear in the context of the major waivers to federal sovereign immunity. For example, the Federal Tort Claims Act, 28 U.S.C. §1346(b), waives federal sovereign immunity for most torts, but not for any contracts. “Although plaintiff attempts to assert claims for breach of contractual duties, the plain language of the F[ederal] T[ort] C[laims] A[ct] provides a waiver of the sovereign’s immunity only for actions sounding in tort.” *Vogelaar v. U.S.*, 665 F.Supp. 1295, 1299 (E.D. Mich., 1987). Conversely, the Tucker Act, 28 U.S.C. §1346(a)(2), waives federal sovereign immunity only for contract claims, but not for tort claims. “The Tucker Act did not confer on the district courts jurisdiction over any suit which could not be maintained in the Court of Claims.[cit.om.] Since the Court of Claims has no jurisdiction over actions against the United States for copyright infringement, jurisdiction in the District Court under the Tucker Act is also lacking.” *Turton v. U.S.*, 212 F.2d 354, 355 (6th Cir., 1954).

This principle fully applies in the context of tribal sovereign immunity. For example, in *Ramey Construction Co. v. Apache Tribe*, 673 F.2d 315, 320 (10th Cir., 1982), the Tenth Circuit held that “When consent to be sued is given, the terms of the consent establish the bounds of a court’s jurisdiction. [cit.om.] In this case, the Tribe consented only to entry of judgment in the amount of the contract retainage it withheld; it did not consent to be sued on any other claims. . .

[cit.om.] The scope of the Tribe's consent in this case precludes recovery of interest on the amount of retainage." Similarly, as the Ninth Circuit has held,

However, the "terms of [a sovereign's] consent to be sued in any court define that court's jurisdiction to entertain the suit."
[cit.om.]

Thus, a tribe's waiver of sovereign immunity may be limited to the issues necessary to decide the action brought by the tribe; the waiver is not necessarily broad enough to encompass related matters, even if those matters arise from the same set of underlying facts.

McClendon v. U.S., 885 F.2d 627, 630 (9th Cir., 1989)

Consistent with this result is *Oklahoma Tax Commission v. Citizen Band of Potawatomi Indian Tribe*, 498 U.S. 505, 509-510 (1991) in which the U.S. Supreme Court held that even the compulsory counterclaim rule did not waive tribal sovereign immunity as to otherwise compulsory counterclaims, even when a tribe institutes an action, and even regarding the same subject matter.

Therefore, AMIHA submits that the terms of any waiver of its sovereign immunity which AMIHA may make necessarily limit and define the scope of that waiver, just as the terms of any waiver of federal sovereign immunity that the United States may make limit and define the scope of that waiver. The principle that that which is not expressly waived is withheld applies in both cases, since federal and tribal sovereign immunity are co-extensive.

D. AMIHA has not waived its sovereign immunity regarding plaintiff's tort claims.

As noted above, AMIHA agrees that the above "sue-and-be-sued" clause in the ordinances which created AMIHA do waive AMIHA's tribal sovereign immunity, but only as to contract claims, and not as to tort claims. This is so for two reasons.

First, the express language of the "sue-and-be-sued" clause does not refer to tort claims. Instead, it refers to contracts, claim, and obligations arising from AMIHA's activities under the

ordinance. Such a waiver is necessary to induce contractors to enter into contracts for the construction of housing projects with AMIHA, which, as noted in the Indian Housing Act of June 28, 1988, *supra*,² and the Pala Band's Ordinance No. 5³, are AMIHA's primary activity. No where in this ordinance or the federal statute is there any reference to federal funds being used to pay tort claims, only to the use of such funds for providing decent, safe, and sanitary housing to eligible Indian families. As noted below, the failure of any of these sources to expressly and unequivocally refer to a waiver of sovereign immunity regarding tort claims necessarily limits the waiver of the "sue-and-be-sued" clause to the contract claims by contractors needed to allow any Indian Housing Authority to perform its function of providing housing.

Second, the one federal appellate case construing this very language in the context of a tort claim against an Indian housing authority has drawn this very distinction in holding that the very language on which plaintiffs now rely is a waiver of an Indian Housing Authority's tribal sovereign immunity from contract claims, *but not tort claims*. Because this case is the only reported federal or state opinion discussing this critical aspect of the present motion, AMIHA will reproduce the relevant parts of the opinion in full. The nature of the contractor's counterclaims

² The primary function of the United States under the Indian Housing Act of June 28, 1988, *supra*, is providing money by contract to Indian Housing Authorities, money which those Indian Housing Authorities use to pay contractors for building homes on federal Indian reservations under contracts between those Indian Housing Authorities and those contractors: "The Secretary [of Housing & Urban Development] may, to the extent provided in appropriation Acts, enter into contracts with Indian housing authorities under title I to provide financial assistance for the development, acquisition, operation, and improvement of housing projects under this section." 42 U.S.C. 1437bb(b).

³ Article II, entitled "Purposes" states that the purposes of AMIHA are "Remedying on the Reservations of this and other participating Indian Bands unsafe and unsanitary housing conditions" and "Alleviating the acute shortage of decent, safe, and sanitary dwellings for families of low income."

against another tribe⁴ in *Rosebud Sioux Tribe v. Val-U Construction Co.*, 50 F.3d 560 (8th Cir., 1995) were both contract claims and tort claims:

In July 1989 Val-U Construction entered into a \$3.6 million contract with the Tribe to build seventy-six housing units to serve a medical facility on the Rosebud Sioux Indian Reservation. Problems arose during the performance of the contract, and the Tribe terminated the contract in September 1990. The contract included an arbitration clause.

In October 1990 Val-U demanded arbitration of the contract termination. The Tribe refused to participate in the arbitration, citing sovereign immunity, and instead sued Val-U in April 1991 for breach of contract, presenting false payment vouchers, RICO violations, and fraud and misrepresentation. Val-U pleaded as an affirmative defense the contract's arbitration clause and, later, collateral estoppel based on the subsequent arbitration award in its favor. Val-U also counterclaimed for breach of contract, loss of the ability to compete, and loss of reputation.

Rosebud Sioux Tribe v. Val-U-Const. Co., 50 F.3d 560, 561 (8th Cir., 1995)

As in the present case, the contractor in *Rosebud* relied on the “sue-and-be-sued” clause in the organic document as a waiver of sovereign immunity for both its contract and its tort claims:

First, Val-U contends that the Tribe waived its sovereign immunity via the contractual arbitration clause and by virtue of the "sue and be sued" clause in its corporate charter.

Id., 50 F.3d at 562

However, the Eighth Circuit held that the scope of the waiver provided by the “sue-and-be-sued” clause in the Indian Housing Authority’s ordinance extended only to contract claims, *and not to tort claims*:

The parties clearly manifested their intent to resolve disputes by arbitration, and the Tribe waived its immunity with respect to any disputes under the contract.

⁴ The party responding to the contractor’s claims in *Rosebud* was actually a tribe acting through a federally-chartered corporation under 25 U.S.C. §477, rather than an Indian Housing Authority. However, this makes no difference for the present analysis because the same “sue-and-be-sued” clause appears in both the corporate charter and the Indian Housing Authority’s ordinances.

The waiver of immunity does not extend, however, to any tort claims by Val-U. The arbitration clause waives sovereign immunity only as to claims under the contract. Furthermore, we find that the "sue and be sued clause" in the Tribe's corporate charter does not operate as a general waiver of the Tribe's immunity from suit. See, e.g., *United Keetoowah Band of Cherokee Indians v. Oklahoma*, 927 F.2d 1170, 1174 (10th Cir.1991)
Id., 50 F.3d at 563

Accordingly, we affirm the dismissal of Val-U's tort counterclaims but reverse the dismissal of its breach of contract counterclaims against the Tribe. We remand this case to the district court to hear those counterclaims.

Id., 50 F.3d at 564

The only other reported case⁵ discussing this distinction agrees with this analysis and rejects the plaintiffs' conclusion, based on *Namekagon*, *supra*, and its progeny, that a "sue-and-be-sued" clause in an Indian Housing Authority's organic ordinance waives the Indian Housing Authority's tribal sovereign immunity for all claims:

This case is easily distinguished from *Namekagon*. The plaintiffs in this case cannot show any express contractual waiver of sovereign immunity. As the Court of Appeals stated in *Namekagon*, *supra*, a housing authority can refuse to relinquish its general immunity from suit, and that is exactly what the Rosebud Housing Authority has done as a matter of practice **except for certain construction contracts**. Since no particular, express contractual immunity waiver exists as to the plaintiff's employment, the housing authority cannot be said to have waived the general immunity to which it is otherwise entitled.

None of the other cases cited by plaintiffs support a waiver of sovereign immunity in this case. All of those cases involve

⁵ As an opinion of a tribal court, this case is reported in the *Indian Law Reporter*. Although this may not be a reporter with which this Court is readily familiar, the U.S. Supreme Court and the U.S. Court of Appeals for the Ninth Circuit routinely cite and rely on cases from tribal courts reported in the *Indian Law Reporter*. See, e.g., *National Farmers Union Insurance Co. v. Crow Tribe of Indians*, 471 U.S. 845, 848 (1985) and *Stock West Corp. v. Taylor*, 942 F.2d 655, 657-658 (9th Cir., 1991). This is appropriate because the U.S. Supreme Court has emphasized that "Tribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65 (1978).

situations where the Indian housing authority in question had entered into an express written contract in order to carry out activities involving construction or financing. *See, R.C. Hedreen Co. v. Crow Tribal Housing Authority*, 521 F.Supp. 599 (1981); *R.J. Williams Co. v. Fort Belknap Housing Authority*, 719 F.2d 979 (1983). This case, on the other hand, does not involve contractors or financing contracts. Rather, the plaintiffs were employees of the Rosebud Housing Authority and the issue involved is a personnel dispute. There was no employment contract nor was there ever any waiver of immunity from suit by the housing authority as to claims arising from that employment.

Dubray v. Rosebud Housing Authority, Rosebud Sioux Tribal Court, 1985, 12 I.L.R. 6015, bold type added

The above holding from the Tribal Court in *Dubray* is particularly important to the present case. This case was brought, as noted on pp. 2-3, Part IV, of plaintiffs' Opposition, pursuant to the civil part of P.L. 280, 28 U.S.C. §1360. Without this federal authorizing statute, this State Court would have no jurisdiction at all in any case over reservation Indians.⁶ One part of P.L. 280, quoted with emphasis by plaintiffs at lines 7-10 of p. 3 of their Opposition, is:

Any tribal ordinance . . . adopted by an Indian tribe . . . in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to this section.

28 U.S.C. 1360(c)

The above Ordinance No. 5 of the Pala Band is clearly one such tribal ordinance which is to be given full force and effect by this State Court. In doing so, this Court should defer to the above interpretation of Tribal law in the "sue-and-be-sued clause" provided by the above Tribal Court, just as this Court defers to the interpretation of federal law provided by federal courts, and as the

⁶ This federal statute provides for a limited amount of state court civil jurisdiction over *only* individual reservation Indians, but not tribes, and is thus not a waiver of AMIHA's sovereign immunity. "[T]here is notably absent [in P.L. 280] any conferral of state jurisdiction over tribes themselves . . .". *Bryan v. Itasca County*, 426 U.S. 373, 389 (1976). "We have never read

federal courts defer to the interpretation of state law by state courts. Since the Tribal Court has interpreted the language of the “sue-and-be-sued” clause as waiving tribal sovereign immunity only as to contract claims, and not tort claims, the above language of 28 U.S.C. §1360(c) requires the same deference to the Tribal Court’s reading of this language.

CONCLUSION

Therefore, AMIHA asserts that, consistent with the requirement that the waiver of its tribal sovereign immunity be narrowly construed in its favor, the “sue-and-be-sued” clause in the Pala Band’s Ordinance No. 5 waives AMIHA’s immunity *only* as to contract actions, and not as to tort actions, such as those asserted by the plaintiffs. Thus, because plaintiffs assert only tort claims, and not contract claims, the immunity remains unwaived as to those tort claims, and the Court should grant the motion to quash on that basis.

Pub.L. 280 to constitute a waiver of tribal sovereign immunity. . .”. *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering*, 476 U.S. 877, 892 (1986).

Dated: February 23, 1997

Respectfully submitted,

Art Bunce
Attorney for specially-appearing
All Mission Indian Housing Authority



MANAGING THE CONSTRUCTION PROCESS: Procurement Requirements Contract Administration and Dispute Resolution Methods

□ Wulfsberg Reese Ferris & Sykes
300 Lakeside Drive, 24th Floor Oakland, CA 94612
(510)-835-9100

Shared Visions: Summit I, Sponsored by HUD



NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996





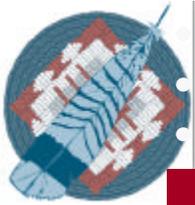
NAHASDA - OVERVIEW

- ❑ Tribal authorities have greater autonomy in providing safe, affordable housing
- ❑ HUD provides block grants to each Tribally Designated Housing Entity ("TDHE")



NAHASDA - OVERVIEW

- ❑ Each TDHE and Indian Housing Authority (“IHA”) administrates its own block grant
- ❑ Each TDHE/IHA must develop its own plan
- ❑ HUD conducts post-plan audits
- ❑ HUD may may issue sanctions for noncompliance



CONTRACT REQUIREMENTS

- NAHASDA requires compliance with
 - Davis-Bacon Act (labor standards)
 - National Environmental Policy Act of 1969 (environmental protection)
 - Indian Self-Determination and Education Assistance Act - § 7(b) (Indian preference)
 - Housing and Urban Development Act of 1968 - § 3 (low-income hiring preference)



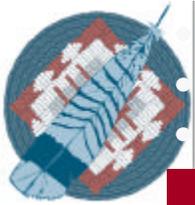
CONTRACT REQUIREMENTS

- ❑ Contract drafter must include NAHASDA and HUD requirements in project contracts

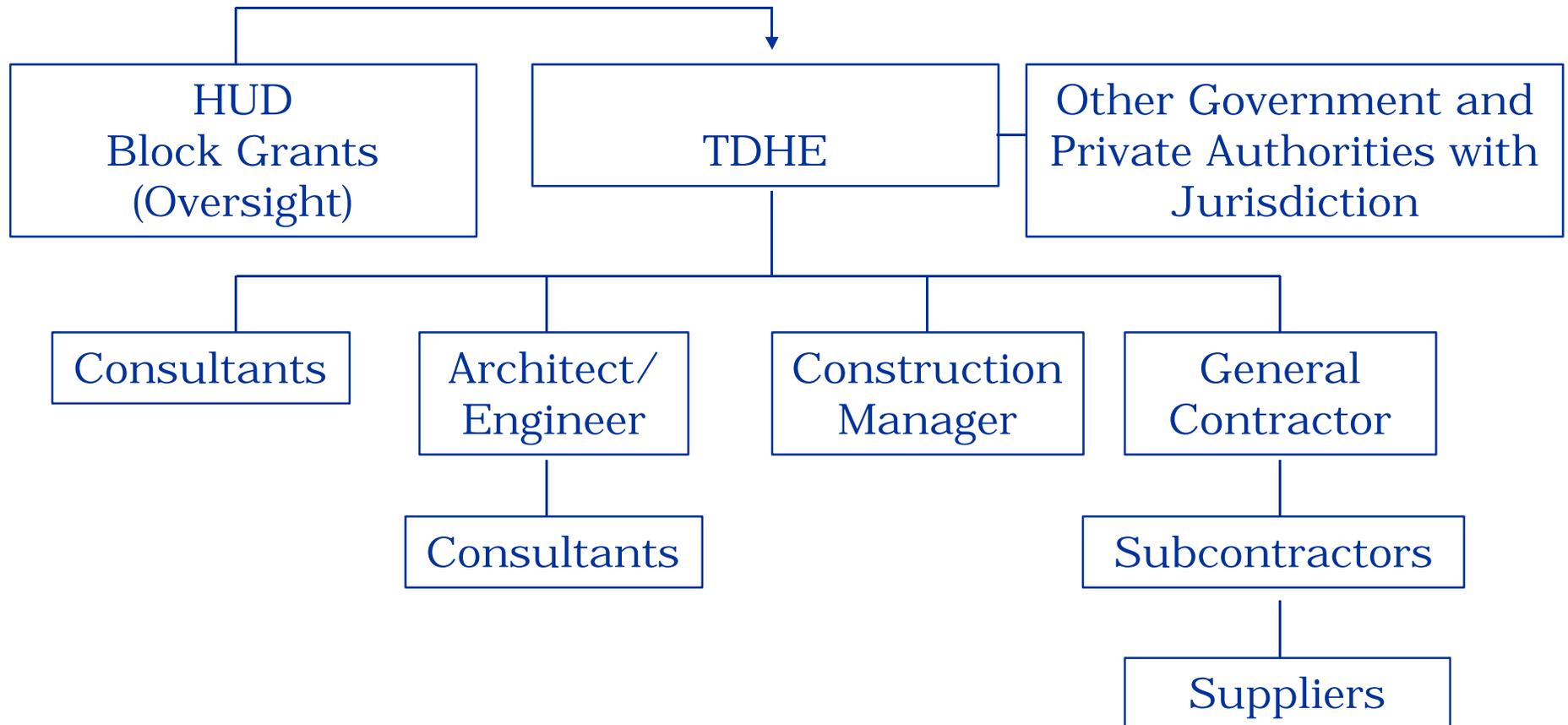


PROJECT PROCUREMENT





PROJECT PARTICIPANTS





CONSTRUCTION PROJECT PARTICIPANTS

- ❑ IHA/TDHE
- ❑ Contracting Officer represents IHA/TDHE
 - Pays for work, inspects work, enforces contract
 - Hires Architect, Contractor, Consultants and perhaps Contract Construction Contractor
- ❑ Contract Construction Contractor



CONSTRUCTION PROJECT PARTICIPANTS

- Architect/Engineer (“A/E”)
 - Prepares project plans and specifications
 - Observes work in progress
 - Reviews shop drawings and product data
 - Certifies payment applications
 - Warrants design will work



CONSTRUCTION PROJECT PARTICIPANTS

- General Contractor
 - Builds per plans and specifications
 - Monitors means and methods of work
 - Monitors work coordination
 - Warrants the completed construction
 - Must meet, maintain and update project schedule



CONSTRUCTION DELIVERY SYSTEMS





ALTERNATIVE CONSTRUCTION SYSTEMS

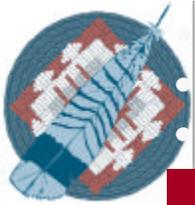
□ “Turnkey” Project

● Owner

- ✓ provides site, performance specifications
- ✓ specifies lump sum price
- ✓ specifies delivery date

● Contractor

- ✓ provides design and construction services
- ✓ “turns keys over” to project to owner upon project completion
- ✓ owns project until turn over to owner



ALTERNATIVE CONSTRUCTION SYSTEMS

□ Design Build Project

● Owner

- ✓ provides site and performance specifications
- ✓ specifies price and delivery date

● Contractor

- ✓ provides design and construction services

● Quality Control/Quality Assurance issues



ALTERNATIVE CONSTRUCTION SYSTEMS

□ Force Account

- TDHE/IHA acts the owner and general contractor
 - ✓ engages subcontractors
 - ✓ hires workers
 - ✓ schedules, budgets and performs the work
- TDHE/IHA must have or obtain the skills necessary for successful project completion



ALTERNATIVE CONSTRUCTION SYSTEMS

☐ Manufactured Housing Units

● Prefabricated construction

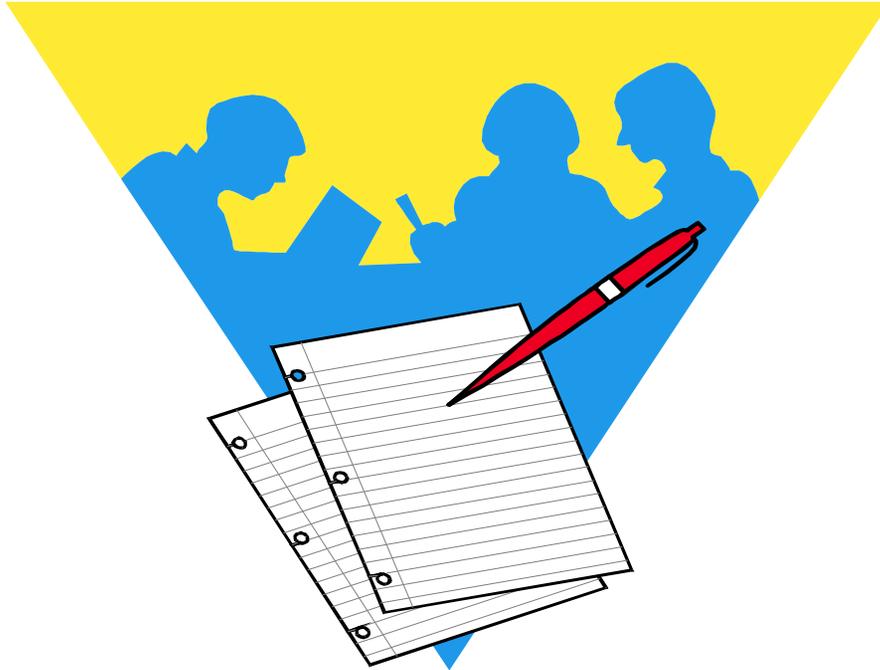
- ✓ contractor assembles prefabricated units on site
- ✓ requires additional on-site construction

● Prefabricated modular units

- ✓ factory ships complete unit to job site



CONSTRUCTION CONTRACTS





TYPES OF CONTRACTS

- ❑ “Fixed Price” (Lump Sum/Stipulated Sum)
 - Contractor agrees to construct project for an established price, agreed to in advance
- ❑ “Cost Plus Fee”
 - Owner agrees to pay contractor/design professional
 - ✓ fee for service (fixed fee or based on % of costs)
 - ✓ direct and indirect costs associated with completion of their duties



TYPES OF CONTRACTS

❑ "Percentage of Construction"

- Contractor's/design professional's compensation is based on a percentage of the total cost of construction
 - ✓ changes may be result of errors and omissions
 - ✓ changes may increase construction costs
 - ✓ changes may not require increase in work

❑ "Cost plus Percentage of Cost"



OWNER - A/E CONTRACTS

- ❑ No HUD required Owner-A/E contract
 - ✓ *Drafter must include in design professional contracts appropriate HUD/NAHASDA requirements*
 - ✓ *Drafter must include in design professional contracts pertinent Code of Federal Regulations ("CFR")*



OWNER-CONTRACTOR CONTRACTS

- ❑ HUD FORM 5370 - “General Conditions of the Contract for Construction”
- ❑ Form 5370 not mandatory for all contracts
 - ✓ *Drafter must incorporate appropriate HUD and NAHASDA requirements in construction contract documents!*



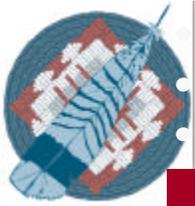
“SECTION 7(b) REQUIREMENT”

- ❑ Indian Self-Determination and Education Assistance Act - §7(b)
 - ❑ Gives preference in training/employment opportunities to
 - Native Americans
 - Native American organizations
 - Native American economic enterprises
- ✓ Contractors shall include Section 7(b) clause in every contract



“SECTION 3 REQUIREMENT”

- ❑ Housing and Urban Development Act of 1968 - §3
- ❑ Directs contractors to use best efforts to offer employment/training opportunities to low-income and very low-income persons
- ❑ Section 3 targets HUD-assisted housing recipients
 - ✓ Contractor must include HUD §3 requirement in its subcontracts

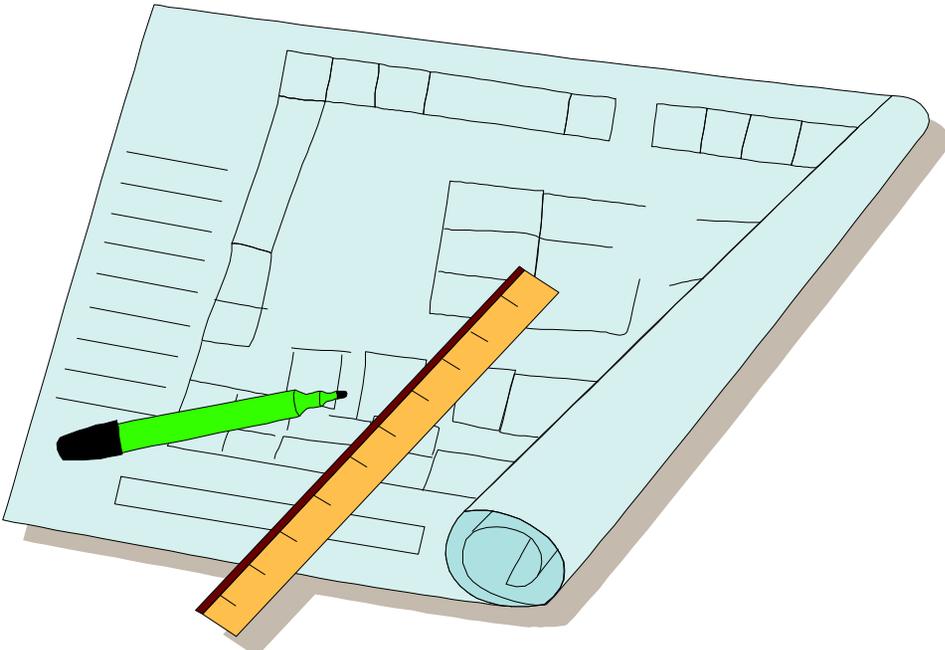


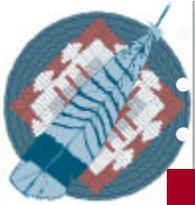
ADDITIONAL REQUIRED PROVISIONS

- ❑ Contracts, subcontracts and subgrants in excess of \$100,000 shall comply with
 - Clean Air Act § 306
 - Clean Water Act § 508
 - Executive Order 11738
 - Environmental Protection Agency regulations
- ❑ Some projects require compliance with Energy Policy and Conservation Act



PROCURING PROFESSIONAL SERVICES





PROCURING PROFESSIONAL SERVICES

- ❑ Develop Statement of Work ("SOW")
- ❑ Develop independent cost estimates
 - ✓ TDHE/IHA will use to analyze responses
- ❑ Develop technical evaluation plan
 - ✓ TDHE/IHA will use to analyze responses
- ❑ Prepare Request for Proposal ("RFP") or Invitation for Bids ("IFB")
 - Identify technical and price evaluation factors



PROCURING PROFESSIONAL SERVICES

- Publish Notice
- Issue RFB/IFB to qualified organizations
- Select most competitive proposals
- Conduct separate negotiations sessions
- Receive “best and final” offers
- Create “short list”
- Select successful bidder



CONTRACT ADMINISTRATION





MANAGEMENT TECHNIQUES

- Schedules
- Value Engineering
- Regularly Scheduled Meetings
- Claims Resolution



PROJECT SCHEDULES

HUD General Conditions

● Progress Schedule

- ✓ must show order of activities
- ✓ must show start and finish date of each activity (including procurement)
- ✓ must show percentage of completion at any time

Consider additional/alternative project schedules



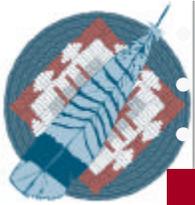
PROJECT SCHEDULES

- ❑ Critical Path Method (“CPM”) Schedule
 - Shows activities for Project duration
 - Shows interconnection or dependency of tasks
 - Establishes optimum sequence and duration
 - Permits determination of importance relative to other tasks and project



PROJECT SCHEDULES

- Project Evaluation and Review Technique ("PERT") Schedule
 - Charts anticipated project activities and events
 - Synonymous with CPM Schedule



PROJECT SCHEDULES

☐ Schedule of Values

- Cost breakdown

- ✓ establishes value for each element of the work
- ✓ value totals equal contract sum

☐ Cost and Resource Loaded Schedules

- ✓ *Consider including in contract documents requirement that contractor submit updated schedules with each payment application*



CHANGES

□ Value Engineering

- Shared savings when the contractor voluntarily proposes cost-saving measures in accomplishing the work required by the contracts

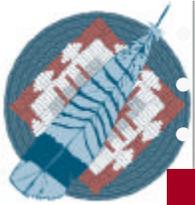
✓ *Consider including in contract documents provision for value engineering change proposals*



SCHEDULED MEETINGS

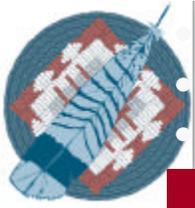
□ Schedule Meetings

- IHA/TDHE, A/E and Contractor should meet regularly to discuss work progress, review schedule, review noted deficiencies in work
 - ✓ *Consider including in contract documents*
 - *regularly scheduled meetings*
 - *designate A/E or CM to prepare minutes*
 - “history is written by the chronicler”

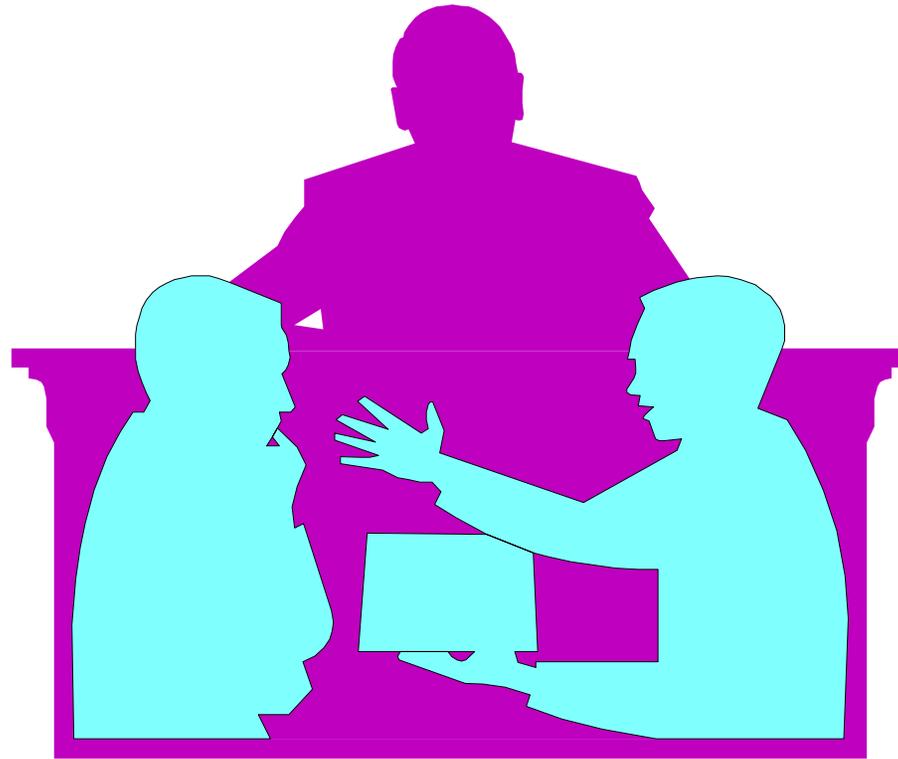


CLAIMS RESOLUTION

- HUD General Conditions - general procedure for claims resolution
 - Contracting Officer's decision final unless contractor initiates appeal proceedings in different forum (mediation, arbitration, litigation)
 - ✓ *Consider including in contract documents detailed claims resolution procedure*
 - *thresh hold amounts*
 - *documents required to "back up" claim*
 - *appeal forum (mediation)*



DISPUTE RESOLUTION METHODS





SOVEREIGN IMMUNITY

□ Sovereign Immunity

- Contract claims

- ✓ Indian tribes are immune from suit
- ✓ Indian tribes cannot be sued without their consent

□ Tribal Courts

- Owner may require that parties submit to jurisdiction of tribal authorities to determine contract disputes



BID DISPUTES

□ Bid Disputes

- ✓ *Drafter must include in Invitation to Bid notice that bid disputes are subject to owner's protest policy and procedures -*
 - may include jurisdiction of tribal authority



MEDIATION

- ❑ HUD General Conditions - general reference to mediation as alternative forum
- ❑ Not binding on parties but generally successful
 - ✓ *Consider including in contract documents provision for mandatory mediation before independent mediator(s) as initial dispute resolution proceeding*



ARBITRATION

- Contract required --- binds only parties that agree to arbitrate their disputes
- Binding or non-binding arbitration
- TDHE/IHA waives jurisdiction of tribal court
 - agreement to arbitrate will not direct dispute to tribal court



ARBITRATION

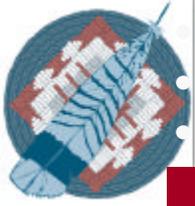
- ❑ AIA form and other pre-printed forms:
owner arbitrates dispute with A/E or contractor
 - ✓ *Consider including in contract documents provision for joint arbitration before independent arbitrator(s) (owner, A/E and contractor)*
 - avoids inconsistent results
 - avoids “empty chair” defense and “blame game”



LITIGATION

□ LITIGATION

- HUD General Conditions - general reference to “suit in a court of competent jurisdiction”
 - ✓ *Consider including in contract documents provision for suit in tribal courts where permitted*



MANAGING THE CONSTRUCTION PROCESS

Presented by
Wulfsberg Reese Ferris & Sykes
Professional Corporation

CONFLICT OF INTEREST PRESENTATION

John Jaraman

I. DEFINITIONS

-- What is Ethics??

Standards of Conduct??

Conflict of Interest????

II. HISTORICAL BACKGROUND

A. Public/Indian Housing Programs

1. Public Housing Requirements
2. 1976 changes relating to Indian Housing.
 - Model Tribal Ordinance provision
 - Provision in Annual Contributions Contract.
3. 24 CFR Part 85 Requirements.
4. IHA Procurement Policy
5. IHA Personnel Policy

B. Indian Block Grant Program

1. 24 CFR Part 85
2. Indian Block Grant Regulations
 - required HUD approval for certain exceptions
 - number of factors to be considered for granting any exception.
 - an exception to the requirement for HUD approval.

~~3. Procurement and/or Personnel Policies~~

4. Anti-Nepotism Policy

III. NAHASDA CONFLICT OF INTEREST PROVISIONS

A. What are the Significant Changes??

- one NAHASDA Regulation Applying to Tribes, TDHE's, including 1937 Act IHA's.
- Self-Determination element- e.g. Tribe or TDHE defines immediate family ties.
- " During their tenure and for one year thereafter"

CAVEAT

B. 24 CFR Section 1000.26 and 1000.30(a).

- Part 85 requires written code of standards of conduct for employees, officers, etc. involved in procurement area.
- No participation in selection or award of contract when conflict of interest situation arises.
- no gratuities, favors, or anything of monetary value with potential or actual contractors, subgrantees, etc.

C. 24 CFR Sections 1000.30(b) through 1000.36

1. What is a personal or financial interest or benefit??
2. What is decision-making process??
3. What is gaining inside information??

What are immediate family ties??

nuclear family unit

extended family considerations

In-law relationships

IV. RECOMMENDATIONS

- A. Review of previous/existing Tribal Ordinances, Tribal and IHA policies.
- B. Make necessary deletions, changes, additions to remove conflicts, inconsistencies, etc.
- C. Training of employees, staff, consultants, commissioners, and anyone involved in NAHASDA funded program.
 - new employees
- D. CONSIDER system of specific penalties, sanctions for violations
 - Tribal Ordinance provision- "misconduct of office"
- E. INVOLVEMENT of Tribal Attorneys

[TRIBAL ORDINANCE PROVISION PERTAINING TO INDIAN HOUSING
AUTHORITIES CREATED PURSUANT TO THE 1937 HOUSING ACT]

-10-

in this section.

ARTICLE VII
MISCELLANEOUS

1. The Authority shall submit an annual report, signed by the Chairman of the Board, to the Council showing (a) a summary of the year's activities, (b) the financial condition of the Authority, (c) the condition of the properties, (d) the number of units and vacancies, (e) any significant problems and accomplishments, (f) plans for the future, and (g) such other information as the Authority or the Council shall deem pertinent.

2. During his tenure and for one year thereafter, no commissioner, officer or employee of the Authority, or any member of any governing body of the Tribe, or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any project, unless prior to such acquisition, he discloses his interest in writing to the Authority and such disclosure is entered upon the minutes of the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest. If any commissioner, officer or employee of the Authority involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as a commissioner, officer or employee, the commissioner, officer or employee, in any such event, shall immediately disclose his interest in writing to the Authority, and such disclosure shall be entered upon the minutes of the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest. Any violation of the foregoing provisions of this section shall constitute misconduct in office. This section shall not be applicable to the acquisition of any interest in obligations of the Authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency, or to membership on the Board as provided in Article IV, Section 1 (a) (4).

3. Each project developed or operated under a contract providing for Federal financial assistance shall be developed and operated in compliance with all requirements of such contract and applicable Federal legislation, and with all regulations and requirements prescribed from time to time by the Federal government in connection with such assistance.

4. The Authority shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

5. The Authority shall not construct or operate any project

§ 85.36

24 CFR Subtitle A (4-1-87 Edition)

Order 12549, "Debarment and Suspension."

§ 85.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of

nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail

laborers and mechanics employed in the development of affordable housing.

(2) When NAHASDA assistance is only used to assist homebuyers to acquire single family housing, the Davis-Bacon wage rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NAHASDA assistance will be used to assist homebuyers to buy the housing.

(3) Prime contracts not in excess of \$2000 are exempt from Davis-Bacon wage rates.

(b) HUD-determined wage rates.

Section 104(b) also mandates that contracts and agreements for assistance, sale or lease under NAHASDA require that prevailing wages determined or adopted (subsequent to a determination under applicable state, tribal or local law) by HUD shall be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development, of affordable housing.

(c) Contract Work Hours and Safety Standards Act. Contracts in excess of \$100,000 to which Davis-Bacon or HUD-determined wage rates apply are subject by law to the overtime provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327).

(d) Volunteers. The requirements in 24 CFR part 70 concerning exemptions for the use of volunteers on projects subject to Davis-Bacon and HUD-determined wage rates are applicable.

(e) Other laws and issuances. Recipients, contractors, subcontractors, and other participants must comply with regulations issued under the labor standards provisions cited in this section; other applicable Federal laws and regulations pertaining to labor standards, and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs).

§ 1000.18 What environmental review requirements apply?

The environmental effects of each activity carried out with assistance under this part must be evaluated in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58. An environmental review does not have to be completed prior to HUD approval of an IHP.

§ 1000.20 Is an Indian tribe required to assume environmental review responsibilities?

(a) No. It is an option an Indian tribe may choose. If an Indian tribe declines

to assume the environmental review responsibilities, HUD will perform the environmental review in accordance with 24 CFR part 50. The timing of HUD undertaking the environmental review will be subject to the availability of resources. A HUD environmental review must be completed for any NAHASDA assisted activities not excluded from review under 24 CFR 50.19(b) before a recipient may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds used in conjunction with such NAHASDA assisted activities with respect to the property.

(b) If an Indian tribe assumes environmental review responsibilities:

(1) Its certifying officer must certify that he/she is authorized and consents on behalf of the Indian tribe and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as set forth in section 105(c) of NAHASDA; and

(2) The Indian tribe must follow the requirements of 24 CFR part 58.

(3) No funds may be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification required by sections 105(b) and 105(c) of NAHASDA, except as authorized by 24 CFR part 58 such as for the costs of environmental reviews and other planning and administrative expenses.

(c) Where an environmental assessment (EA) is appropriate under 24 CFR part 50, instead of an Indian tribe assuming environmental review responsibilities under paragraph (b) of this section or HUD preparing the EA itself under paragraph (a) of this section, an Indian tribe or TDHE may prepare an EA for HUD review. In addition to complying with the requirements of 40 CFR 1506.5(a), HUD shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the EA in accordance with 40 CFR 1506.5(b).

§ 1000.22 Are the costs of the environmental review an eligible cost?

Yes, costs of completing the environmental review are eligible.

§ 1000.24 If an Indian tribe assumes environmental review responsibility, how will HUD assist the Indian tribe in performing the environmental review?

As set forth in section 105(a)(2)(B) of NAHASDA and 24 CFR 58.77, HUD will provide for monitoring of environmental reviews and will also facilitate training for the performance for such reviews by Indian tribes.

§ 1000.26 What are the administrative requirements under NAHASDA?

(a) Except as addressed in § 1000.28, recipients shall comply with the requirements and standards of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments," and with the following sections of 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." For purposes of this part, "grantee" as defined in 24 CFR part 85 has the same meaning as "recipient."

(1) Section 85.3, "Definitions."

(2) Section 85.6, "Exceptions."

(3) Section 85.12, "Special grant or subgrant conditions for 'high risk' grantees."

(4) Section 85.20, "Standards for financial management systems," except paragraph (a).

(5) Section 85.21, "Payment."

(6) Section 85.22, "Allowable costs."

(7) Section 85.26, "Non-federal audits."

(8) Section 85.32, "Equipment," except in all cases in which the equipment is sold, the proceeds shall be program income.

(9) Section 85.33, "Supplies."

(10) Section 85.35, "Subawards to debarred and suspended parties."

(11) Section 85.36, "Procurement," except paragraph (a). There may be circumstances under which the bonding requirements of § 85.36(h) are inconsistent with other responsibilities and obligations of the recipient. In such circumstances, acceptable methods to provide performance and payment assurance may include:

(i) Deposit with the recipient of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(ii) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk; or

(iii) Letter of credit for 10 percent of the total contract price unconditionally payable upon demand of the recipient subject to reduction during any warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

(12) Section 85.37, "Subgrants."

(13) Section 85.40, "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f).

(14) Section 85.41, "Financial reporting," except paragraphs (a), (b), and (e).

(15) Section 85.44, "Termination for convenience."

(16) Section 85.51 "Later disallowances and adjustments."

(17) Section 85.52, "Collection of amounts due."

(b)(1) With respect to the applicability of cost principles, all items of cost listed in Attachment B of OMB Circular A-87 which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in Attachment A of this circular and are otherwise eligible under this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without specific approval of HUD or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties are unallowable costs to the IHBG program.

(2) In addition, no person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with IHBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

§ 1000.28 May a self-governance Indian tribe be exempted from the applicability of § 1000.26?

Yes. A self-governance Indian tribe shall certify that its administrative requirements, standards and systems meet or exceed the comparable requirements of § 1000.26. For purposes of this section, a self-governance Indian tribe is an Indian tribe that participates in tribal self-governance as authorized under Public Law 93-638, as amended (25 U.S.C. 450 *et seq.*).

§ 1000.30 What prohibitions regarding conflict of interest are applicable?

(a) *Applicability.* In the procurement of supplies, equipment, other property, construction and services by recipients and subrecipients, the conflict of interest provisions of 24 CFR 85.36 shall apply. In all cases not governed by 24 CFR 85.36, the following provisions of this section shall apply.

(b) *Conflicts prohibited.* 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. Such

persons include anyone with an interest in any contract, subcontract or agreement or proceeds thereunder, either for themselves or others with whom they have business or immediate family ties. Immediate family ties are determined by the Indian tribe or TDHE in its operating policies.

(c) The conflict of interest provision does not apply in instances where a person who might otherwise be included under the conflict provision 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 IHBG funds, provided that there is no conflict of interest under applicable tribal or state law. The recipient must make a public disclosure of the nature of assistance to be provided and the specific basis for the selection of the person. The recipient shall provide the appropriate Area ONAP with a copy of the disclosure before the assistance is provided to the person.

§ 1000.32 May exceptions be made to the conflict of interest provisions?

(a) Yes. HUD may make exceptions to the conflict of interest provisions set forth in § 1000.30(b) on a case-by-case basis when it determines that such an exception would further the primary objective of NAHASDA and the effective and efficient implementation of the recipient's program, activity, or project.

(b) A public disclosure of the conflict must be made and a determination that the exception would not violate tribal laws on conflict of interest (or any applicable state laws) must also be made.

§ 1000.34 What factors must be considered in making an exception to the conflict of interest provisions?

In determining whether or not to make an exception to the conflict of interest provisions, HUD must consider whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict.

§ 1000.36 How long must a recipient retain records regarding exceptions made to the conflict of interest provisions?

A recipient must maintain all such records for a period of at least 3 years after an exception is made.

§ 1000.38 What flood insurance requirements are applicable?

Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), a recipient may not permit the use of Federal financial assistance

for acquisition and construction purposes (including rehabilitation) in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the following conditions are met:

(a) The community in which the area is situated is participating in the National Flood Insurance Program in accord with section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)), or less than a year has passed since FEMA notification regarding such flood hazards. For this purpose, the "community" is the governmental entity, such as an Indian tribe or authorized tribal organization, an Alaska Native village, or authorized Native organization, or a municipality or county, that has authority to adopt and enforce flood plain management regulations for the area; and

(b) Where the community is participating in the National Flood Insurance Program, flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012(a)); provided, that if the financial assistance is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

§ 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

Yes, lead-based paint requirements apply to housing activities assisted under NAHASDA. The applicable requirements for NAHASDA are:

(a) *Purpose and applicability.* (1) The purpose of this section is to implement section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822) by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning for rental and homeownership units owned or operated by a recipient. This section is issued under 24 CFR 35.24(b)(4). The requirements of subpart C of 24 CFR part 35 do not apply to the housing covered under this section. Other provisions of part 35 apply, including subpart H, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property.

(2) The requirements of this section do not apply to housing built after 1977, 0-bedroom units, units that are certified by a qualified inspector to be free of lead-based paint, or units designated exclusively for the elderly or the handicapped unless a child of less than



ETHICS

- ❑ (a) (1) “None of the funds appropriated by any Act may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with any Federal action described in paragraph (2) of this subsection



ETHICS

- ❑ (2) The prohibition in paragraph (1) of this subsection applies with respect to the following Federal actions:
 - The awarding of any Federal contract.
 - The making of any Federal grant.
 - The making of any Federal loan.
 - The entering into of any cooperative agreement.
 - The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ❑ 31 U.S.C. 1351 (a) (1)



ETHICS

- ❑ The “recipient” of a Federal contract, grant, loan, or cooperative agreement is defined as follows:
 - (1) “The term ‘recipient’, with respect to funds received in connection with a Federal contract, grant, loan or cooperative agreement-
 - ✓ (A) includes the contractors, subcontractors, or subgrantees (as the case may be) of the recipient; but



ETHICS

- ✓ (B) does not include an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency but only with respect to expenditures that are by such tribe or organization for purposes specified in subsection (a) and are permitted by other Federal law."

□ 31 U.S.C 1351 (g) (1)

INDIAN TRIBAL EMPLOYERS AND THE APPLICATION OF FEDERAL AND STATE EMPLOYMENT LAWS

By Robert J. Miller¹

I. INTRODUCTION

Tribes have long operated various business concerns and governmental activities which require them to employ individuals in tribal businesses or tribal affairs. In recent years, many Indian tribes have also experienced significant economic growth and development in various areas. Consequently, many tribes are creating, owning, and operating new business enterprises or increasing their governmental activities at an accelerated pace.

As a result, tribes are finding themselves to be the employers of hundreds of employees. The current "popularity" of employment litigation has led tribal, federal and state courts to address new questions and issues regarding the employment relationship of a tribe, tribal employers and their employees. The major issue in many law suits arising from employment with a tribe or a tribal organization employer, like a Tribally Designated Housing Entity, is what employment or labor laws govern the employment relationship.

A. Tribal Sovereignty

Indian Tribes are "domestic dependent nations." *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831). Tribes exercise inherent authority over their members and territories. *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991).

1. Tribes retain the inherent sovereign power to regulate their internal and social relations, as well as the power to regulate the activities of nonmembers who enter consensual relationships with the tribe or its members. *Montana v. United States*, 450 U.S. 544 (1981); *McClanahan v. United States*, 411 U.S. 164 (1973).

2. Tribal Sovereign Immunity. Tribes, as sovereign governments, possess common law immunity from lawsuits unless such immunity is clearly and unequivocally waived by Congress or by the tribe. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

B. Plenary Power of Congress.

Congress has plenary power over tribes. This power includes the authority to limit, modify or eliminate powers of self-government or sovereign immunity which a tribe may possess. *Rice v. Rehner*, 463 U.S. 713 (1983); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

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C. **Clear Intent to Abrogate Tribal Sovereignty Required.**

In determining whether Congress has exercised its plenary power to limit tribal powers or to waive tribal sovereign immunity to some extent, "a proper respect both for tribal sovereignty itself and for the plenary authority of Congress . . . cautions that we tread lightly in the absence of clear indications of legislative intent." *Martinez*, 436 U.S. at 60.

II. **FEDERAL LABOR STATUTES**

A. **Who is the Employer?**

1. Tribe as employer.
2. Non-tribal employer.

In general, federal labor and employment laws apply to non-tribal employers operating on the reservation.

3. Control Test

It is possible for a tribe to ostensibly "own" a business but not be considered to be the employer of the entity's employees. *Devils Lake Sioux Manufacturing Corporation*, 243 N.L.R.B. 163, 164 (1979). In that case, the National Labor Relations Board held that the Labor Management Relations Act applied to a joint venture which was owned 51% by the tribe and 49% by a non-tribal employer. This was so even though all activities took place on the reservation because the activities and the employees were directed and controlled by the non-tribal entity. In contrast, where a tribe controls an entity's policies, activities and employees, the tribe will be considered the employer even if the entity is managed or operated by a non-tribal person or entity. *Southern Indian Health Council, Inc.*, 290 N.L.R.B. 436, 437 (1988). See also *Tammy Fisher v. Mille Lacs Grand Casino*. Minnesota Workers' Compensation Court rules that a control test determines the employer of tribal casino employees.

B. **Express Tribal Exemptions: Title VII and the ADA**

1. **Title VII** – Covered by another speaker

(a) Tribal Exemption.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, expressly excludes Indian tribes from the definition of "employer[s]" who may not discriminate on the basis of race, color, religion, sex and national origin. 42 U.S.C. §2000e(b). Title VII also

contains a provision which expressly sanctions the use of Indian preference by employers operating on or near reservations. 42 U.S.C. §2000e-2(i) ("Section 703(i)).

(1) *Wardle v. Ute Indian Tribe*, 623 F.2d 670 (10th Cir. 1980). The Tenth Circuit holds that this language bars the application of Title VII to tribes.

(2) *Dille v. Council of Energy Resource Tribes*, 801 F.2d 373 (10th Cir. 1986). The Tenth Circuit holds that the specific exemptions for Indian tribes contained in Title VII encompass an organization comprised solely of Indian tribes.

(3) *Giedosh v. Little Wound School Board, Inc.*, 25 Indian L. Rep. 3055 (D. S.D. Dec. 18, 1997) (tribal school board was considered a "tribe" and thus not an employer under Title VII when tribal members established and control the board); *Sulcer v. Citizen Band Potawatomi Indian Tribe*, 19 Indian L. Rep. 3071 (W.D. Okla. 1992) (court dismissed employment discrimination claim against the tribe and members of the tribe's governing body for terminating an employee based on Title VII's Indian tribe exemption and tribal sovereign immunity); *Barnes v. Bristol Bay Area Health Corporation*, No. A92-459 (D. Alaska April 20, 1995) (a non-profit tribal organization health corporation controlled by Alaska villages is considered a "tribe" and is excluded from the definition of an employer who could even possibly be liable under Title VII).

(4) In one particular situation a court has found that a tribal employer might be liable under Title VII. In *Myrick v. Devils Lake Sioux Manufacturing Corp.*, 718 F.Supp. 753, 754 (D. N.D. 1989), the court held that a corporation incorporated under North Dakota law and owned 51% by the tribe and 49% by a Delaware corporation did not fall within the Indian tribe exemption to Title VII.

2. ADA.

Indian tribes are expressly excluded from the definition of "employer" under the Americans with Disabilities Act, which prohibits discrimination on the basis of a disability. 42 U.S.C. §§ 12101-12213. Thus, the ADA does not apply to tribes or tribal employers. *See Giedosh v. Little Wound School Board, Inc.*, 25 Indian L. Rep. 3055 (D. S.D. Dec. 18, 1997) (tribal school board was considered a "tribe" and is not an employer under the ADA when tribal members established and control the board).

C. **Applicability of Statutes of General Application: OSHA, ADEA, ERISA, FLSA, FMLA and the LMRA.**

Unlike Title VII and the ADA, the majority of federal labor and employment statutes, including the Occupational Safety and Health Act ("OSHA"), the Age Discrimination in Employment Act ("ADEA"), the Employment Retirement Security Act ("ERISA"), the Fair Labor Standards Act ("FLSA"), the Family Medical Leave Act ("FMLA") and the Labor Management Relations Act ("LMRA"), are silent as to whether they apply to Indian tribes. A

split has developed between the federal courts as to whether some of these statutes of general applicability apply to Indian tribes as employers.

The Tenth and Eighth Circuits have concluded that OSHA and the ADEA do not apply to tribes as employers. These courts have followed established principles of respect for tribal sovereignty and tribal self-governance and have required a showing of clear congressional legislative intent to curtail tribal rights before holding that these statutes are applicable to tribes.

In contrast, the Ninth Circuit has developed, and the Seventh Circuit has adopted, an approach that is much less deferential to tribal sovereignty. The Ninth Circuit analysis, which is based on dicta, or non-binding language, from the Supreme Court creates a presumption that federal statutes of general applicability apply to Indian tribes. *Federal Power Commission v. Tuscarora Indian Nation*, 362 U.S. 99 (1960). The *Tuscarora* Court stated: "It is now well settled by many decisions of this Court that a general statute in terms applying to all persons includes Indians and their property interests." *Id.* at 120. Applying this analysis, the Ninth and Seventh Circuit court have held that OSHA, ERISA and the FLSA apply to tribal employers.²

1. OSHA.

The Occupational Safety and Health Act, 29 U.S.C. §§ 651 *et seq.*, does not contain express language exempting tribes from the safety and health standards imposed by the Act.

(a) *Donovan v. Navajo Forest Products Industries*, 692 F.2d 709 (10th Cir. 1982). The Tenth Circuit holds that OSHA does not apply to the Navajo Forest Products Industries, a tribal business enterprise owned and operated by the Navajo Tribe on the Navajo Reservation. Application of OSHA to the tribal business would abrogate treaty provisions and "dilute the principles of tribal sovereignty and self-government recognized in the treaty." *Id.* at 712.

(b) *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113 (9th Cir. 1985). To the contrary, the Ninth Circuit holds that OSHA, a statute of general applicability, does apply to a wholly-owned and operated tribal business. In so holding, the Ninth Circuit adopted dicta contained in *Tuscarora*, as discussed above.

(c) *United States Department of Labor v. Occupational Safety and Health Review Commission*, 935 F.2d 182 (9th Cir. 1991). The Ninth Circuit rules that OSHA applies to a mill owned and operated by the Confederated Tribes of Warm Springs located on the Tribes' reservation, even though the Tribe had a treaty expressly recognizing the right to exclude non-members from the reservation.

² Some recent cases have held that a state's sovereign immunity protect them from lawsuits under the FLSA and the FMLA. *Mueller v. Thompson*, 133 F.3d 1063 (7th Cir. 1998); *Garrett v. Board of Trustees Univ Ala.*, 1998 WL 21879 (N.D. Ala. 1998). There are cases which hold both ways on this issue. Tribal employers might be able to use this argument to prevent employment lawsuits against them under federal statutes which are silent as to whether they apply to tribal employers.

(d) *Reich v. Mashantucket Sand & Gravel*, 95 F.3d 174 (2d Cir. 1996). The Second Circuit court adopted the Ninth Circuit test and held that OSHA applies to a tribally owned construction company because it was involved in purely commercial services and not governmental matter. The company worked only on projects on the reservation and only at the direction of the tribal council.

2. ADEA.

The Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, 630(b) ("ADEA"), (protecting employees 40 years and older from employment discrimination), contains no express language excluding Indian tribes from the prohibition against age discrimination. The Eighth and Tenth Circuits have addressed the issue of the ADEA's application to tribal employers and have held that the ADEA does not apply to tribes.

(a) *EEOC v. Cherokee Nation*, 871 F.2d 937 (10th Cir. 1989). The Tenth Circuit reads the ADEA to exclude Indian tribes and dismisses an employee's age discrimination suit against the Cherokee Nation's Director of Health and Human Services because application of the ADEA would interfere with tribal self-government. *Id.* at 939.

(b) *EEOC v. Fond du Lac Heavy Equipment and Construction Co.*, 986 F.2d 246 (8th Cir. 1993). The Eighth Circuit holds that the ADEA is inapplicable to Indian tribes and dismisses an age discrimination claim brought by a tribal member against an equipment and construction company located on the reservation. The construction company was wholly owned and chartered by the Fond du Lac Band of Lake Superior Chippewa Indians. Application of the ADEA would interfere with tribal self-government. *Id.* at 249-51.

3. ERISA.

The Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 *et seq.* ("ERISA") is a federal statute of general applicability governing employee benefit plans. The Act contains no express language exempting Indian tribal employers from its coverage nor any express language applying the Act to tribes.

(a) *Smart v. State Farm Insurance*, 868 F.2d 929 (7th Cir. 1989). The Seventh Circuit holds that ERISA governs a group policy issued by a non-tribal insurer to the Lac du Flambeau Band of the Chippewa Tribe for the Tribe's employees at a health center owned and operated by the Tribe and located entirely on the Tribe's Reservation.

(b) *Lumber Industry Pension Fund v. Warm Springs Forest Products Industries*, 939 F.2d 683 (9th Cir. 1991). The Ninth Circuit rules that ERISA applies to a tribal pension plan covering employees of a tribally-owned and operated lumber mill on the reservation.

4. FLSA.

The Fair Labor Standards Act, 29 U. S.C. §§ 201 *et seq.*, ("FLSA") does not expressly exclude Indian tribes from the wage requirements imposed by the Act. The FLSA requires the payment of minimum wages and overtime wages. No court has yet directly ruled on whether this Act applies to tribal employers.

(a) *Martin v. Indian Wildlife Commission*, 1 Wage & Hour Cas.2d (BNA) 58, 61 U.S.L.W. 2262 (D. Wis. 1992), *aff'd*, *Reich v. Great Lakes Indian Fish and Wildlife Commission*, 4 F.3d 490 (7th Cir. 1993). The lower court held that the FLSA did not apply to the Great Lakes Indian Fish and Wildlife Commission (the "Commission"), a tribal organization operating under a constitution adopted by its member tribes. On appeal, however, the higher court, the Seventh Circuit, affirmed the decision not to apply the FLSA in this situation but it did not affirm the ruling that the FLSA does not apply to tribes. Instead, the Seventh Circuit held that the FLSA did not apply to the Commission's game wardens because they fall within the FLSA's exemption for law enforcement officers. The Seventh Circuit stressed that it did not hold that employees of Indian agencies were exempt from the FLSA. *Reich*, 4 F.3d at 493, 504.

5. FMLA.

The Family Medical Leave Act, 28 U.S.C. §§ 2601 *et seq.*, ("FMLA") is also silent as to whether it applies to Indian tribal employers. While no court has addressed the issue, the Secretary of Labor has adopted the Ninth Circuit test and takes the position that this statute of general applicability applies to Indian tribes. 60 Fed. Reg. 2181 (Jan. 6, 1995).

6. LMRA.

The Labor Management Relations Act, 29 U.S.C. § 141 *et seq.*, ("LMRA") governs union-management relations. The LMRA does not contain language exempting Indian tribes from its coverage. The National Labor Relations Board ("NLRB" or "Board") has held, however, that a tribally owned and operated business located on a reservation is exempt from the LMRA under the Act's exemption for government entities. *Southern Indian Health Council, Inc.*, 290 N.L.R.B. 436 (1988); *Fort Apache Timber Company*, 226 N.L.R.B. 503, 506 (1976). The Board, however, considers that the Act applies to businesses even if they are wholly owned and operated by a tribe if the business is located off reservation. *Sac & Fox Industries, Ltd.*, 307 N.L.R.B. 241 (1992).

III. STATE LABOR AND EMPLOYMENT LAWS

State civil laws generally are not applicable to tribal affairs within the territory of a tribe. *New Mexico v. Mescalero Apache Tribe*, 463 U.S. 324, 334 (1983) ("State jurisdiction is preempted by the operation of federal law if it interferes with or is incompatible with federal and tribal interests reflected in the federal law, unless the state interests at stake are sufficient to justify the assertion of state authority."). The Supreme Court has stated that reservation Indians have the right "to make their own laws and [to] be ruled by them." *Williams v. Lee*, 358 U.S. 217, 220 (1959).

In Public Law 280 states, where state law more often overlaps into Indian country, the United States Supreme Court has developed a civil-regulatory/criminal-prohibitory analysis in determining whether state laws are civil-regulatory and whether the state law might apply in Indian country. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 208 (1987).

In essence, where state laws are civil laws, that is where they only control or regulate conduct and do not completely prohibit a particular conduct, then the laws are not applicable to a tribe or tribal members in Indian country. *Bryan v. Itasca County*, 426 U.S. 373, 390-92 (1976) (Public Law 280 grant of civil jurisdiction to states only granted state courts jurisdiction to adjudicate private civil causes of action involving reservation Indians and does not grant the state general civil regulatory authority over a reservation); *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 208 (1987) (state regulatory gambling laws did not apply on-reservation even in a Public Law 280 state); *Twenty-Nine Palms Band of Mission Indians v. Wilson*, 925 F.Supp. 1470 (C.D. Cal. 1996) (P.L. 280 state is without jurisdiction to enforce regulatory boxing laws and licensing to on-reservation events).

Consequently, most if not all state labor and employment laws do not apply to tribes and tribal employers on reservation. *Tibbetts v. Leech Lake Reservation Business Committee*, 397 N.W.2d 883, 890 (Minn. 1986) (Minnesota workers' compensation law was civil regulatory in nature and is inapplicable to tribal employers under the Bryan analysis and due to tribal sovereign immunity).

State labor and employment laws probably do apply, however, to non-tribal employers even if they are operating on an Indian reservation. See 40 U.S.C. § 290; *Begay v. Kerr-McGee Corp.*, 682 F.2d 1311 (9th Cir. 1982); *White Mountain Apache Tribe v. Industrial Comm'n*, 696 P.2d 223 (Ariz. Ct. App. 1985); *Johnson v. Kerr-McGee Oil Indus., Inc.*, 631 P.2d 548 (Ariz. Ct. App.), *appeal dismissed*, 454 U.S. 1025 (1981). *But see In re William L. Mathews*, 21 Indian L. Rep. 5131 (Wash. Bd. Indus. Ins. App., Aug., 15, 1994) (Washington State Board of Industrial Insurance Appeals held that it lacks personal and subject matter jurisdiction over an individual Yakama Indian employer operating on the Yakama Reservation).

A. Workers' Compensation Laws. State workers' compensation laws apply only to non-tribal employers operating on tribal land, and not to tribal employers. *Begay v. Kerr-McGee Corp.*, 682 F.2d 1311 (9th Cir. 1982); *White Mountain Apache Tribe v. Industrial*

Commission of Arizona, 696 P.2d 223 (Ariz. Ct. App. 1985); *Middletown Rancheria of Pomo Indians v. Workers' Compensation Appeals Board*, 25 Indian L. Rep. 5047 (Cal. Ct. App. Jan. 20, 1998) (due to tribe's sovereign immunity state worker's compensation system had no jurisdiction to enforce state laws and impose liability against tribal casino). Thus, it is essential to determine who is the employer in a particular situation on an Indian reservation to determine whether a state's workers' compensation laws apply.

A tribe or tribal employer, however, might consider voluntarily participating in a state workers' compensation program even though this is not required by law. It might be good policy for a tribe or TDHE to join such a program as a benefit for its employees. If a tribal employer does join such a state program, it should then participate fully in the state system and defend improper claims to keep its costs down.

Some tribal employers participate in private worker's compensation programs and purchase insurance coverage through a private company. In one case under that situation, the tribal court acted as the administrative body to review an injured worker's claim under the policy. *Baker v. Rosebud Sioux Headstart*, 25 Indian L. Rep. 6150 (Rosebud Sioux Tribal Ct. 1998). In another case, a federal court dismissed an injured worker's suit against the tribal employer and the tribal council because the worker had not first exhausted his tribal remedies in tribal court. The court also dismissed the suit against the private insurance company on sovereign immunity grounds because it was an agency of the Kaibab Band of Paiute Indians. *Adams v. Moapa Band of Paiute Indians, et al.*, 25 Indian L. Rep. 3128 (D. Nev. 1997).

B. Unemployment Compensation Laws. Under the Federal Unemployment Tax Act (FUTA), I.R.C. § 3301 et seq., all employers are required to pay for unemployment compensation plans, including tribal employers. *In the Matter of Cabazon Casino v. IRS*, 13 Bankr. Ct. Dec. 1348 (9th Cir. 1986). It is unlikely, however, that tribal employers are required to comply with state unemployment compensation laws and participate in a state program or pay into a state fund. See I.R.C. § 3305(d) (all employers on Indian reservations, except tribal employers, must comply with state unemployment compensation laws); *Employment Security Department v. Cheyenne River Sioux Tribe*, 119 N.W. 285 (S.D. 1963) (the South Dakota Supreme Court held that the state could not enforce the provisions of its Unemployment Compensation Act against a tribal employer because neither the tribe nor Congress had waived the tribe's sovereign immunity).

Even though tribal employers are not required to join state unemployment compensation insurance programs, it might be a good option for a tribe or TDHE to join such a program as a benefit for its employees. To keep costs down, however, the tribal employer should then take part in the state system and defend improper claims.

C. Tribal employees injured on the job. A tribal employer may choose not to have any workers' compensation program at all. A tribe's sovereign immunity, unless expressly waived, should prohibit injured or laid off employees from bringing lawsuits against the tribe or tribal employer. However, some prospective employees may not want to work for a tribal employer

that does not participate in a workers' compensation plan or an unemployment program, and it might be bad policy politics to expose tribal workers to injury or layoffs without compensation protection.

An option for a tribal employer is to participate in the state system. State workers' compensation and unemployment compensation systems are well-established, provide employers with protection from liability and provide employees with coverage for on-the-job injuries and layoffs. Cost is the major disadvantage to the tribal employer. Another option is for a tribe or tribal employer to establish its own workers' compensation or unemployment compensation programs. Several tribes have already taken this option. This could provide a financial savings over high workers' compensation or unemployment premiums and insure that the tribe does not inadvertently subject itself to the state workers' compensation or unemployment program jurisdiction. One disadvantage of this option however is that operating a workers' compensation or unemployment compensation system can place a financial and/or administrative burden on the tribe.

IV. Current Employment Issues

A. Sexual Harassment

Sexual harassment cases in the workplace are a very popular form of litigation at this time. Such cases are usually brought under Title VII, which does not apply to tribal employers. Thus, tribal employers should ordinarily not have to worry too much about such lawsuits. However, the typical sexual harassment case usually also raises claims such as defamation, assault, battery, intentional infliction of emotional distress and wrongful termination. Therefore, tribal employers do need to worry about company and individual liability from sexual harassment situations.

Sex harassment claims comes in two forms: quid pro quo and hostile work environment. Quid pro quo harassment is a demand for sexual conduct which is then used as a basis for making employment decisions (for example, "sleep with me or else").

Hostile work environment sexual harassment is a severe or constant pattern of sexual conduct that unreasonably interferes with the employee's work or creates an intimidating, hostile or offensive work environment. Typical types of conduct creating a hostile environment include joke-telling, sexual comments or innuendo, pinups, gestures, stares, blocking movements, touching, bumping into a person or unwanted attention.

Tribal employers should consider establishing procedures to follow after receiving a hostile environment sexual harassment claim. (1) The employer should promptly and thoroughly investigate the claim; (2) the employer should take immediate and appropriate effective action; and, (3) the employer should document every step in its investigation. Tribal employers should distribute their sexual harassment policy to all employees stating, among other things, that activities that could create a hostile working environment are prohibited and will not be tolerated in the workplace, and notifying

employees whom to contact if they feel they are being subjected to sexual harassment. Employees should be given several options as to whom to report such conduct within the company.

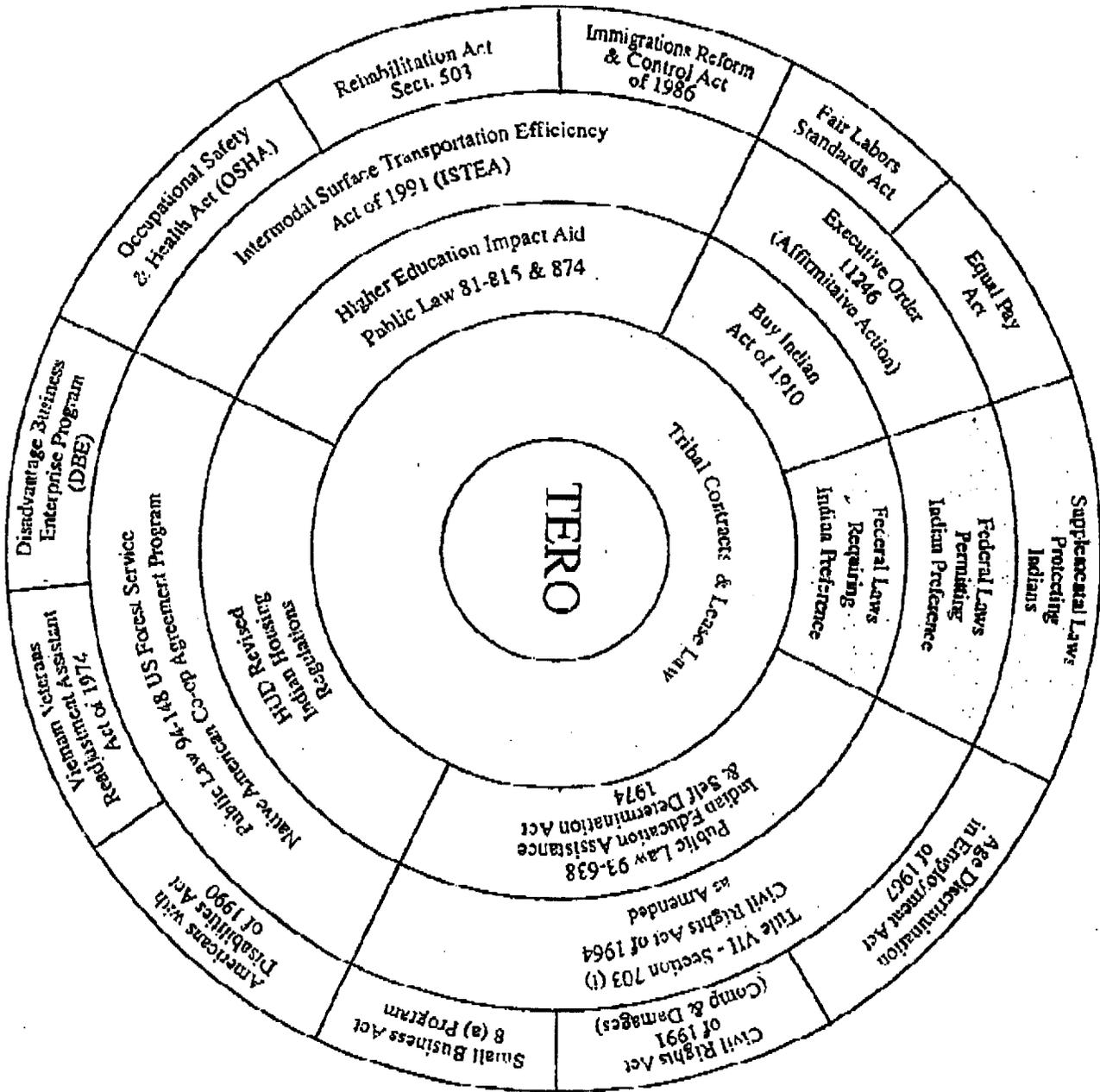
B. Personnel Policies/Employee Handbooks

At HUD's insistence, most IHA/TDHEs have utilized written personnel policies. Some IHA/TDHEs also have employee handbooks. These documents can be valuable resources for employers. They can spell out what is expected of employees, and they can also ensure that employees understand their duties and rights. The major problem with most of the personnel policies I have reviewed is that they grant IHA/TDHE employees far more rights and due process than any tribal, federal, or state law would ever require. In addition, many of the personnel policies set out such elaborate, complex, or contradictory procedural requirements for disciplining or discharging an employee that the IHA/TDHE cannot take such acts without violating their own policies. Most IHA/TDHEs need to review and revise their policies to simplify them and to ensure that the requirements are easily understood and easily performed.

Moreover, personnel policies and handbooks need to be used as they are used by the majority of employers outside Indian country. Policies and handbooks need to inform IHA/TDHE employees that they are employed "at will," meaning that they can be terminated at any time, for any reason, with or without notice, and that they have the reciprocal right to resign at any time, for any reason, with or without notice. Each policy and employee handbook should contain a clear and conspicuous contract disclaimer - "Nothing herein shall be construed to create an express or implied contract of employment for any specific period of time" - and a clear at-will provision - "I understand and acknowledge that I am an at-will employee and may be terminated or may resign at any time, for any reason, with or without notice." Personnel policies and employee handbooks containing these provisions should be given to employees and employees should be required to sign a statement that they received and read the policies. These actions can be very helpful in preventing claims for wrongful termination or breach of an express or implied employment contract. *See Lawson v. Umatilla County*, 1998 WL 117866 (9th Cir. 1998) (if a personnel policy preserves the at-will status then no employment contract is created); *Barmettler v. Reno Air, Inc.*, 1998 WL 178459 (Nev. 1998) (drug policy set out in personnel policy does not change the employee's at-will employment status); *Orr v. Westminster Village North, Inc.*, 1997 WL 769409 (Ind. 1997) (grievance procedure promised in employee handbook did not create extra rights when the handbook warned that immediate dismissal was possible); *Colville Tribal Enterprise Corp. v. Orr*, 26 Indian L. Rep. 6005 (Colville Tribes Ct. App. Dec. 4, 1998) (tribal economic development corporation vice-president was an at-will employee and could be discharged at any time as he did not have an implied employment contract under the corporation's personnel policy; in addition, the tribe's sovereign immunity prevented a suit for damages and attorney's fees).

Council for Tribal Employment Rights

Tero/Indians Preference Legal Framework





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Council for Tribal Employment Rights

The Council for Tribal Employment Rights (CTER) is an Indian owned and operated non-profit corporation, comprised and representing the interests of over 130 Tribes and another 250 Alaska Native Village Tribal Employment Rights Officers (TERO's) on a national basis. With funds provided through an Administration for Native Americans grant and private sector contributions, the CTER Board of Directors and Staff provide training and technical assistance to Indian Tribes, Native organizations, governmental agencies, and private sector employers in all aspects of Indian preference, Tribal Employment Rights enforcement, business and implementation strategies involving the sovereign powers of the Tribes.

The CTER is governed by a fourteen member Board of Directors representing seven TERO Regions in Alaska, the Pacific Northwest, the Dakota Coalition, the Rocky Mountain, the Southwest, Southern Plains and the Eastern Regions. A staff with over fifty years of combined TERO experience administers the daily operations of the CTER.

Founded in 1978 as the Tribal Employment Rights Planning Committee (TERPC) was originally made up of the first twelve TERO's in existence for the purpose of rendering assistance to new TERO's. Since then, the organization has been restructured into the Council for Tribal Employment Rights to better address the needs of the new and developing TERO's on an ongoing basis. Today, the CTER is comprised of over 130 TERO's and remains dedicated to its mission of optimizing individual and organizational economic opportunities for Indian people.



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CTER Services and Training Schedule

Services:

Operating on the premise that Indian employment rights are sovereign and protected rights just as mineral, water, hunting, and fishing rights are, the CTER and the TERO's it represents are dedicated to ensuring the maximum utilization of Indian people in all employment, training, and business opportunities both on and off the reservations.

The CTER provides a full range of training and implementation assistance on-site, via telephone, mail, and in regional TERO seminars, conferences, and workshops.

Training Schedule:

The CTER conducts TERO and work-force utilization workshops in conjunction with national and regional seminars which are hosted by different TERO regions as an ANA grant-related service to the regions on a cost-recovery basis. Services must be mutually agreed upon by CTER and the region.

Services for Basic TERO seminars, TERO Commission training, and a full range of Cultural Synergy workshops are available in the CTER Offices in Seattle, WA or Phoenix, AZ, for a registration fee for all attenders. Travel costs are the responsibility of the attenders.

CTER Services and Training Schedule (cont.)

- * **Tribal Workforce Empowerment & Utilization**
- * **"Cultural Synergy - Beyond Diversity" Symposia**
- * **Tribally Developed Certified Apprenticeship and Skilled Training Programs**
- * **Youth and Entrepreneurship**

The CTER provides specialized training and technical assistance to federal agencies, private sector employers, Indian Tribes and Native organizations. Staff is also available for training and consulting work on an hourly fee or project fee basis.



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TERO Self-Determination

The TERO concept begins with individual economic development through the gainful employment of Indian workers. This is accomplished by utilizing the inherent sovereignty of the tribes to develop and enforce a TERO ordinance which preserves and protects the tribes' right to preferential employment, training, and business opportunities within the exterior boundaries of the reservation. Utilizing the tribes' powers of exclusion and existing federal Indian laws, the tribes can capture existing opportunities currently available to Indian workers but being monopolized by non-Indians. The concept recognizes tribal employment rights as sovereign and protected, much like water, mineral, hunting and fishing rights.

Once a tribe has successfully captured existing opportunities and has begun to qualify tribal members in sufficient numbers, it can begin to develop new opportunities for placements, either in new business or those existing adjacent to the reservation. This can be done through effective public relations and negotiations directly with the employers or through application of appropriate Federal laws and regulations enforceable by the Equal Employment Opportunity Commission or the Office of Federal Contract Compliance Programs.

The TERO's have successfully applied the same approach used to employ Indian workers on projects to secure contracts, subcontracts, and small business opportunities for Indian contractors and entrepreneurs on and near reservations. Through the work experience and training obtained on these jobs, the Indian contractors and entrepreneurs have begun to qualify themselves to compete for new and developing opportunities off the reservation and in the private sector as well.

TERO Self-Determination (cont'd)

The TERO remains involved in all aspects of preferential contracting from identification of bona fide Indian firms and businesses to their referral to potential employers, ensuring the qualifications and opportunities of Indian people every step of the way. Again, the TERO's secure existing opportunities first and develop new ones as conditions allow.

The concept promotes self-sufficiency through sound business practices and techniques, and is experiencing considerable success as a viable approach to solving some old and very serious problems.



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CTER Fee Schedule

CTER services are provided according to the following schedule:

- * To all federally recognized Indian tribes and/or Alaska or Hawaiian Native Organizations, on-site TERO training and implementation assistance is provided on a fee plus expense basis.
- * To CTER member tribes, on-site assistance is provided at \$400 per day (for non TERO member Tribes onsite assistance is \$500 per day) per CTER staff person plus 1 day preparation, and travel and material expenses.
- * To non-member tribes, private sector firms, public agencies and/or organizations, services are provided at \$500 per day per staff person plus 1 day preparation, and travel and material expenses.
- * For other (Work-force Utilization, Youth and Entrepreneurship, Stress Management, etc.) training sessions, services are provided at \$500 per day per staff person plus 1 day preparation, and travel and material expenses.



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CTER Reference Manuals

Reference manuals are available for purchase at the following prices:

- Alaska Native Preference in Employment and Contracting \$35.00
- BIA 7(b) Training Manual \$35.00
- Economic Development-The Tribal Alternative \$35.00
- Indian Preference - A Guide to Tribal Action \$35.00
- Indian Preference in Construction Contracting \$35.00
- Labor Law, Unions, and Indian Self-Determination \$35.00
- Legal Structures for Indian Business Development on Reservations - A Tribal Sovereignty Approach \$35.00
- The Law on Indian Preference in Employment and Contracting \$35.00
- TERO Director Training- EEOC Reference Guide \$30.00
- TERO Director Training- EEOC Participant Workbook \$30.00
- Tribal Apprenticeship Training Manual- A Guidebook for Planning and Implementing U.S. DOL/BAT Certified Apprenticeship Training Programs \$35.00

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SELECTED EMPLOYMENT/CIVIL RIGHTS CASES
RE: Indian Housing Authorities & Other Tribal Entities

Adams v. Moapa Band of Paiute Indians, 25 Ind. L.R. 3128 (U.S. Dist. Ct. Nev. 1997)

Baker v. Rosebud Sioux Headstart Program,
25 Ind. L.R. 6150 (Rosebud Sioux Tribal Ct. 1998)

Board of Trustees of Sisseton-Wapeton Comm. College v. Wynde,
18 Ind. L.R. 6033 (N. Plns. Intertr. Ct. App. 1990)

Colville Tribal Enterprise Corporation v. Orr, 26 Ind. L.R. 6005 (Colville Ct. App. 1998)

Dawavendewa v. Salt River Proj. Agric. Improvement & Power Dist.,
154 F.3d 1117 (9th Cir. 1998)

Dille v. Council of Energy Resource Tribes, 610 F.Supp. 157 (D. Colo. 1985), aff'd 801
F.2d 373 (10th Cir. 1986)

Dillon v. Yankton Sioux Tribal Housing Authority, 144 F.3d 581 (8th Cir. 1998)

Dubray v. Rosebud Housing Authority,
12 Ind. L.R. 6015 (Rosebud Sioux Tribal Ct. 1985) and 565 F.Supp. 462 (D. S.D. 1983)

EEOC v. Cherokee Nation, 871 F.2d 937 (10th Cir. 1989)

EEOC v. Fond du Lac Heavy Equipment and Construction Co.,
986 F.2d 245 (8th Cir. 1993)

Middletown Rancheria of Pomo Indians v. Worker's Compensation Appeals Bd.,
25 Ind. L.R. 5047 (Calif. Ct. App., 1st Dist, 1998)

Morton v. Mancari, 417 U.S. 535, 94 S.Ct. 2474, 41 L.Ed.2d 290 (1974)

Pink v. Modoc Indian Health Project, Inc., ___ F.3d ___ (9th Cir. 1998); 25 Ind. L.R. 2234.

R.C. Hedreen Co. v. Crow Tribal Hous. Auth., 521 F.Supp. 599 (D. Mont. 1981).

St. Paul Intertribal Housing Bd. v. Reynolds, 564 F.Supp. 1408 (D. Minn. 1983)

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[Plaintiff] suggests that because the Authority entered into an agreement with HUD and promised to abide by various civil rights statutes, it effectively waived its sovereign immunity. In its agreement with HUD, the contract signed by the Authority specifically provides that “[a]n Indian Housing Authority established pursuant to tribal law shall comply with applicable civil rights requirements, as set forth in Title 24 of the Code of Federal Regulations.” [cite omitted] There is no provision in these regulations, however, mandating a waiver of sovereign immunity when a tribal housing authority enters into an agreement with HUD. Dillon at 584 (the Court is interpreting the 1995 Annual Contributions Contract).

* * *

It has been held that “Indian tribes possess the ‘inherent powers of a limited sovereignty which have never been extinguished.’” EEOC v. Fond du Lac Heavy Equip. & Constr. Co., 986 F. 2d 246, 248 (8th Cir. 1993) (quoting United States v. Wheeler, 435 U.S. 313, 322, 98 S.Ct. 1079, 1085-86, 55 L. Ed.2d 303 (1978)).

A tribe’s sovereign immunity can be passed on to its agencies and it passes on this immunity when it creates housing authorities. R.C. Hedreen Co. v. Crow Tribal Hous. Auth., 521 F.Supp. 599 (D. Mont. 1981).

Many Courts have acknowledged the sovereign immunity of Indian housing authorities. DuBray v. Rosebud Housing Authority, 12 Ind. L.R. 6015 (Rosebud Sioux Tribal Court, 1985); Dillon v. Yankton Sioux Tribal Housing Authority, 144 F.3d 581 (8th Cir. 1998); R.C. Hedreen, *Id.*

An Indian housing authority is a tribal agency, to which the limitations of the United States Constitution do not apply. DuBray, 565 F.Supp. 462 (D.S.D. 1983).

As an entity possessing sovereign immunity, an Indian housing authority cannot be sued unless it unequivocally and expressly waives its sovereign immunity. “A waiver of sovereign immunity cannot be implied but must be unequivocally expressed.” Santa Clara Pueblo v. Martinez, 436 U.S. 39, 58 (1978). The “sue and be sued” clause of the old HUD standard ordinance is not a blanket waiver of immunity, but merely grants the housing authority the ability to contractually waive immunity. Dubray, *Id.* ; Weeks Construction v. Oglala Sioux Housing Authority, 797 F.2d 668 (8th Cir. 1986); Dillon, *Id.*

**ORGANIZATION ISSUES FOR TRIBALLY DESIGNATED UMBRELLA
HOUSING ENTITIES UNDER NAHASDA**

Catherine Baker Stetson and Timothy J. Humphrey, Sr.¹ ©1999

March 30–April 1, 1999

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1. Introduction

As generally believed, under the Native American Housing and Self Determination Act of 1996 (“NAHASDA”), there are no clear guidelines for establishment of a Tribally Designated Housing Entity (“TDHE”). In the past, the United States Department of Housing and Urban Development (“HUD”) was intimately involved in the establishment of Indian Housing Authorities (“IHAs”), going so far as establishing a model ordinance to be adopted by tribes. It seems that, after NAHASDA was adopted, most tribes continued the business of providing housing services, pausing long enough to establish TDHEs or to recognize the old IHA, but did not take the time to determine whether their Housing Ordinance (Amendatory Ordinance) continues to satisfy the needs of the tribe under NAHASDA. While the need to reexamine the relevant ordinances is important, it is even more crucial if the tribe is a member of an umbrella or joint entity serving several tribes.

Under NAHASDA, the only provision tending to identify how a TDHE is organized is found in the definition section, 25 U.S.C. § 4103. Paragraph 21 defines TDHE to mean either an existing IHA, if the tribe has not taken action to formally designate a TDHE, or another entity established “by exercise of the power of self-government of one or more Indian tribes independent of State law,” or “by operation of State law providing specifically for housing authorities or housing entities for Indians.”² Paragraph 21 goes on to provide specifically that a TDHE may be established by one or more tribes “to act on behalf of *each* such tribe authorizing or establishing the housing entity.” The regulations promulgated under NAHASDA discuss designation of a TDHE only at 24 C.F.R. §

²This provision is generally interpreted to be limited to housing entities established in Alaska and Oklahoma.

1000.206. This provision states merely that the TDHE is designated by resolution of the tribe to be served or, when the tribe has delegated its authority to a tribal committee, by resolution of that committee. In the absence of formal action by the tribe, the TDHE is designated by default as provided in 25 U.S.C. § 4103. Except for these provisions, guidance on establishment and designation of the tribal housing entity is absent. The tribes must look to their organic documents and housing ordinances and must do needs evaluation to determine what best suits their situation. Often this will require a complete restructuring of the housing entity and review and amendment of tribal law. Especially where a tribe's housing needs were (are) served by a multi-tribal organization, and where NAHASDA reorganization resulted in a change in the composition of the organization, the main issue to resolve is whether changes in composition of the housing entity allows continued operation under old organizational documents or laws. Threshold questions to be asked are:

1. How was the housing entity originally organized, what kind of entity is it? Can it be sued?
2. How can the housing entity be better organized?

2. Entity Organization and Immunity

A. *Nature of the Organization.* While typically organized in the late 60s and early 70s, many housing entities were reorganized in 1977 as a result of changes to the HUD regulations then in effect, and have been operating under so called "Amendatory Ordinances" ever since. Each Amendatory Ordinance amends and restates the entire organizational ordinance. So regardless of how a housing entity was organized prior to that time, the Amendatory Ordinances govern all actions, rights, and obligations of the Housing Authority since then.

The Amendatory Ordinances were prescribed by HUD and adopted by the tribes, more or less *verbatim*. While the prescribed ordinance form was drafted originally to serve the needs of a single tribe IHA, footnotes made it clear that the terms concerning composition of the Board could be modified to meet the needs of the entity.

Both NAHASDA and the old HUD regulations provide for the organization of IHAs/TDHEs by (1) exercise of the power of self-government of Indian tribes independent of State law; or (2) by operation of State law providing specifically for housing authorities or housing entities for Indians, including regional housing authorities in the State of Alaska³. 25 U.S.C. §4103(21)(B); *see* former 24 C.F.R. §950.102. While NAHASDA does specifically authorize the development of a TDHE by more than one tribe, 25 U.S.C. § 4103(21)(B)(i), the regulations in effect at the time the housing entity was formed were entirely silent as to establishment of an entity jointly by more than one tribe. *See* former 24 C.F.R. §§ 950.102 (definition of IHA), 950.125 (Establishment of IHA pursuant to State law), and 950.126 (Establishment pursuant to tribal ordinance). However, each Amendatory Ordinance does allow the tribally established entity to join or cooperate with any other public housing agency operating under the laws of a state or another tribe.⁴ Each such Ordinance, therefore, supports an argument that the resulting entity may be a partnership between several tribal entities.

³Formation of IHAs pursuant to state law generally is considered to be limited to the state of Oklahoma (governed by the Oklahoma Indian Welfare Act instead of the Indian Reorganization Act) and the State of Alaska.

⁴Article V((3)(s) provides that the entity formed under the Ordinance had the power to join or cooperate with any other public housing agency or agencies (tribal or state), jointly or otherwise, for the purposes of financing, planning, undertaking, owning, constructing, operating, or contracting with respect to a housing project or projects of the Authority or such agency or agency.

The next question is whether either the housing entity or its member entities are incorporated. The original HUD regulations provided that an IHA could be established pursuant to tribal law. The Amendatory Ordinance was prepared for consideration and adoption by HUD and contains many references to corporate attributes and powers. For example, Article V, §1 provides that the “Authority shall have perpetual succession [a particularly corporate attribute, not common to partnerships] in its corporate name,” and §3 of that article gives the Authority the power to “adopt and use a corporate seal.”

It is generally recognized that a tribal governmental entity has the power to form corporations without having to comply with any particular procedure or format. Whether or not the member tribes had a formal procedure or code for incorporation, it may be argued that the adoption of the Amendatory Ordinance endowing the housing entity with corporate qualities *was* an informal incorporation of the entity. If so, the entity established under the Amendatory Ordinance may be said to be a corporation chartered by that tribe. If this is the case, each tribe could be said to have formed a corporation authorized to act under the umbrella of a partnership of similar tribal corporations. Of course, this is up to each tribe, and a tribal resolution would be in order, clarifying the tribal intentions to incorporate or not.

B. Validity of Organization under Amendatory Ordinances. Even if a review of each Amendatory Ordinance and the regulations in effect at the time the housing entity was formed provided insight into what form of entity was created, such insight may not be dispositive of the issue because the organization of the entity, specifically the organization of the Board, may violate the member tribes’ current Ordinances. Whatever the organizational nature of entity, its existence is dependent on compliance with the tribal Amendatory Ordinances. While the Amendatory Ordinances

clearly authorized the formation of housing entities, *each* tribe in its own Ordinance reserved the right to approve the appointment of *all* member of the Board. Article IV(1)(a) states that the Board will be composed of XX persons, each appointed by the Council of the tribe adopting the Ordinance. Subparagraph (b) states that the Council of the tribe adopting the Ordinance shall select the Chairman. In practice, each umbrella entity's member tribe appoints only one Board member, not five, and these individuals, not any Council, select the Chairman. *As such, current Board composition may be entirely inconsistent with the Amendatory Ordinances.* To comply with the current Amendatory Ordinances each tribe should adopt a resolution concurring in the selection of the other member tribes' Commissioners and in the selection of the Chairperson. A better idea may be to redo the ordinances.

C. *Liabilities and Immunity of Housing Entities.* Article V, §2 of each Amendatory Ordinance provides as follows:

The Council hereby gives its irrevocable consent to allowing the Authority to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activities under this ordinance and hereby authorizes the Authority to agree by contract to waive any immunity from suit which it might otherwise have; but the Tribe shall not be liable for the debts or obligations of the Authority.

This provision was, like all the others, prescribed by HUD regulations. While many courts have held this to be a waiver of Housing Authority immunity, arguably, while the form of Ordinance permits the housing entity to sue or be sued, it does not require it. Of course, the Authority may choose to do so by contract. Whatever the organizational structure of housing entity, the assets of the tribe(s) are protected because the waiver included in the Amendatory Ordinance specifically limits

the liability to non-tribal assets. However, it is possible that assets owned by the entity may be subject to the reach of creditors.

If the housing entity is a partnership of several tribal entities, the liability of its partners (the member tribes) will be limited, since each of the partners has sovereign immunity and, without a waiver of immunity, is exempt from suit. The Supreme Court's decision last year in *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, No. 96-1037 (May 26, 1998), makes it clear that tribal immunity extends (at least) to contracts made off-reservation and performed off-reservation; the Court's reasoning would apply equally to off-reservation torts. For on-reservation activities, the case for immunity is even stronger. While tribally-owned assets are protected, the question actually is whether creditors could go after assets held by the housing entity, in its own right.

The first hurdle is to determine which assets are in fact assets of the housing entity and which are assets of the tribe(s). The housing entity may hold various substantial assets on behalf of its tribe(s). Prior to NAHASDA, cash was commingled, and the tribes' shares were not tracked separately. Thus a contractor working on a project on one reservation, for example, could conceivably sue the housing entity and go after assets held for another tribe, etc.⁵ HUD may well intervene in such a lawsuit, since the entity's funds are provided by that agency; after NAHASDA,

⁵This kind of exposure would exist regardless of whether the housing entity is a corporation or a partnership; in either case, the *assets of the entity* are exposed to creditors.

however, HUD's jurisdiction is much more limited, and it may not always have the right, or the inclination, to step in to such a dispute.⁶

While some pre-NAHASDA funds remain and are administered by housing entities, funds under NAHASDA are being handled differently. HUD currently has taken the position that funds allocated under NAHASDA are funds of the TDHE, though this position conflicts with the language of § 101 of NAHASDA which states that, even though block grants are provided directly to the TDHE, they are a grant to the tribe to carry out that tribe's affordable housing activities. There is, at least, an argument that NAHASDA funds are tribal assets and not subject to the waiver of sovereign immunity under the Ordinance. However, the remaining, non-NAHASDA assets held by the housing entity could be deemed to be non-tribal assets held by the entity.

⁶While these assets are held *for* the various Tribes, they are nevertheless assets *of* the housing entity, not formally held in trust, and may therefore be reached by creditors of the entity. MEPAs, which are actually held in trust (though not formally) for the respective Homebuyers, should be beyond the reach of creditors, though this is not entirely clear. In practice, we have seen even MEPA accounts taken in a court judgement against a housing authority.

Under certain circumstances, assets held by a housing entity may not be subject to court action or creditor's claims. If the housing entity is deemed, by a court, to be a "subordinate organization" of the tribe(s) that has not concealed or misrepresented that it was doing business for the tribe(s), it possesses all sovereign immunity possessed by the tribe(s) to the extent it has not waived sovereign immunity, whether located on or off-reservation.⁷ However, if this test cannot be met and the housing entity is located off-reservation, a court could find that the entity was not sufficiently identified as a tribal entity and is therefore amenable to suit allowing access to non-tribal assets it holds.

Location of a housing entity's offices on- or off-reservation also may make one other important difference: jurisdiction and venue of a lawsuit. Except for actions in tribal court for the eviction of a tenant or homebuyer, the consent to sue and be sued provision contained in the Amending Ordinance arguably does not by itself give any court jurisdiction to hear suits by or against the housing entity. To the extent the housing entity is merely an entity composed of tribal entities joined for common benefit and located off reservation, there may be no forum readily available for adjudication of any dispute.

It may be that the only way to address these problems is by amending the underlying Ordinances (certainly to fix the issue of the number of commissioners) and the housing entity's bylaws and by the careful drafting of an operating (partnership?) agreement and of future contracts. We offer below some suggestions as to how some of these problems can be minimized or eliminated.

⁷ *Padilla v. Pueblo of Acoma*, 754 P.2d 845 (NM 1988) as modified by *Kiowa, supra*.

3. Suggestions Regarding Reorganization of Housing Entities and Improving their Immunity

Whether the Amendatory Ordinances effectively created tribal corporate entities authorized to act together as one entity, or whether the Amendatory Ordinances did *not* incorporate any entity, umbrella entities in their own right are merely partnerships of their member tribes or their member tribes' individual corporations, unless such umbrella entities themselves choose to incorporate. Incorporation of a TDHE in its own right would add another layer of complexity and conceptual difficulty. In order to ensure even-handedness among the member tribes, the corporation would have to be chartered by the state, by one tribe, or by *every* member tribe.⁸

Unless and until tribal sovereign immunity is limited by Congress or the courts, a partnership would provide the tribes basically the same shield against liability that a corporation would. Forming an entity as an official sole proprietorship or partnership might actually have an advantage over corporate form: as a sole proprietorship owned by the tribe or partnership of immune sovereigns, the organization itself would more likely be immune from suit. As before, limited waivers of such immunity can be granted as an inducement to, and protection for, contractors and vendors who deal with the housing entity.

Attempts to erode tribal sovereign immunity have begun, however, and, at the same time, suits by contractors who have been granted waivers of immunity and others (*e.g.*, member tribes) may still raise the common-fund problem discussed above. If an umbrella entity is contemplated, something more than a simple partnership may be advisable.

⁸Under NAHASDA, a TDHE must be formed under tribal law; a state-chartered corporation would not, therefore, be allowed, except in Oklahoma and Alaska.

One possibility would be to have each member tribe officially form its own tribal corporation and so state; the corporations together would then form the housing entity as a partnership of the corporations. This would ensure that the tribes continue to be protected against the housing entity's liabilities. The housing entity, the partnership-of-corporations, would be formally designated to be each tribe's TDHE. Under this scenario, liquid funds held by the entity should be held in separate trust accounts for each tribe to insure the integrity of the assets held for each and to limit any argument that the funds are not tribal property and are thus reachable as assets of the housing entity.

Also, under this scenario, efforts could be made to limit the housing entity's "agency" to a particular tribe while acting for that tribe, and to limit the exposure of other tribes' assets thereby. Whether as a separate, incorporated entity or a partnership (among the tribes or their corporations), however, the housing entity's "apparent authority" (*i.e.*, a third-party's perception that the agency acts for all) may limit the benefit of such a discrete-agency approach, unless the limitation of the housing entity's authority is made clear in each of its contracts.

In other words, when the housing entity is working on one tribe's project, for example, the contracts should expressly state that it is acting solely as agent for that tribe, so that the assets held by the entity for other tribes will be off-limits in the event of a lawsuit over the project. Member tribes, who would agree to this arrangement up-front (in the reorganization documents), would also be bound by its terms and prevented from seeking any assets held for other tribes in any dispute with the organization.

If reorganization occurs in this manner, an additional benefit may appear, in that it may be possible to develop contracts for construction of homes *free from the state gross receipts or sales tax*. In New Mexico, *Laguna Indus., Inc. v. New Mexico Taxation & Revenue Dep't*, 114 N.M. 644

(Ct. App. 1992), *aff'd*, 115 N.M. 553 (1993), makes it quite clear that services to tribes on-reservation are exempt from the state gross receipts tax; it is less clear that services *to a housing entity* are exempt. The rule is now reflected in 3 N.M. Admin. Code §§2.4.9.4 (services—general) and 2.4.9.5 (construction services), which provide for exemption from the tax on receipts from services *to a tribe on its reservation*. 3 N.M. Admin. Code §2.4.9.1 also exempts *on-reservation* sales of tangible personal property to a tribe (or member). For a sale of goods to be considered made on-reservation, the goods must be delivered on-reservation, and *two* of the following three acts must occur on-reservation: solicitation of the sale; making of the contract; or payment. 3 N.M. Admin. Code §2.4.9.1.2.2. For all practical purposes, we have delivery on-reservation, and, however solicitation occurred, we can contract and take payment on-reservation. However, to the extent that the tribes' development money is separately identified, and especially if the contract is signed by the housing entity as a tribe's agent, we can take the position that the entity is acting as the agent of the tribe on which a particular project is built (or to be built). By amending the entity's bylaws and the tribes' ordinances to reflect this arrangement, we can make sure that the benefit of the tax exemption under *Laguna Industries* and 3 N.M. Admin. Code §2.4.9 is preserved.

4. Conclusion

Regardless of the manner in which a tribe wishes to organize its housing programs under NAHASDA, whether preferring a single or umbrella entity, a careful review of preexisting documents must be undertaken. Under NAHASDA much more freedom to choose is granted to the tribe and its TDHE. Old ordinances and organizational documents were drafted to establish compliance with laws and regulations no longer in existence. The formation of a TDHE should meet the specific and

current needs of its tribe, and tribal laws and regulations should be such that they protect the new concepts of self determination in housing expressed in NAHASDA

OUTLINE OF IHA RESTRUCTURING ISSUES

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- I. OPPORTUNITIES TO RESTRUCTURE**
- A. SINGLE TRIBE AND MULTI-TRIBAL HOUSING AUTHORITIES**
- 1. ARTICLE II - PURPOSES**
 - a. ADD SUBMITTING HOUSING PLANS UNDER NAHASDA ON BEHALF OF TRIBE**
 - (1) WHETHER WANT TO REQUIRE PRIOR REVIEW OF PLAN BY TRIBE PRIOR TO SUBMISSION UNDER 4112(d)**
 - b. TO RECEIVE GRANT AMOUNTS AND PROVIDE ASSISTANCE UNDER NAHASDA**
 - c. WHETHER TO EXPAND FUNCTIONS OF ENTITY TO INCLUDE OTHER ECONOMIC DEVELOPMENT ACTIVITIES**
 - d. WHETHER TO INCLUDE MORE THAN LOW INCOME PERSONS AS ELIGIBLE TO BE SERVED. (TAKE ADVANTAGE OF 24 CFR 1000.110, MODEL ACTIVITIES)**
 - e. CONSIDER ADDING PROVISIONS LIMITING IHA TO ACTIVITIES PERMITTED TO 501(C)(3) ORGS OR UNDER TRIBAL GOVERNMENTAL TAX STATUS ACT**
 - (1) INCLUDES LIMITATIONS ON PROPAGANDA AND INFLUENCING LEGISLATION**
 - (2) LIMITED TO 20% OF ANNUAL TAX EXEMPT INCOME**
 - 2. ARTICLE III- DEFINITIONS**
 - a. EXPAND DEFINITION OF HOUSING PROJECT**
 - (1) ASSISTANCE WITH HOME PURCHASE**
 - (a) INTEREST SUBSIDIES**
 - (b) WRITE DOWNS**
 - (c) LOAN GUARANTEES**
 - b. AREA OF OPERATION (TAKING ADVANTAGE OF "INDIAN AREA" DEFINITION IN NAHASDA 25 USC 4103(10))**
 - (1) RE-EXAMINE AREA WHERE IHA WANTS TO PROVIDE HOUSING ASSISTANCE**
 - (a) OFF-RESERVATION**
 - (b) IN VICINITY (SAME COUNTY)**
 - (c) OTHER AREAS WHERE TRIBAL MEMBERS LIVE**
 - 3. ARTICLE V - POWERS**
 - a. REVISE 2, SUE AND BE SUED CLAUSE TO REQUIRE EXPRESS AND UNEQUIVOCAL WRITTEN WAIVER OF**

SOVEREIGN IMMUNITY BY BOARD OF COMMISSIONERS AS TO SPECIFIC OBLIGATION. (RESERSES LONG LINE OF CASES CONSTRUING V.2 AS BLANKET WAIVER OF SOVEREIGN IMMUNITY, BUT SEE RECENT 8TH CIR. CASES)

- b. ADD SPECIFIC POWER TO SUBMIT INDIAN HOUSING PLANS UNDER NAHASDA AND TO RECEIVE AND ADMINISTER ASSISTANCE UNDER NAHASDA
 - c. 3(m) - REVISE TO REFER TO ELIGIBLE PERSONS RATHER THAN LOW INCOME PERSONS, IF EXPANDING TO INCLUDE SOME MODERATE INCOME FAMILIES
4. ARTICLE VII - MISCELLANEOUS
- a. REVISE 1 TO REQUIRE ALL REPORTS REQUIRED BY NAHASDA OR OTHER APPLICABLE LAW, INCLUDING TRIBAL AND FEDERAL LAW
 - b. DELETE 2 MANDATING THAT ORDINANCE REMAIN IN EFFECT AND REQUIRING HUD APPROVAL FOR ANY AMENDMENTS (DO THESE AMENDMENTS REQUIRE HUD APPROVAL? HUD COULD HELP BY ISSUING NOTICE GIVING BLANKET APPROVAL TO ORDINANCE AMENDMENTS)
5. CONSIDER ADDING PROVISIONS ON DISSOLUTION BECAUSE
- a. GOOD IDEA GENERALLY
 - b. PLACE TO STATE PROPERTY IRREVOCABLY DEDICATED TO 501(C)(3) OR ESSENTIAL GOVERNMENTAL PURPOSES AND UPON DISSOLUTION PROPERTY TO BE TRANSFERRED TO ANOTHER ENTITY TO CARRY ON SUCH PURPOSES AFTER PAYMENT OF DEBTS AND LIABILITIES OF IHA.

B. CHANGING MULTI-TRIBAL HOUSING AUTHORITIES INTO JOINT POWERS AGENCIES.

- 1. REQUIRES EACH TRIBE TO ADOPT JPA ORDINANCE
- 2. JPA CAN EMBODY AGREEMENT AMONG TRIBES BETTER THAN ORDINANCE ADOPTED SEPARATELY BY EACH TRIBE WHICH EACH TRIBE IS FREE TO AMEND AT ANY TIME WITHOUT REGARD FOR THE AMENDMENT'S EFFECT ON THE OTHER TRIBES OR THE IHA.
- 3. OPPORTUNITY TO NEGOTIATE AND SET FORTH IN AGREEMENT PROCEDURE AND CONSEQUENCE OF FUTURE WITHDRAWL BY TRIBE OR DISSOLUTION OF IHA
 - a. FOR EXAMPLE, WHAT HAPPENS TO IHA ASSETS UPON WITHDRAWAL OF ONE OR MORE TRIBES?
 - b. WHAT HAPPENS TO ASSETS UPON DISSOLUTION?
 - (1) DIVIDE AMONG TRIBES STILL PART OF IHA AT TIME OF DISSOLUTION?
 - (2) ADOPT FORMULA TO SHARE WITH ALL TRIBES WHO AT ANY TIME BELONGED?
 - (3) TRANSFER TO SUCCESSOR ORGANIZATION?

II. ISSUES TO ADDRESS WHEN ONE OR MORE TRIBES WANT TO WITHDRAW FROM MULTI-TRIBAL HOUSING AUTHORITY

A. TRANSFER OF IHA RIGHTS IN 1937 ACT PROJECT TO TRIBE

- 1. SUBJECT TO EXISTING SUBLEASES (MHO AGREEMENTS AND LOW RENT LEASES), TERMINATE EXISTING LAND LEASES OF

TRIBAL LAND TO IHA

2. CONVEY HOUSING UNITS AND RELATED IMPROVEMENTS TO TRIBE

- a. WHAT REPRESENTATIONS AND WARRANTIES AS TO CONDITION OF UNITS?
- b. IHA WILL WANT TO CONVEY IN AS IS CONDITION
- c. SUBJECT TO MHA AGREEMENTS
 - (1) SOME IMPROVEMENTS MAY ALREADY HAVE BEEN CONVEYED TO HOMEBUYERS
 - (2) ASSURANCE BY TRIBE TO HONOR MHO AGREEMENTS?

B. INSURANCE

- 1. AMERIND PREPAID INSURANCE PREMIUMS
- 2. INSURANCE RESERVES
- 3. ASSIGNMENT OF IHA'S RIGHTS UNDER POLICIES
 - a. ANY APPROVAL REQUIRED FROM AMERIND?

C. ACCOUNTS RECEIVABLE AND SECURITY DEPOSITS

D. PROJECT AND TENANT FILES

E. TREATMENT OF PROGRAM RESERVATIONS

F. PENDING GRANTS, SUCH AS UNFINISHED CIAP PROJECTS

G. TREATMENT OF IHA ASSETS IN ADDITION TO THOSE LISTED ABOVE, SUCH AS RESERVES, PERSONAL PROPERTY

- 1. EXISTING ORDINANCE MAKES NO PROVISION OTHER THAN
 - a. V.1 WHICH PROVIDES THE PROPERTY BELONGS TO IHA IN PERPETUITY
 - b. PROVISION VIII.2 THAT ORDINANCE WILL NOT BE AMENDED WITHOUT HUD APPROVAL
- 2. WHAT ABOUT EXISTING IHA LIABILITIES?

H. INDEMNIFICATION AND RELEASES

- 1. BY TRIBE OF IHA FOR:
 - a. CONDITION OF HOUSES AND RELATED IMPROVEMENTS
 - b. FOR TRIBE'S FUTURE ADMINISTRATION OF PROJECTS
- 2. BY IHA OF TRIBE FOR:
 - a. PAST IHA CONTRACTS
 - b. CLAIMS ARISING OUT OF IHA NEGLIGENCE OR INTENTIONAL WRONGDOING DURING ITS OWNERSHIP AND MANAGEMENT OF PROJECTS

I. ENFORCEMENT OF AGREEMENT

- 1. MUTUAL WAIVERS OF SOVEREIGN IMMUNITY?
- 2. ENFORCEMENT BY ARBITRATION?

Prepared by Denise A. Chee, Chee Law Offices, P.C.
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HOME MORTGAGE FINANCING

What is Mortgage Financing?

Mortgage financing is borrowing money from a lender, usually a bank, and using real estate (land) to secure the loan. The land becomes the collateral. If the borrower (called the mortgagor) defaults on the loan, the lender (called the mortgagee) asks a court to give it the real estate (called foreclosure).

What is Home Mortgage Financing?

Home mortgage financing is borrowing money to build, buy or renovate a home. The bank holds the real estate (the land and the home) as collateral, and upon default forecloses on the property.

Mortgage financing is the method used by most people to build or buy a home in mainstream America. The person buying the home purchases both the home and the land upon which the home is located. This is easy to do since land outside Indian country is either private land or government land. People buy and sell private land everyday. This is because private land is easily transferable and assignable. This type of land is referred to as fee land.

Mortgage financing works because there are laws in every state that allow a lender to foreclose on property and evict persons who refuse to vacate the property. Other laws provide for recording of the land and giving a priority of lien to the lender in the event of default.

What's Different about Indian Lands that Make Home Mortgage Financing Different?

Most Indian lands including Pueblo lands are held in trust. They are held in legal title by the U.S. government with equitable title held by the Indian tribe. (Never mind that Pueblos got their land in fee from the Spanish government. Case law has clearly established that Pueblo lands are in trust status.) Lands held in trust can't be transferred and are not owned by any one individual tribal member. So obviously, if a bank can't get the land upon default, they're not going to be willing to lend money to build or buy a home in Indian country.

Government agencies (like HUD and the VA) and some lenders (such as Fannie Mac and Freddie Mac) have seen that there is a need to bring mortgage financing into Indian

country, and for lenders they've seen that Indian country is a new market for money. They've worked together with Indian tribes to make mortgage financing work in Indian country. This is done by mortgaging the lease (referred to as a leasehold interest) that individual Indians can get from their tribes. Banks have indicated a willingness to collateralize a leasehold interest on the promises of tribes to work with them in finding a new buyer who is a tribal member in the event of default. The promises are usually spelled out in a Memorandum of Agreement or a Tri-Party Agreement.

Most Indian tribes do not have the necessary laws to make mortgage financing work on the reservation. So tribes who want to bring mortgage financing have to either agree to use state laws or adopt their own. It is always in the best interest of a tribe to adopt its own laws. Most Pueblos have unwritten laws that they don't want the written laws to conflict with. Tribes would also have to be willing to lease property to individual tribal members.

Many tribes give land to tribal members by assignment. The assignments are made either by traditional leaders or the tribal council. This process wouldn't change. What would change is that the assignments would then be leased to the tribal members to allow them to use it for collateral. Leases would be approved by the same people who currently approve them, usually the tribal council. Leasing procedures could be developed to make the leasing process faster and easier. Forms would be developed. One tribe developed a leasing procedure which delegated authority to approve leases to its land office. If a tribe gives land by assignment, the leasing process wouldn't replace land assignments. Only those lands that have been assigned would be given a lease. And not all assignments would be given a lease. Only those upon which a tribal member desires to borrow money to build or renovate a home on.

So What Laws are Needed?

The following laws are needed to make large scale mortgage financing work in Indian country:

- Foreclosure laws
- Eviction laws
- Recording laws (these can be contained within the foreclosure law)
- Priority of lien laws (these can be contained within the foreclosure law)

What Else is Needed?

The following documents are needed to make large scale mortgage financing work in Indian country:

- Leases
- Leasing procedures (to allow for a speedy method of providing leases)
- MOA/Tri-Party Agreement (between the Tribe, the Lender and BIA)
- Rider to Promissory Note (an amendment to the standard loan document used by banks to meet the unique conditions of lending in Indian country.)

Rider to Security Instrument (an amendment to the standard security instrument to meet the unique conditions of lending in Indian country.)

Is There Risks Involved in Mortgage Financing?

Yes, if a homebuyer doesn't make his/her monthly payments, the lender will foreclose on the leasehold interest and ask the tribe for assistance in finding another eligible tribal member. The lender will want to sublease the property for up to a year if it can't find a buyer, since it will lose money if the home sits vacant. It will ask the tribe for assistance in finding a sublessee.

So, the borrower who doesn't make his/her mortgage payments risks losing his leasehold interest and the underlying land assignment. After the property is foreclosed, if he/she doesn't move voluntarily, he will be evicted under the eviction laws. The tribe never risks losing the land. It can reassign the land to another tribal member and give the tribal member a lease on the land. The tribal member agrees to purchase the home on the land from the lender. The tribe or its tribally designated housing entity always has the first option of purchasing the home. It can then work with another buyer to assist them to purchase the home.

It will be very important to educate tribal members on mortgage financing. Tribal members interested in home mortgage financing must be educated on the risks involved in failing to make mortgage payments. These are the same risks that exist for any homeowner outside Indian country. Obviously, a Tribe wouldn't want its tribal members collateralizing their leasehold interests for anything other than to build or renovate a home. This needs to be communicated to tribal members and may be included in the foreclosure code.

**Sample Eviction Code
Prepared by Denise A. Chee**

EVICTON CODE OF THE _____ TRIBE

Article I - Jurisdiction/Limited Waiver of Sovereign Immunity/Limitations

Section 1. Jurisdiction.

The Tribal Court of the _____ Tribe shall have exclusive jurisdiction over all eviction actions arising on all lands located within the exterior boundaries of the _____ Tribe.

Section 2. Limited Waiver of Sovereign Immunity.

The _____ Tribe hereby authorizes a limited waiver of immunity from suit, with respect to specific controversies or claim described in this section that may arise out of or relate to the _____ Tribe's obligations under a mortgage or lease entered into by the _____ Tribe under a mortgage assumption pursuant to Sections 6(b) or Section 12(a)(3) of the Foreclosure Code of the _____ Tribe. In connection with such limited waiver, the _____ Tribe consents solely to the jurisdiction of the _____ Tribe Tribal Courts with respect to (a) actions in equity brought by any party to such mortgage or lease seeking specific performance of any of the _____ Tribe's express obligations thereunder and (b) actions at law for actual damages which shall consist exclusively for remaining sums secured by a mortgage. This waiver of immunity is not intended, or shall it be construed (a) to extend to any claim for punitive or compensatory damages, (b) to waive the _____ Tribe's immunity from suit for any other purpose or with respect to any controversy, claim, or other matter not specifically mentioned in this section, or (c) to extend to the benefit of any person other than the parties to the Documents or their successors or assigns. This limited waiver of immunity from suit shall not be construed as an admission of liability of the _____ Tribe as to any claim for damages or as an agreement or willingness to pay any amount as damages absent a judicial determination of liability, and the _____ Tribe shall have the right to defend any of such claim fully on the merits.

Article II - Eviction Procedures

Section 1. Purpose.

The purpose of this Code is to prescribe procedures relating to evictions in connection with leases, subleases or other land assignments or interests made by the _____ Tribe, the _____ Tribe's Designated Housing Department or Entity or any owner of land or leasehold interest.

Section 2. Definitions.

a. "**Lease**" shall mean a ground lease or other agreement for use Land or other real property.

b. "**Leasehold Estate**" shall mean a leasehold estate established pursuant to a Lease between an owner of land or land interest as Lessor, and a third party as Tenant.

c. "**Lessor**" shall mean the owner of land or land interest, including the Tribe. The Tribe shall be the beneficial or equitable owner of certain Trust Land or Restricted Land underlying a Leasehold Estate on which a Mortgage has been given. The Lessor shall include the successor(s) or assign(s) of such Lessor.

d. "**Mortgage**" shall mean the first-lien mortgage of a beneficial real property interest in Trust Land or Restricted Land given to secure a mortgage loan made by a Mortgagee.

e. "**Mortgagee**" shall mean any mortgage lender or any successors or assigns of any such lender. This definition also includes any subsequent holder, whether by assignment, succession or otherwise, of the original Mortgagee's right, title or interest in and to the Mortgage and/or the Mortgaged property, together with the improvements.

f. "**Mortgagor**" shall mean any eligible tribal member or entity borrower who has executed a Mortgage on its beneficial interest in Trust Land or Restricted Land, including any heir(s), successor(s), executor(s), administrator(s) or assign(s) of such borrower.

g. "**Nuisance**" shall mean maintenance on the Mortgaged property of a condition which:

- (1) Unreasonably threatens the health or safety of the public or neighboring land users; or
- (2) Unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.

h. "**_____ Tribe**" shall refer to the _____ Tribe.

i. "**Restricted Land**" shall mean land within the jurisdiction of the _____ Tribe that is subject to restrictions against alienation imposed by federal treaty, statute, Executive Order, or the _____ Tribe.

j. "Subordinate Lienholder" shall mean the holder of any lien, including a mortgage, perfected subsequent to the recording of a Mortgage under this Code; provided, however, such definition shall not include the _____ Tribe with respect to a claim for a Tribal tax on the Mortgaged property, where applicable

k. "Tenant" shall mean any person who occupies Trust land or Restricted Land, as lessee, under a Leasehold Estate with the Lessor.

l. "Tribal Court" shall mean: (i) the _____ Tribe Tribal Court; or (ii) such body as may now or hereafter be authorized by the laws of the _____ Tribe to exercise the powers and functions of a court of law.

m. "Trust Land" shall mean land within the jurisdiction of the _____ Tribe, title to which is held by the United States for the benefit of the Tribe or an individual member of the _____ Tribe.

n. "Unlawful Detainer Action" shall be a suit brought before the Tribal Court to terminate a Mortgagor's or Tenant's interest in Trust Land or Restricted Land and/or to evict any person from occupancy of such property.

o. "Waste" shall mean spoil or destruction of land, buildings, gardens, trees or other improvements on the Mortgaged property which result in substantial injury to such property.

p. "Writ of Restitution" is an order of the Tribal Court:

- (1) Restoring an owner, Lessor, Mortgagee (or other successor in interest) to possession of Trust Land or Restricted Land subject to a Mortgage; and
- (2) Evicting a Tenant or other occupant from such property.

Section 2. Unlawful Detainer.

A Tenant or other occupier of a beneficial interest in Trust Land or Restricted Land subject to a Mortgage or Lease shall be guilty of unlawful detainer if such person shall continue in occupancy of such property under any of the following situations:

(a) Without the requirement of any notice by the _____ Tribe or Lessor.

- (1) After the expiration of the term of any Lease or Sublease;
- (2) If such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim under a Lease or title to such

- property;
- (3) After the Lessor has terminated such person's tenancy pursuant to the Lessor's procedures; or
 - (4) After a Mortgagor's interest in Trust Land or Restricted Land has been foreclosed in a Mortgage Foreclosure Proceeding in the Tribal Court.
- (b) After having received at least seven (7) days notice of termination and notice to vacate the premises, the Tenant or occupier remains in possession of such property contrary to the terms of the notice as follows:
- (1) When such person has received notice: (i) that he or she is in default in the payment of ground or unit rent; and (ii) requiring him or her to either pay such rent or surrender possession of the occupied property and such person has not either surrendered possession of such property or paid the rent within the time period provided in such notice; or
 - (2) When such person shall continue to fail to keep or perform any condition or covenant of any Lease or other use agreement under which the property is held after he or she has been given notice to comply with such condition or covenant or else to surrender the property; or
 - (3) When such person continues to commit or to permit Waste upon or maintain a Nuisance upon the occupied property after having been given notice to either cease such Waste or maintenance of Nuisance or to surrender the property; or
 - (4) When such person violates a material covenant of any Lease designed to protect the health and safety of persons.

Section 3. Procedures for Service of Notice.

- (a) Notices required or authorized in the immediately preceding section shall be given in accordance with established Tribal Court rules and procedures or policies of the _____ Tribe's Designated Housing Department or Entity. In the absence of such rules and procedures, notices shall be given in writing by either:
- (1) Delivering a copy personally to the Tenant or occupier or to any adult members of his or her family residing on the Leased or Mortgaged property; or
 - (2) Posting said notice in a conspicuous place near the entrance to

said property, and by sending an additional copy to the Tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.

- (b) Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of these two methods of service.

Section 4. Complaint and Summons.

The Lessor or the Mortgagee (including its successors or assigns) shall commence an action for eviction by filing with the Tribal Court, in writing, the following documents:

- (a) A complaint, signed by the Lessor, the Mortgagee (or its successors or assigns), or an agent or attorney on their behalf including the following:
- (1) Citing authority for jurisdiction of the Tribal Court;
 - (2) If the property is mortgaged, naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Mortgage, including each Subordinate Lien holder (except the _____ Tribe with respect to a claim for a Tribal tax on the property subject to the Mortgage), as a defendant;
 - (3) Describing the property subject to the Mortgage or Lease;
 - (3) Stating the facts concerning (i) the execution of any Lease and/or the Mortgage; (ii) the recording of any Mortgage; and (iii) the facts upon which he or she seeks to recover; and
 - (4) Stating any claim for damages or compensation due from the persons to be evicted.
- (b) A copy of the summons, issued in accordance with established Tribal Court rules and procedures. In the absence of such rules and procedures for the issuance of a summons, the summons shall require defendants to appear for trial upon the complaint on a date and time specified in the summons. The trial date specified in the summons shall be no less than six (6) nor more than twenty (20) days from the date of service of the summons and complaint. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the court an answer and appear for trial at the time, date and place specified in the summons.

Section 5. Service of Summons and Complaint.

A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the two methods provided in Article II, Section 3 above.

Section 6. Power of the Tribal Court.

(a) The only issue on an action for eviction shall be the right of actual possession. A lender who has foreclosed on a leasehold estate shall be deemed to have the right to actual possession. The merits of ownership of land interest shall be an issue to be determined by the traditional laws of the _____ Tribe. An action for eviction may not be brought in connection with any other action, nor may it be made the subject of any set off or counter claim.

(b) The Tribal Court shall enter a Writ of Restitution if:

- (1) Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided herein; and
- (2) The Tribal Court:
 - (a) finds that the occupier of the property subject to the Mortgage or Lease is guilty of an act of unlawful detainer; or
 - (b) determines that the Tenant failed to respond to the complaint.

(c) Upon issuance of a Writ of Restitution the Tribal Court shall have the authority to enter against the defendants a judgment for the following: (1) back rent, unpaid utilities, and any charges due the Lessor under any lease or occupancy agreement; (2) any and all amounts secured by the Mortgage that are due the Mortgagee (or its successors or assigns); (3) damages caused by the defendants to the property other than ordinary wear and tear; and (4) costs and reasonable attorney's fees incurred in bringing suit.

(d) At the hearing where the eviction is ordered, the Court shall inform the defendant that if he/she does not vacate the premises voluntarily by the effective date, he/she will be subject to forcible eviction, and his/her property will be subject to storage, sale and disposal as set forth in Section 9 below.

Section 7. Enforcement.

Upon issuance of a Writ of Restitution, Tribal law enforcement officers shall within five days enforce the Writ of Restitution by removing the defendants and their personal property from the property which is unlawfully occupied, and levy damages and costs incurred by the Police Department in such removal. In cases involving a Mortgagee (or its successors or assigns), the Writ of Restitution shall be enforced no later than sixty (60) days after the date of service of the summons and complaint, subject to Section 8 below.

Eviction Code of the _____ Tribe, Adopted _____ 1999

Section 8. Continuance in Cases Involving the Mortgagee.

Except by agreement of all parties, there shall be no continuances in cases involving the Mortgagee (or its successors or assigns) which will interfere with the requirement that the Writ of Restitution be enforced not later than sixty (60) days from the date of service of the summons and complaint.

Section 9. Storage of Property.

Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the Lessor or owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the Lessor or owner is authorized to sell the property in order to recover these costs. The Lessor or owner shall provide the evicted occupants with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the Lessor or owner.

FORECLOSURE CODE OF THE _____ TRIBE

Article I - Jurisdiction/Limited Waiver of Sovereign Immunity/Limitations

Section 1. Jurisdiction.

The Tribal Court of the _____ Tribe shall have exclusive jurisdiction over all foreclosure actions arising on all lands located within the exterior boundaries of the _____ Tribe.

Section 2. Limited Waiver of Sovereign Immunity.

The _____ Tribe hereby authorizes a limited waiver of immunity from suit, with respect to specific controversies or claim described in this section that may arise out of or relate to the _____ Tribe's obligations under a mortgage or lease entered into by the _____ Tribe under a mortgage assumption pursuant to Sections 6(b) or Section 12(a)(3) of this Code. In connection with such limited waiver, the _____ Tribe consents solely to the jurisdiction of the _____ Tribe Tribal Courts with respect to (a) actions in equity brought by any party to such mortgage or lease seeking specific performance of any of the _____ Tribe's express obligations thereunder and (b) actions at law for actual damages which shall consist exclusively for remaining sums secured by a mortgage. This waiver of immunity is not intended, or shall it be construed (a) to extend to any claim for punitive or compensatory damages, (b) to waive the _____ Tribe's immunity from suit for any other purpose or with respect to any controversy, claim, or other matter not specifically mentioned in this section, or (c) to extend to the benefit of any person other than the parties to the Documents or their successors or assigns. This limited waiver of immunity from suit shall not be construed as an admission of liability of the _____ Tribe as to any claim for damages or as an agreement or willingness to pay any amount as damages absent a judicial determination of liability, and the _____ Tribe shall have the right to defend any of such claim fully on the merits.

Article II - Mortgaging of Trust or Restricted Land

Section 1. Purpose.

The purpose of this Code is to assist tribal members in obtaining mortgage financing for the purchase of residences and businesses on Trust Lands or Restricted Lands within the jurisdiction of the _____ Tribe, by prescribing procedures relating to recordation and foreclosure in connection with Mortgages given to secure loans made by Mortgagees.

Section 2. Definitions.

a. "Lease" shall mean a ground lease or other agreement for use of Trust Land or Restricted Land on which a Mortgage has or will be given.

b. "Leasehold Estate" shall mean a leasehold estate established pursuant to a

FORECLOSURE CODE OF THE _____ TRIBE

Article I - Jurisdiction/Limited Waiver of Sovereign Immunity/Limitations

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The Tribal Court of the _____ Tribe shall have exclusive jurisdiction over all foreclosure actions arising on all lands located within the exterior boundaries of the _____ Tribe.

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- b. "Leasehold Estate" shall mean a leasehold estate established pursuant to a

Foreclosure Code of the _____ Tribe, Adopted _____, 1999

Lease between the Tribe, as Lessor, and a member of the Tribe, as Tenant.

c. "Lessor" shall mean the Tribe. The Tribe shall be the beneficial or equitable owner of certain Trust Land or Restricted Land underlying a Leasehold Estate on which a Mortgage has been given. The Lessor shall include the successor(s) or assign(s) of such Lessor.

d. "Mortgage" shall mean the first-lien mortgage of a beneficial real property interest in Trust Land or Restricted Land given to secure a mortgage loan made by a Mortgagee.

e. "Mortgagee" shall mean any mortgage lender or any successors or assigns of any such lender. This definition also includes any subsequent holder, whether by assignment, succession or otherwise, of the original Mortgagee's right, title or interest in and to the Mortgage and/or the Mortgaged property, together with the improvements.

f. "Mortgage Foreclosure Proceeding" shall mean a proceeding in the _____ Tribe Tribal Court: (i) to foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagors in Trust Land or Restricted Land on which a mortgage has been made by a Mortgagee; and/or (ii) to assign such interest of the Mortgagor to the Mortgagee or the Mortgagee's successors or assigns.

g. "Mortgagor" shall mean any eligible tribal member or entity borrower who has executed a Mortgage on its beneficial interest in Trust Land or Restricted Land, including any heir(s), successor(s), executor(s), administrator(s) or assign(s) of such borrower.

h. "_____ Tribe" shall refer to the _____ Tribe.

i. "Restricted Land" shall mean land within the jurisdiction of the _____ Tribe that is subject to restrictions against alienation imposed by federal treaty, statute, Executive Order, or the _____ Tribe.

j. "Subordinate Lienholder" shall mean the holder of any lien, including a mortgage, perfected subsequent to the recording of a Mortgage under this Code; provided, however, such definition shall not include the _____ Tribe with respect to a claim for a Tribal tax on the Mortgaged property, where applicable.

k. "Tenant" shall mean any person who occupies Trust land or Restricted Land, as lessee, under a Leasehold Estate with the Lessor.

l. "Tribal Court" shall mean: (i) the _____ Tribe Tribal Court; or (ii) such body as may now or hereafter be authorized by the laws of the _____ Tribe to exercise the powers and functions of a court of law.

m. "Tribal member" shall mean any person recognized as being _____ by the _____ Tribe Tribal Council.

n. "Tribal Realty Officer" shall mean the person designated by the _____ Tribe to perform the recording functions required by this document or any deputy or designee of such person.

o. "Tribe" refers to the _____ Tribe.

p. "Trust Land" shall mean land within the jurisdiction of the _____ Tribe, title to which is held by the United States for the benefit of the Tribe or an individual member of the _____ Tribe.

Section 3. Mortgage of Leasehold Estate.

Any tribal member who is a tenant as defined in this Code may, with approval of the Lessor, mortgage the leasehold estate for the purpose of obtaining home or business financing on said land.

Section 4. Priority.

A Mortgage recorded in accordance with the recording procedures set forth in this Code shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim (except a lien or claim arising from a Tribal tax assessed against property subject to the Mortgage).

Section 5. Recording.

- a. The recording of Mortgages and Leases on Trust Land or Restricted Land shall be at the Bureau of Indian Affairs Area Land Titles and Records Office.
- b. Where a Mortgage requires that a Lease or Mortgage on Trust land or Restricted Land also be recorded in the county recorder's office in the state in which the Mortgaged properties are located, the lease or mortgage shall also be recorded at such county recorder's office.
- c. The Tribal Realty Officer shall maintain in the Tribal Court, or other designated office, a system for the recording of Mortgages and such other documents as the _____ Tribe may designate by law or resolution including, without limitation, any Lease.
- d. The Tribal Realty Officer shall endorse upon any Lease and/or Mortgage or other document received for recording the following:
 - (1) The date and time of receipt of the Lease and/or Mortgage or other document;
 - (2) The filing number, to be assigned by the Tribal Realty Officer, which shall be a unique number for each Lease and/or Mortgage or other document received; and
 - (3) The name of the Tribal Realty Officer receiving the Lease and/or Mortgage or other document.
- e. Upon completion of the above endorsements, the Tribal Realty Officer shall make true and correct copies of the Lease and/or Mortgage or other security instrument and shall certify each copy as follows:

_____ TRIBE) ss.

o. "Tribe" refers to the _____ Tribe.

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- e. Upon completion of the above endorsements, the Tribal Realty Officer shall make true and correct copies of the Lease and/or Mortgage or other security instrument and shall certify each copy as follows:

_____ TRIBE) ss.

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this ____ day of _____.

(SEAL)

Signature

Title

f. The Tribal Realty Officer shall maintain such copies in the records of the recording system and shall return the original Lease and/or Mortgage or other document to the person or entity that presented the same for recording.

g. The Tribal Realty Officer shall also maintain a log of each Lease and/or Mortgage or other document recorded in which there shall be entered the following.

- (1) The name(s) of the Mortgagor(s) of each Mortgage, identified as such;
- (2) The name(s) of the Mortgagee(s) of each Mortgage, identified as such;
- (3) The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents including any Lease;
- (4) The date and time of receipt;
- (5) The filing numbers assigned by the Tribal Realty Officer; and
- (6) The name of the Tribal Realty Officer receiving any Lease, Mortgage or other document.

h. The certified copies of any Leases, Mortgages and other documents and the log maintained by the Tribal Realty Officer shall be made available for public inspection and copying.

Section 6. Pre-Foreclosure Notice.

a. Upon the default of the Mortgagor(s) and at least ten (10) days prior to instituting foreclosure proceedings, the Mortgagee shall notify the _____ Tribe or its Designated Housing Department or Entity in writing of its intention to pursue foreclosure. Such notice must be hand-delivered or sent by certified mail to the Governor of the _____ Tribe or the Executive Director of the _____ Tribe's Designated Housing Department or Entity.

b. Upon such notice, and upon the expiration of any applicable cure period provided Lessee under a mortgage or security instrument, the Lessor or its Designated Housing Department or Entity shall have the right of first refusal to acquire the Leasehold Estate (subject to all valid liens and encumbrances) prior to the commencement of foreclosure proceedings.

c. The right of first refusal shall be exercised within twenty (20) days from receipt of the Lender's written notice.

Section 7. Mortgage Foreclosure Proceedings.

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this _____ day of _____.

(SEAL)

Signature

Title

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- c. The right of first refusal shall be exercised within twenty (20) days from receipt of the Lender's written notice.

Section 7. Mortgage Foreclosure Proceedings.

Upon the default of the Mortgagor(s), and upon expiration of any applicable cure periods under a Mortgage and expiration of the Lessor's first right of refusal in the preceding section, the Mortgagee or its successors and assigns, may commence a Mortgage foreclosure proceeding in the Tribal Court as follows:

(a) By filing a verified complaint:

- (1) Citing authority for jurisdiction of the Tribal Court;
- (2) Naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Mortgage, including each Subordinate Lienholder (except the _____ Tribe with respect to a claim for a Tribal tax on the Mortgaged property), as a defendant;
- (3) Describing the property subject to the Mortgage;
- (4) Stating the facts concerning: (i) the execution of any Lease and/or the Mortgage; (ii) the recording of the Mortgage; and (iii) the alleged default(s) of the Mortgagor(s) and any other facts as may be necessary to constitute a cause of action;
- (5) Having appended as exhibits true and correct copies of each promissory note, Lease, if any, Mortgage, and, if applicable, assignment thereof relating to such Mortgaged property; and
- (6) Including an allegation that all relevant requirements and conditions prescribed in the Mortgage and the Lease, if any, have been complied with by the Mortgagee or its successors or assigns.

(b) By obtaining a summons, issued as in other cases, requiring the Mortgagor(s) and each other person or entity claiming through the Mortgagor as defendants to appear for a trial upon the complaint on a date and time specified in the summons, and filing a copy of such summons with the Tribal Court.

Section 8. Service of Process and Procedures.

The laws of the _____ Tribe governing services of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any Mortgage Foreclosure Proceeding pursuant to this Code.

Section 9. Dismissal of Foreclosure upon Payment by Mortgagor.

- a. The foreclosure proceeding shall be dismissed if the borrower, before judgment, tenders to the Mortgagee or its successors or assigns payment of the total amount required to be tendered, including costs of the filing of a civil action.
- b. Notice of tender. To invoke this section, the Mortgagor must tender payment to the Mortgagee or its successors or assigns and file with the Court a notice of tender, indicating that the Mortgagor is tendering the amount described below.
- c. Amount required to be tendered. The amount tendered shall consist of the following:
 - (i) Arrearage. The arrearage amount shall be the sum of the monthly payments missed up to and including the date of the tender.

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- (3) Describing the property subject to the Mortgage;
- (4) Stating the facts concerning: (i) the execution of any Lease and/or the Mortgage; (ii) the recording of the Mortgage; and (iii) the alleged default(s) of the Mortgagor(s) and any other facts as may be necessary to constitute a cause of action;
- (5) Having appended as exhibits true and correct copies of each promissory note, Lease, if any, Mortgage, and, if applicable, assignment thereof relating to such Mortgaged property; and
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(b) By obtaining a summons, issued as in other cases, requiring the Mortgagor(s) and each other person or entity claiming through the Mortgagor as defendants to appear for a trial upon the complaint on a date and time specified in the summons, and filing a copy of such summons with the Tribal Court.

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- c. Amount required to be tendered. The amount tendered shall consist of the following:
 - (i) Arrearage. The arrearage amount shall be the sum of the monthly payments missed up to and including the date of the tender.

- (ii) Costs and fees. Reasonable costs and fees, including attorneys fees, determined by the Court, but in no event shall they exceed costs actually incurred.
 - (iii) Acceleration clauses prohibited. Under no circumstances may the amount required to be tendered include any amounts due pursuant to an acceleration clause. This shall not prohibit the Mortgagee from charging late fees.
- d. Disputes regarding cost. Where the Mortgagor and Mortgagee or its successors and assigns are unable to agree on reasonable costs and fees, the Mortgagor shall nonetheless file its notice of tender and tender payment of costs and fees to the Court, indicating that this amount is disputed. The Mortgagee shall file a fee petition with the Court within five (5) business days of the filing of the notice of tender. The Court shall stay the proceedings for no longer than twenty (20) days pending resolution of the dispute.
- e. Dismissal of stay. Where the court's determination of reasonable costs and fees exceeds the amount tendered, the stay shall be lifted if the Mortgagor fails to file a revised notice of tender.

Section 10. Cure of Default by Subordinate Lienholder.

Prior to the entry of a judgment of foreclosure of a Mortgage pursuant to this Ordinance, any Mortgagor or any Subordinate Lienholder may cure the default(s) under the Mortgage. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure such default(s), plus interest on such amounts at the rate stated in the promissory note evidencing the subordinate lien.

Section 11. Power of the Tribal Court.

If the alleged default(s) have not been cured, judgment shall be entered:

- (a) foreclosing the Mortgagor's interest in the Mortgaged property, and each other defendant named in the complaint upon whom proper and timely service has been made, including each Subordinate Lienholder; and
- (b) assigning such Mortgaged property to the Mortgagee or the Mortgagee's successor or assignee and order sale of the residential property, or of a subset of the property that will suffice to satisfy the judgment. The Mortgagee must ensure that the price for which the property is sold is commercially reasonable. If the sales price is greater than the amount of the judgment, then the Mortgagee shall provide the difference to the Mortgagor within ten days of the Mortgagee's receipt of the money.

Section 12. Right of First Refusal During Foreclosure.

a. The _____ Tribe shall have the right of first refusal regarding all property to be sold pursuant to these foreclosure proceedings.

- 1. Notice to the _____ Tribe. Upon commencement of judicial

- (ii) Costs and fees. Reasonable costs and fees, including attorneys fees, determined by the Court, but in no event shall they exceed costs actually incurred.
 - (iii) Acceleration clauses prohibited. Under no circumstances may the amount required to be tendered include any amounts due pursuant to an acceleration clause. This shall not prohibit the Mortgagee from charging late fees.
- d. Disputes regarding cost. Where the Mortgagor and Mortgagee or its successors and assigns are unable to agree on reasonable costs and fees, the Mortgagor shall nonetheless file its notice of tender and tender payment of costs and fees to the Court, indicating that this amount is disputed. The Mortgagee shall file a fee petition with the Court within five (5) business days of the filing of the notice of tender. The Court shall stay the proceedings for no longer than twenty (20) days pending resolution of the dispute.
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Section 10. Cure of Default by Subordinate Lienholder.

Prior to the entry of a judgment of foreclosure of a Mortgage pursuant to this Ordinance, any Mortgagor or any Subordinate Lienholder may cure the default(s) under the Mortgage. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure such default(s), plus interest on such amounts at the rate stated in the promissory note evidencing the subordinate lien.

Section 11. Power of the Tribal Court.

If the alleged default(s) have not been cured, judgment shall be entered:

- (a) foreclosing the Mortgagor's interest in the Mortgaged property, and each other defendant named in the complaint upon whom proper and timely service has been made, including each Subordinate Lienholder; and
- (b) assigning such Mortgaged property to the Mortgagee or the Mortgagee's successor or assignee and order sale of the residential property, or of a subset of the property that will suffice to satisfy the judgment. The Mortgagee must ensure that the price for which the property is sold is commercially reasonable. If the sales price is greater than the amount of the judgment, then the Mortgagee shall provide the difference to the Mortgagor within ten days of the Mortgagee's receipt of the money.

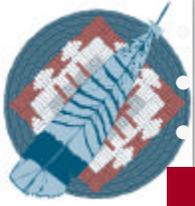
Section 12. Right of First Refusal During Foreclosure.

- a. The _____ Tribe shall have the right of first refusal regarding all property to be sold pursuant to these foreclosure proceedings.
- 1. Notice to the _____ Tribe. Upon commencement of judicial

foreclosure proceedings, the Mortgagee or its successors or assigns shall give written notice by certified mail, of these proceedings to the _____ Tribe.

2. Right to conduct an appraisal. The _____ Tribe may conduct an appraisal of the property during or immediately after the foreclosure process. If the property in question is occupied, the _____ Tribe will make all reasonable efforts to respect the privacy of the homeowner, but the homeowner may not unreasonably interfere with the _____ Tribe's right to conduct the appraisal.
3. Exercising the right to purchase after foreclosure. Upon entry of an order of foreclosure, a copy of the court order shall be served on the Office of the Governor or Housing Department or Entity, or on another agent designated by the _____ Tribe Tribal Council to receive such notice. Within twenty (20) working days of the service of the order, the _____ Tribe may provide written notice to the Mortgagee or its successors or assigns that the _____ Tribe elects to purchase the residential property for the amount of the judgment, or for some other amount agreed upon by the _____ Tribe and the Mortgagee. At the same time the _____ Tribe provides such notice to the Mortgagee, or at some other time agreed upon by the _____ Tribe and the Mortgagee, the _____ Tribe must tender payment. If the amount paid is less than the commercially reasonable price of the house, the _____ Tribe will pay the difference to the Mortgagor. If the _____ Tribe does not exercise its right to purchase the property within twenty days of the date of service of the court order, the _____ Tribe will be deemed to have waived its right of first refusal.

- b. The term "_____ Tribe" as used in this Section shall mean "the _____ Tribe or its Designated Housing Department or Entity".

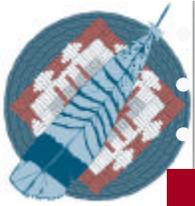


NAHASDA Listening Session

Indian Housing Plan and Annual Performance Report

Shared Visions: Summit I, Sponsored by HUD

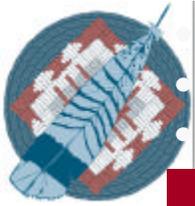




NAHASDA Listening Session

Listening Session Objectives

- Hear Your Concerns
- Gather your Suggestions
- Develop Blueprint for Action



NAHASDA Listening Session

Indian Housing Plan and Annual Performance Report

- Indian Housing Plan
- Model Activities
- Cooperation Agreements
- Annual Performance Report

Shared Visions: Summit I, Sponsored by HUD



Indian Housing Plan

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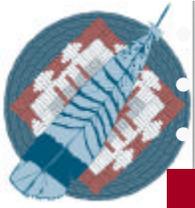
IHP Process

- Define Purpose (Mission)
- Describe Population and Housing
- Determine Housing Needs
- Identify Resources
- Allocate Financial Resource
- Set Goals



IHP Sections

- ❑ Five Year Plan
- ❑ One Year Plan



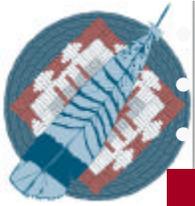
IHP Development

- Negotiated Rulemaking
- Public Comment Periods
- Tribal Consultation For IHP Changes



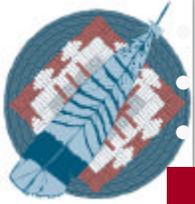
First Year IHP Submissions

- ❑ 367 IHPs “Approved”
- ❑ 546 Tribes Represented in 367 IHPs



1999 IHP Submissions

- Same Format as Last Year
- Five Year Plan Required Only Once Every Five Years
- July 1, 1999 Deadline



Eligible/Model Activities

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Eligible Affordable Housing Activities

- ❑ Section 202 of NAHASDA
 - Indian Housing Assistance
 - Development
 - Housing Services
 - Housing Management Services
 - Crime Prevention and Safety
 - Model Activities



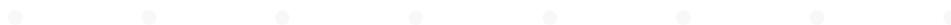
Eligible Activities

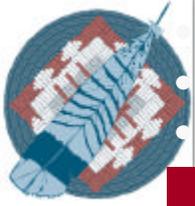
ACTIVITIES

MUST BE LINKED TO AFFORDABLE

HOUSING

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Indian Housing Assistance

Modernization/Operation of 1937 Act Housing

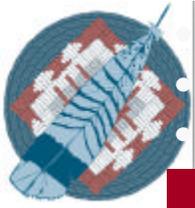
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Development

- Acquisition
- New Construction
- Rehabilitation
- Site Improvement
- Development of Utilities



Development (continued)

- Conversion
- Demolition
- Financing
- Planning and Administration
- Down Payment Assistance



Housing Services

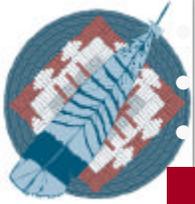
- Housing Related Services for Affordable Housing
- Housing Counseling
- Establishment and Support of Resident Organizations
- Energy Auditing
- Tenant-Based Rental Assistance
- Self Sufficiency Activities

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Housing Management Services

- ❑ Management Services for Affordable Housing
- ❑ Preparation of Work Specifications
- ❑ Loan Processing
- ❑ Inspections
- ❑ Tenant Selections
- ❑ Mgmt. of Affordable Housing Projects

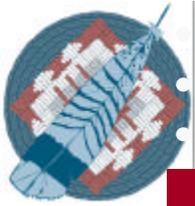


Crime Prevention and Safety

Safety, Security and Law Enforcement
Measures to Protect Residents of
Affordable Housing From Crime

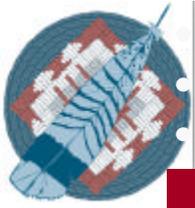
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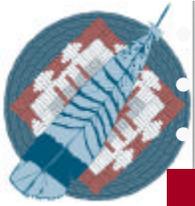
Model Activities

- Housing Activities to Carry Out Purposes of NAHASDA
- Approved by HUD
- 60 Days to Review Activity
- Submit at Any Time
- Must Amend IHP to Include Activity
- Must be for Affordable Housing Activities



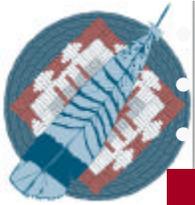
Model Activities

- Housing Office Space
- Warehouse, Maintenance and Storage Space
- Day Care Center for Affordable Housing Participants
- Community Buildings/Centers
- Pro-Ration of Cost



Economic Development

- ❑ Not Considered Eligible Affordable Housing Activity
- ❑ Not Included in Section 202(1) - (6)



Cooperation Agreements

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NAHASDA

NAHASDA as Amended Oct. 21, 1998

Title I, Section 101

(c) Local Cooperation Agreements

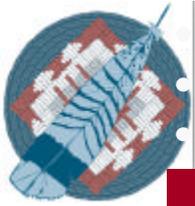
(d) Exemption from Taxation

(e) Effect of Failure to Exempt from Taxation



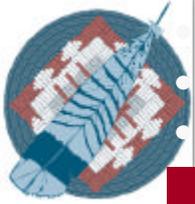
HUD Regulation

- ❑ Subpart C - Indian Housing Plan
 - 24 CFR 1000.240 - When is a cooperation agreement required?
 - 24 CFR 1000.242 - When is exemption from taxation required?



What if ...

- We have existing housing, but no cooperation agreement?
- We want to build or acquire housing, but have no cooperation agreement?
- What if we cannot get an agreement?



Annual Performance Report

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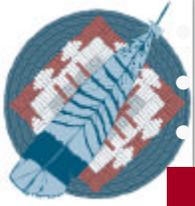
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Shared Visions: Summit I, Sponsored by HUD



Annual Performance Report

- Overview
- Concerns
- Proposed Changes

Department of Housing and Urban Development

Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule

24 CFR PART 1000 -- NATIVE AMERICAN HOUSING ACTIVITIES

Subpart B--Affordable Housing Activities

Sec. 1000.102 What are eligible affordable housing activities?

Eligible affordable housing activities are those described in section 202 of NAHASDA.

Sec. 1000.112 How will HUD determine whether to approve model housing activities?

HUD will review all proposals with the goal of approving the activities and encouraging the flexibility, discretion, and self-determination granted to Indian tribes under NAHASDA to formulate and operate innovative housing programs that meet the intent of NAHASDA.

Sec. 1000.114 How long does HUD have to review and act on a proposal to provide assistance to non low-income Indian families or a model housing activity?

Whether submitted in the IHP or at any other time, HUD will have sixty calendar days after receiving the proposal to notify the recipient in writing that the proposal to provide assistance to non low-income Indian families or for model activities is approved or disapproved. If no decision is made by HUD within sixty calendar days of receiving the proposal, the proposal is deemed to have been approved by HUD.

Sec. 1000.116 What should HUD do before declining a proposal to provide assistance to non low-income Indian families or a model housing activity ?

HUD shall consult with a recipient regarding the recipient's proposal to provide assistance to non low-income Indian families or a model housing activity. To the extent resources are available, HUD shall provide technical assistance to the recipient in amending and modifying the proposal if necessary. In case of a denial, HUD shall give the specific reasons for the denial.

Sec. 1000.118 What recourse does a recipient have if HUD disapproves a proposal to provide assistance to non low-income Indian families or a model housing activity?

- (a) Within thirty calendar days of receiving HUD's denial of a proposal to provide assistance to non low-income Indian families or a model housing activity, the recipient may request reconsideration of the denial in writing. The request shall set forth justification for the reconsideration.
- (b) Within twenty calendar days of receiving the request, HUD shall reconsider the recipient's request and either affirm or reverse its initial decision in writing, setting forth its reasons for the decision. If the decision was made by the Assistant Secretary, the decision will constitute final agency action. If the decision was made at a lower level, then paragraphs (c) and (d) of this section will apply.
- (c) The recipient may appeal any denial of reconsideration by filing an appeal with the Assistant Secretary within twenty calendar days of receiving the denial. The appeal shall set forth the reasons why the recipient does not agree with HUD's decision and set forth justification for the reconsideration.
- (d) Within twenty calendar days of receipt of the appeal, the Assistant Secretary shall review the recipient's appeal and act on the appeal, setting forth the reasons for the decision.

Department of Housing and Urban Development

Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule

24 CFR Part 1000 -- NATIVE AMERICAN HOUSING ACTIVITIES

Subpart C--Indian Housing Plan (IHP)

Sec. 1000.240 When is a local cooperation agreement required for affordable housing activities?

The requirement for a local cooperation agreement applies only to rental and lease-purchase homeownership units assisted with IHBG funds which are owned by the Indian tribe or TDHE.

Sec. 1000.242 When does the requirement for exemption from taxation apply to affordable housing activities?

The requirement for exemption from taxation applies only to rental and lease-purchase homeownership units assisted with IHBG funds which are owned by the Indian tribe or TDHE.

Department of Housing and Urban Development

**Implementation of the Native American Housing Assistance and
Self-Determination Act of 1996; Final Rule**

24 CFR Part 1000 -- NATIVE AMERICAN HOUSING ACTIVITIES

Subpart F--Recipient Monitoring, Oversight and Accountability

Sec. 1000.512 Are performance reports required?

Yes. An annual report shall be submitted by the recipient to HUD and the Indian tribe being served in a format acceptable by HUD. Annual performance reports shall contain:

- (a) The information required by sections 403(b) and 404(b) of NAHASDA;
- (b) Brief information on the following:
 - (1) A comparison of actual accomplishments to the objectives established for the period;
 - (2) The reasons for slippage if established objectives were not met; and
 - (3) Analysis and explanation of cost overruns or high unit costs; and
- (c) Any information regarding the recipient's performance in accordance with HUD's performance measures, as set forth in section Sec. 1000.524.

Sec. 1000.514 When must the annual performance report be submitted?

The annual performance report must be submitted within 60 days of the end of the recipient's program year. If a justified request is submitted by the recipient, the Area ONAP may extend the due date for submission of the performance report.

Sec. 1000.516 What reporting period is covered by the annual performance report?

For the first year of NAHASDA, the period to be covered by the annual performance report will be October 1, 1997 through September 30, 1998. Subsequent reporting periods will coincide with the recipient's program year.

Sec. 1000.518 When must a recipient obtain public comment on its annual performance report?

The recipient must make its report publicly available to tribal members, non-Indians served under NAHASDA, and other citizens in the Indian area, in sufficient time to permit comment before submission of the report to HUD. The recipient determines the manner and times for making the report available.

The recipient shall include a summary of any comments received by the grant beneficiary or recipient from tribal members, non-Indians served under NAHASDA, and other citizens in the Indian area.

Indian Housing Plan

These forms meet the minimum requirements for an Indian Housing Plan (IHP) required by the United States Department of Housing and Urban Development. In addition to these minimum requirements, a tribe/ tribally designated housing entity (TDHE) may elect to prepare a more comprehensive IHP. If a tribe/TDHE elects to prepare a more comprehensive plan, the required elements of this IHP must still be submitted on the prescribed HUD forms.

Indian Housing Plan

Under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4104 et seq.) HUD will provide grants, loan guarantees, and technical assistance to Indian tribes and Alaskan Native villages for the development and operation of low-income housing in Indian areas. Grants will be made to eligible recipients under the Indian Housing Block Grant Program. To be eligible for the grants, respondents must submit an Indian Housing Plan which meets the minimum requirements of the Act, consult with residents, prepare Title VI application/certification, submit performance reports, and maintain records for HUD monitoring and audit review.

Public reporting burden for this collection of information is estimated to average 120 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

HUD will ensure that the information submitted complies with the requirements of the Act, approve/disapprove the IHP, and review and monitor the IHP. Responses to this collection of information are mandatory to obtain a benefit. The information requested does not lend itself to confidentiality.

This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Indian Housing Plan Cover Sheet

Please read the instructions on
back before completing this
cover sheet

1. Name and Address of Tribe (if only one tribe)

2. Name and Address of Tribal Contact Person (if only one tribe)	Telephone Number with Area Code (if only one tribe)
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3. Name and Address of Tribally Designated Housing Entity (TDHE) (if applicable)

4. Name and Address of TDHE Contact Person	Telephone Number with Area Code
--	---------------------------------

5. Type of Submission Original <input type="checkbox"/> Amended <input type="checkbox"/>	6. Federal Fiscal Year	7. Grant Number	8. Estimated Grant Amount	9. Actual Grant Amount
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10. Enter the name and address of the tribe and the name, address, and telephone number of the tribal contact person for each tribe included in this IHP. This information may be reported like this:

Name of Tribe	Address of Tribe	Tribal Contact Person	Address	Phone

11. Title of the Authorized Official submitting the IHP

Signature & Date:

X

For HUD Use Only	Date IHP is received by HUD:	Time IHP is received by HUD:
-------------------------	------------------------------	------------------------------

Indian Housing Plan Cover Sheet Instructions

If the IHP is being submitted by a TDHE for more than one tribe, leave lines 1 and 2 blank and provide this information in line 10.

1. Enter the name and address of the tribe for whom the IHP is prepared.
2. Enter the name, telephone number, and address of the tribal contact person. The tribal contact person is the person who is best able to answer questions regarding the IHP. This information should be provided even if the IHP was prepared by a tribally designated housing entity (TDHE).
3. Complete the necessary information if the IHP is prepared by a TDHE on behalf of a tribe(s).
4. Enter the name, telephone number, and address of the TDHE contact person. The TDHE contact person is the person who is best able to answer questions regarding the IHP.
5. Check to indicate if the IHP is an original submission or an amended submission.
6. Enter the Federal fiscal year for which funding will be made available for the IHP. For example, October 1, 1997 to September 30, 1998 is fiscal year 1998.
7. Enter the HUD-assigned grant number.
8. Enter the estimated grant amount expected to be received for the 1-year plan period.
9. If the actual grant amount is not known at the time the IHP is submitted, leave the actual grant amount line blank.
10. Enter the name of the tribe and the name, telephone number, and address of the tribal contact person for each tribe included in this IHP. The tribal contact person is the person who is best able to answer questions regarding the IHP.
11. The cover sheet must be signed by an authorized official of the tribe or TDHE submitting the plan.

For HUD use only: The date and time the plan is received by HUD will be completed by Area Office of Native American Programs (ONAP) staff.

Indian Housing Plan Table of Contents

This Table of Contents is for use by tribes/TDHEs to identify the location of the required elements of the Indian Housing Plan. For each element listed, enter the page number where the information can be found in the IHP.

		PageNumber
Five Year Plan	Mission Statement	_____
	Goals and Objectives.	_____
	Activities Plan	_____
One Year Plan	Goals and Objectives	_____
	Statement of Needs	_____
	Table 1 - Statement of Needs	_____
	Financial Resources	_____
	Table 2 - Financial Resources	_____
	Table 3 - Housing Profile	_____
	Affordable Housing Resources including a description of:	
	The characteristics of the housing market	_____
	The structure/coordination/cooperation with other entities	_____
	The manner in which housing needs will be addressed	_____
	The manner in which 1937 Act housing will be protected/maintained	_____
	Existing/anticipated homeownership/rental programs	_____
	Existing/anticipated housing rehabilitation programs	_____
	All other existing/anticipated housing assistance	_____
	Housing to be demolished or disposed of	_____
	Coordination with tribal and State welfare agencies	_____
	The manner in which safety and resident involvement will be promoted	_____
	Organizational capacity and key personnel that will carry out IHP activities	_____
	Performance Objectives	_____
	Useful Life	_____
	Model Activities	_____
	Tribal and Indian Preference	_____
Percentage of Planning and Administration	_____	
Minimal Funding	_____	
Method of Payment	_____	
Environmental Review - Expression of Intent (Optional)	_____	
Standard Certification of Compliance	_____	
Tribal Certification	_____	

Five Year Indian Housing Plan

Respond to each of the elements requested in the 5-year plan section of the IHP. In addition to text, information may be presented in the form of charts, tables, maps, etc.

The 5-Year Plan section of the Indian Housing Plan must contain, with respect to the 5-year period beginning with the fiscal year for which the plan is submitted, the following information:

1. **Mission Statement.** A general statement of the mission of the Indian tribe to serve the needs of the low-income families in the jurisdiction of the Indian tribe (as defined in the regulation under Indian Area) during the 5-year period.
2. **Goals and Objectives.** A statement of the goals and objectives of the Indian tribe to enable the tribe to serve the needs identified in the mission statement.
3. **Activities Plan.** An overview of the activities planned during the period including an analysis of the manner in which the activities will enable the tribe to meet its mission, goals, and objectives.

One Year Indian Housing Plan

Respond to each of the elements requested in the 1-year plan section of the IHP. In addition to text, information may be presented in the form of charts, tables, maps, etc. If a particular section does not apply because the tribe/TDHE will not carry out a specified activity, enter NA.

The 1-Year Plan section of the Indian Housing Plan must contain information, relating to the upcoming fiscal year for which assistance is to be made available, including the following:

1. **Goals and Objectives.** A statement of the goals and objectives to be accomplished during the period that are measurable as determined by the tribe/TDHE.
2. **Statement of Needs.** A statement of the housing needs of the low-income Indian families residing in the jurisdiction of the Indian tribe, and outside the jurisdiction where tribal needs require consideration, and the means by which such needs will be addressed during the 1-year period, including a description of:
 - a. the estimated housing needs and the need for assistance for the low-income Indian families in the jurisdiction, and outside the jurisdiction where tribal needs require consideration, including a description of the manner in which the geographical distribution of assistance is consistent with the geographical needs and needs for various categories of housing assistance; and
 - b. the estimated housing needs for all Indian families in the jurisdiction.
3. **Financial Resources.** An operating budget for the recipient including:
 - a. an identification and a description of the financial resources reasonably available to the recipient to carry out the purposes of NAHASDA, including an explanation of the manner in which amounts made available will leverage additional resources; and
 - b. the uses to which such resources will be committed, including eligible and required affordable housing activities under title II of NAHASDA and administrative expenses.
4. **Affordable Housing Resources.** A statement of the affordable housing resources currently available and to be made available during the period, including a description of:
 - a. the significant characteristics of the housing market in the jurisdiction, including the availability of housing from other public sources, private market housing, and the manner in which such characteristics influence the decision of the recipient to use grant amounts to be provided under NAHASDA for rental assistance, production of new units, acquisition of existing units, or rehabilitation of units;
 - b. the structure, coordination, and means of cooperation between the recipient and any other governmental entities in the development, submission, or implementation of housing plans, including a description of the involvement of private, public, and nonprofit organizations and institutions, and the use of loan guarantees under section 184 of the Housing and Community Development Act of 1992, and other housing assistance provided by the Federal Government for Indian tribes, including loans, grants, and mortgage insurance;
 - c. the manner in which the plan will address the needs identified pursuant to the Statement of Needs Section in paragraph 2;
 - d. the manner in which the recipient will protect and maintain the viability of housing owned and operated by the recipient that was developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937;
 - e. any existing and anticipated homeownership programs and rental programs to be carried out during the period, and the requirements and assistance available under such programs;
 - f. any existing and anticipated housing rehabilitation programs necessary to ensure the long-term viability of the housing to be carried out during the period, and the requirements and assistance available under such programs;
 - g. all other existing or anticipated housing assistance provided by the recipient during the period, including transitional housing, homeless housing, college housing, supportive services housing, and the requirements and assistance available under such programs;
 - h. any housing to be demolished or disposed of, a timetable for such demolition or disposition, and any other information required by the Secretary with respect to such demolition or disposition including a financial analysis regarding the proposed demolition/disposition;
 - i. the manner in which the recipient will coordinate with tribal and State welfare agencies to ensure that residents of such housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;
 - j. the requirements established by the recipient to promote the safety of residents of such housing, facilitate the undertaking of crime prevention measures, allow resident input and involvement, including the establishment of resident organizations, and allow for the coordination of crime prevention activities between the recipient and tribal and local law enforcement officials; and
 - k. the entity that will carry out the activities under the plan, including the organizational capacity and key personnel of the entity.
5. **Performance Objectives.** In accordance with 24 CFR 100.504, performance objectives are to be developed by each recipient and included in this 1-year plan. Performance objectives are criteria by which the recipient will monitor and evaluate its performance; provide quantitative measurements by which the recipient will gauge its performance; and determine the impact and benefit the grant beneficiary derives from the accomplishments obtained under the plan. For example, if in the IHP, the recipient indicates it will build new houses, the performance objective may be the completion of the homes within a certain time period and within a certain budgeted amount, and measure the numbers of tribal members and families served.

Table 1 Statement of Needs

Name of Tribe:

Name of TDHE: (if applicable)

Grant Number:

Federal Fiscal Year: Tribal/TDHE Program Year:

Indian Area:

Part I: Tribal Profile for Indian Area	All Indians in the Indian Area	
	All Income Levels column b	Low-Income column c
column a		
1. Total Indian Population		
2. Number of Indian Families		
3. Number of Elderly Indian Families		
4. Number of Near-Elderly Indian Families (optional)		
5. Number of Indian Families Living in Substandard Housing		
6. Number of Indian Families Living in Over-Crowded Conditions		
Part II: Tribal Profile for Indian Area (Optional)	All Income Levels	Low-Income
7.		

Part III: Current Status and Future Needs			
Type of Housing column a	Existing Housing column b	Unmet Needs for All Indian Families column c	Unmet Needs for Low-Income Indian Families column d
8. Rental Housing	a. Number of Units		
	b. Number of Units Needing Rehabilitation		
9. Homeowner Housing	a. Number of Units		
	b. Number of Units Needing Rehabilitation		
10. Supportive Service Housing (# of units)			
11. College Housing (# of units)			
12. Transitional Housing (# of units)			
13. Homeless Housing (# of beds)			

Part IV: Other Current Status and Future Needs (Optional)			
14.			
Data Source:			

Instructions: Table 1: Statement of Needs

Complete the table in accordance with the instructions below.

Table Heading

Enter the name of the tribe for whom the table is prepared and the name of the tribally designated housing entity (TDHE) if the IHP is prepared by a TDHE on behalf of the tribe. Enter the HUD assigned tribal grant number for the Federal fiscal year for which the table is prepared and the Federal fiscal year for which assistance is to be made available. For example, October 1, 1997 to September 30, 1998 is Federal fiscal year 1998. Enter the starting date of the tribal/TDHE designated program year (mm/dd/yyyy).

Describe the Indian area which the data in the table represents. The Indian area is the area within which an Indian tribe operates affordable housing programs or the area in which a TDHE is authorized by one or more Indian Tribes to operate affordable housing programs.

Definitions: The following definitions are to be used when completing Table 1.

Low-income family: A low-income family is a family whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the findings of the Secretary or the agency that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

Family: The term family includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, a single person, as determined by the Indian tribe.

Median income: The definition of median income, with respect to an Indian area, is the greater of the median income for the Indian area, which the Secretary shall determine; or the median income for the United States.

Elderly family: The term elderly family means a family whose head (or his or her spouse), or whose sole member, is an elderly person (at least 62 years of age). Such terms include 2 or more elderly persons living together, and 1 or more such persons living with 1 or more persons determined under the Indian housing plan for the agency to be essential to their care or well-being.

Near-elderly family: The term near-elderly family means a family whose head (or his or her spouse), or whose sole member, is a near-elderly person (at least 55 years of age and less than 62 years of age). Such terms include 2 or more near-elderly persons living together, and 1 or more such persons living with 1 or more persons determined under the Indian housing plan for the agency to be essential to their care or well-being.

The following definitions may be adopted by the tribe/THDE or the tribe/THDE may develop its own definitions.

Substandard housing: Substandard housing is a housing unit that is dilapidated; does not have operable indoor plumbing; does not have a usable flush toilet inside the unit for the exclusive use of a family; does not have a usable bathtub or shower inside the unit for the exclusive use of a family; does not have electricity, or has inadequate or unsafe electrical service; does not have a safe or adequate source of heat; should, but does not, have a kitchen; or has been declared unfit for habitation by an agency or unit of government.

Dilapidated housing: A dilapidated housing unit is a unit that does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or a unit that has one or more critical defects, or a combination of

intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

Overcrowded conditions: Overcrowded means households with more than 1.01 persons per room.

Units needing rehabilitation: Units in need of rehabilitation are units which fail to meet the tribe's/TDHE's housing quality standards (HQS). The tribe's/TDHE's HQS must be at least as stringent as those used for the Section 8 program (see 24 CFR 982.401) unless the Area ONAP approves less stringent standards based on a determination that local conditions make the use of the Section 8 standards infeasible. Any less stringent standards must still, however, provide:

1. that the house is safe, in a physically sound condition with all systems performing their intended design functions;
2. a livable home environment;
3. an energy efficient building and systems which incorporate energy conservation measures;
4. adequate space and privacy for all intended household members.

Supportive service housing: Supportive service housing is housing, including housing units and group quarters, that has a supportive environment and includes a planned supportive service component. A planned supportive service component includes services provided to residents of supportive service housing for the purpose of facilitating the independence of residents. Examples of services include case management, medical or psychological counseling and supervision, child care, transportation, and job training.

College housing: College housing is housing, the primary purpose of which is to provide housing for students who are attending post high school educational facilities.

Transitional housing: Transitional housing is housing, the purpose of which is to facilitate the movement of homeless individuals and families to permanent housing within 24 months.

Homeless housing: Homeless housing is any facility, the primary purpose of which is to provide temporary or transitional shelter for the homeless in general or for specific populations of the homeless.

Part I: Tribal Profile for Indian Area

The information required in Part I relates to Indian persons and families.

Column a: Person and Family Categories: This column lists selected categories for data collection. Line 1 requests information in terms of persons and lines 2-6 requests information in terms of families.

Columns b and c should include all Indians in the Indian area.

Column b: All Income Levels: Enter the requested information for Indians at all income levels including low-income.

Column c: Low-Income: Enter the requested information for low-income Indians. This column is a subset of column b and therefore, the numbers entered in this column should never be greater than those entered in column b.

Line 1: Total Indian Population: Enter the total number of Indian persons.

Line 2: Number of Indian Families: Enter the total number of Indian families.

Line 3: Number of Elderly Indian Families: Enter the total number of elderly Indian families.

Line 4: Number of Near-Elderly Indian Families: Enter the total number of near-elderly Indian families. This information is optional.

Line 5: Number of Indian Families Living in Substandard Housing: Enter the number of Indian families who are currently living in substandard housing.

Line 6: Number of Indian Families Living in Over-Crowded Conditions: Enter the number of Indian families who are currently living in overcrowded housing.

Part II: Tribal Profile for Indian Area (Optional)

Part II is optional and allows tribes/TDHEs to provide information pertaining to any category of persons or families that they believe should be included in Table 1.

Column a: Person and Family Categories: Enter tribal/TDHE selected categories of persons or families. A definition of each category must be included as an attachment to this table.

Columns b and c: The instructions for these columns are the same as Part I except columns a, b, and c can represent Indians and non-Indians as determined by the categories selected.

Line 7: Enter the tribal/TDHE selected categories of persons and/or families. For example, non-Indians to be served under NAHASDA. (use as many lines as necessary numbered 7a, 7b, 7c, etc. An attachment may be used if needed.)

Part III: Current Status and Future Needs

The information required in Part III relates to Indian persons and families.

Column a: Type of Housing: This column lists selected housing categories.

Column b: Existing Housing: Enter the number of existing housing units (or beds in the case of homeless housing) in the Indian area for each housing category described on lines 8-13.

Column c: Unmet Needs for All Indian Families: Enter the number of new housing units (or beds in the case of homeless housing) needed for all Indian families for each housing category described on lines 8-13.

Column d: Unmet Needs for Low-Income Indian Families: Enter the number of new housing units (or beds in the case of homeless housing) needed for low-income Indian families for each housing category described on lines 8-13. This column is a subset of column c. Therefore, the numbers entered in this column should never be greater than those entered in column c.

Line 8a: Rental Housing-Number of Units: Enter the number of rental housing units including units that were developed under the 1937 Housing Act or are privately owned (include tribal housing) that are occupied or vacant. However, do not include supportive service housing, college housing, transitional housing, or homeless housing. These categories of housing are listed on lines 10-13.

Line 8b: Rental Housing-Number of Units Needing Rehabilitation: Enter the number of rental housing units (from those entered in line 8a) that are in need of rehabilitation.

Line 9a: Homeowner Housing-Number of Units: Enter the number of owner occupied housing units (occupied or vacant) including Turnkey III and Mutual Help housing developed under the 1937 Housing Act, and privately owned housing.

Line 9b: Homeowner Housing-Number of Units Needing Rehabilitation: Enter the number of owner housing units (from those entered in line 9a) that are in need of rehabilitation.

Line 10: Supportive Service Housing: Enter the number of supportive service housing units.

Line 11: College Housing: Enter the number of college housing units.

Line 12: Transitional Housing: Enter the number of transitional housing units.

Line 13: Homeless Housing: Enter the number of homeless housing in terms of beds.

Part IV: Other Current Status and Future Needs (Optional)

Part IV is optional and allows tribes/TDHEs to provide information pertaining to any category of housing that they believe should be included in Table 1. Additional information describing local circumstances and concerns may be included when the tribe determines it appropriate to the IHP.

Column a: Types of Housing: Enter tribal/TDHE selected types of housing. For example, elderly housing. A definition of each category must be included as an attachment to this table.

Columns b, c, and d: The instructions for these columns are the same as Part III.

Line 14: Enter the tribal/TDHE selected types of housing as described in column a above (use as many lines as necessary numbered 14a, 14b, 14c, etc. An attachment may be used if needed.)

Data Source: Describe the sources of data for the information contained in the table.

Table 2 Financial Resources

Name of Tribe:

Name of TDHE: (if applicable)

Grant Number:

Federal Fiscal Year:

Tribal/TDHE Program Year:

Type of Submission: Original Amended

Part I: Sources of Funds for NAHASDA Activities

Sources of Funds column a	Planned Amount column b
1. HUD Resources	
a. NAHASDA Block Grant	
b. NAHASDA Program Income	
c. NAHASDA Title VI	
d. Section 184 Loan Guarantee	
e. Indian Community Development Block Grant	
f. Drug Elimination Grants and Drug Technical Assistance	
g. Prior Year Funds	
h. Other	
2. Existing Program Resources	
a. 1937 Housing Act Programs	
b. Other HUD Programs	
3. Other Federal or State Resources	
a. BIA Home Improvement Program	
b. Other	
4. Private Resources	
a. Tribal Contributions for affordable housing	
b. Financial Institution	
c. Other	
5. Other	
6. Total Resources	

Table 2 Financial Resources Continued

Part II: Allocation of Funds for NAHASDA Activities

Activity column a		Budgeted Amount column b	Planned Number of Units column c	Number of Families column d
7. Indian Housing Assistance				
a. Modernization (1937 Housing Act)				
b. Operating (1937 Housing Act)				
8. Development				
a. Rental	1. Construction of new units			
	2. Acquisition			
	3. Rehabilitation			
b. Home-ownership	1. Construction of new units			
	2. Acquisition			
	3. Rehabilitation			
9. Housing Services				
10. Housing Management Services				
11. Crime Prevention and Safety				
12. Model Activities (specify below)				
a.				
13. Planning and Administration				
14. Reserves				
15. Other				
16. Total				

Instructions: Table 2: Financial Resources

The allocation of resources should be consistent with the statement of needs in the IHP including Table 1. Complete the table in accordance with the instructions below.

Table Heading

Name of tribe: Enter the name of the tribe for whom the table is prepared.

TDHE Name (if applicable): Enter the name of the tribally designated housing entity (TDHE) if the IHP is prepared by a TDHE on behalf of the tribe.

Grant Number: Enter the HUD assigned tribal grant number for the Federal fiscal year for which the table is prepared.

Federal Fiscal Year: Enter the Federal fiscal year for which assistance is to be made available. For example, October 1, 1997 to September 30, 1998 is federal fiscal year 1998.

Tribal/TDHE Program Year: Enter the starting date of the tribal/TDHE designated program year (mm/dd/yyyy).

Type of Submission: Enter an "X" if this table is an original submission. Enter an "X" if this table amends a prior submission.

Part I: Sources of Funds for NAHASDA Activities

In part I of Table 2, list only the sources of funds and related dollar amounts that will be used for NAHASDA eligible activities. NAHASDA eligible activities are listed in Part II of this table.

If the exact amount of funds reasonably expected to be made available during the plan period is not known at the time the IHP is prepared, estimate amounts as accurately as possible.

Column a: Sources of Funds: This column lists selected sources of funds that may be used for NAHASDA activities. No data is required to be entered in this column unless a tribe/TDHE elects to include funding sources that are not already listed.

Column b: Planned Amount: Enter the amount of funds that are expected to be received during the period of time covered by the 1-year plan that will be used for NAHASDA eligible activities.

Line 1a: NAHASDA Block Grant: Enter the amount of NAHASDA block grant funds expected to be received during the period covered by 1-year plan.

Line 1b: NAHASDA Program Income: Enter the amount of NAHASDA program income that is expected to be received during the period covered by the 1-year plan. Program income is defined in the final rule.

Line 1c: NAHASDA Title VI: Enter the amount of NAHASDA Title VI funds expected to be received during the period covered by the 1-year plan.

Line 1d: Section 184 Loan Guarantee: Enter the amount of Section 184 Loan Guarantee funds expected to be reserved during the period covered by the 1-year plan.

Line 1e: Indian Community Development Block Grant: Enter the amount of Indian Community Development Block Grant funds expected to be received during the period covered by the 1-year plan which will be used for NAHASDA eligible activities.

Line 1f: Drug Elimination Grants and Drug Technical Assistance: Enter the amount of Drug Elimination Grant and Drug Technical Assistance funds expected to be received during the period covered by the 1-year plan which will be used for NAHASDA eligible activities.

Line 1g: Prior Year Funds: Enter the amount of NAHASDA funds from previous years that have not been programmed in a previous IHP, and are available for use during the period covered by the 1-year plan. No data is required on this line for the first year of NAHASDA.

Line 1h: Other: In column a, enter the name(s) of HUD programs that are not listed above, but for which funds are expected to be received during the period covered by the 1-year plan and are to be used for NAHASDA eligible activities. In column b, enter the amount of funds expected to be received.

Line 2a: 1937 Housing Act Programs: Enter the amount of unobligated funds from the programs listed below. Remaining funds from the programs listed below will be incorporated into the NAHASDA program as of October 1, 1997, and will be governed by NAHASDA rules.

- 1937 Housing Act Programs:
- Comprehensive Improvement Assistance Program
- Comprehensive Grant Program
- Development Programs
- Operating Subsidy and Cash Reserves
- Homebuyer Equity
- Proceeds From Sale

Line 2b: Other HUD Programs: Enter the amount of unobligated funds from the programs listed below.

- HOPE
- HOME
- Youthbuild
- Economic Development Supportive Services
- Family Investment Centers
- Section 8 Rental Assistance/Renewals
- Emergency Shelter Grants

Line 3a: BIA Home Improvement Program: Enter the amount of BIA Home Improvement Program funds expected to be received during the period covered by the 1-year plan which will be used for NAHASDA eligible activities.

Line 3b: Other: In column a, enter the name(s) of other federal or state resources that are not listed above, but for which funds are expected to be received during the period covered by the 1-year plan and are to be used for NAHASDA eligible activities. In column b, enter the amount of funds expected to be received.

Line 4a: Tribal Contributions for affordable housing: Enter the amount of tribal contributions expected to be received during the period covered by the 1-year plan which will be used for NAHASDA eligible activities.

Line 4b: Financial Institution: Enter the amount of funds expected to be received from financial institutions (banks, mortgage companies, credit unions, etc.) during the period covered by the 1-year plan which will be used for NAHASDA eligible activities. Do not include the amount of funds expected to be received under NAHASDA Title VI or Section 184. Funds from these sources will be listed in lines 1c and 1d, respectively.

Line 4c: Other: In column a, enter the name(s) of other private resources that are not listed above, but for which funds are expected to be received during the period covered by the 1-year plan and are to be used for NAHASDA eligible activities. In column b, enter the amount of funds expected to be received.

Line 5: Other: In column a, enter any other funding source that is not listed above, but for which funds are expected to be received during the period covered by the 1-year plan and are to be used for NAHASDA eligible activities. In column b, enter the amount of funds expected to be received.

Line 6: Total Resources: Enter the total amount of all resources by adding lines 1 through 5.

Part II: Allocation of Funds for NAHASDA Activities

Column a: Activity: This column lists the NAHASDA Eligible Activities. If model activities are to be undertaken as part of the 1-year plan, they must be identified on line 12.

Column b: Budgeted Amount: Enter the amount of funds to be budgeted for each NAHASDA activity. This number should include direct program costs, e.g., program materials and contract costs associated with the eligible activity. Staff and overhead costs directly related to carrying out affordable housing activities can be determined to be eligible costs of the affordable housing activity or considered administration or planning (line 13) at the discretion of the recipient.

Column c: Number of Units: Enter the number of units to be completed for each activity which shows a budgeted amount in column b.

Column d: Number of Families: Enter the number of families that will be assisted through each activity which shows a budgeted amount in column b.

Line 7a: Modernization: Enter the requested information for modernization activities for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority. (1937 Housing Act units)

Line 7b: Operating: Enter the requested information for operation activities for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority. (1937 Housing Act units)

Line 8: Development: This line is a heading for lines 8a and 8b.

Line 8.a.1: Rental-Construction of new units: Enter the requested information for the construction of new rental units.

Line 8.a.2: Rental-Acquisition: Enter the requested information for the acquisition of new rental units.

Line 8.a.3: Rental-Rehabilitation: Enter the requested information for the rehabilitation of rental units.

Line 8.b.1: Home Ownership-Construction of new units: Enter the requested information for the construction of new homeownership units.

Line 8.b.2: Home Ownership-Acquisition: Enter the requested information for the acquisition of homeownership units.

Line 8.b.3: Home Ownership-Rehabilitation: Enter the requested information for the rehabilitation of homeownership units.

Line 9: Housing Services: Enter the requested information for housing services. Housing services include the provision of housing-related services for affordable housing, such as housing counseling in connection with rental or homeownership assistance, establishment and support of resident organizations and

resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted pursuant to section 202 of NAHASDA.

Line 10: Housing Management Services: Enter the requested information for housing management services. Housing management services include the provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, maintenance, tenant selection, management of tenant-based rental assistance, and management of affordable housing projects.

Line 11: Crime Prevention and Safety: Enter the requested information for crime prevention and safety activities. Crime prevention and safety activities include the provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime. Costs for crime prevention and safety apply to 1937 Housing Act assisted units as well as other units.

Line 12: Model Activities (specify below): Housing activities under model programs are activities that are designed to carry out the purposes of NAHASDA. Note: Model activities must be approved by the Secretary. Listing a model activity on this table does not constitute Secretarial approval.

Line 12a: Enter the name of the model activity in column a. In columns b, c, and d, enter the requested information for the model activity. (use as many lines as necessary numbered 12a, 12b, 12c, etc.)

Line 13: Planning and Administration: Enter the requested information for planning and administration. Planning and administration are defined in the Final Rule.

Line 14: Reserves: If the tribe/TDHE plans to reserve any of its funds for use in future years, enter the amount in column b.

Line 15: Other: Any other use of funds should be identified here and a description of the activity should be included as an attachment to Table 2.

Line 16: Total: Enter the totals of lines 7 through 15.

Table 3 Housing Profile

Name of Tribe:

Name of TDHE: (if applicable)

Grant Number:

Federal Fiscal Year:

Tribal/TDHE Program Year:

Part I: 1937 Housing Act Inventory Under Management

Housing Inventory column a	Number of Units (Subtotal) column b	Number of Units (Total) column c
1. Mutual Help Units Under Management as of September 30		
2. Low Rent Units Under Management as of September 30		
3. Turnkey III Units Under Management as of September 30		
4. Total Beginning 1937 Housing Act Inventory		
5. Units Planned to be Demolished or Disposed of During Plan Period	a. Mutual Help	
	b. Low Rent	
	c. Turnkey III	
	d. Total	()
6. Units Planned to be Conveyed During Plan Period	a. Mutual Help	
	b. Low Rent	
	c. Turnkey III	
	d. Total	()
7. Total Planned Ending 1937 Housing Act Inventory as of Sept. 30		

Part II: 1937 Housing Act Inventory in the Development Pipeline

8. Mutual Help Units in the Pipeline as of September 30		
9. Low Rent Units in the Pipeline as of September 30		
10. Total Units in Pipeline as of September 30		

Part III: Section 8 Vouchers and Certificates

11. Section 8 Vouchers and Certificates as of September 30		
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Part IV: NAHASDA Units

12. Total NAHASDA Units as of September 30		
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Instructions: Table 3: Housing Profile

Complete the table in accordance with the instructions below.

Table Heading

Name of Tribe: Enter the name of the tribe for whom the table is prepared.

Name of TDHE (if applicable): Enter the name of the tribally designated housing entity (TDHE) if the IHP is prepared by a TDHE on behalf of the tribe.

Grant Number: Enter the HUD assigned tribal grant number for the Federal fiscal year for which the table is prepared.

Federal Fiscal Year: Enter the Federal fiscal year for which assistance is to be made available. For example, October 1, 1997 to September 30, 1998 is federal fiscal year 1998.

Tribal/TDHE Program Year: Enter the starting date of the tribal/TDHE designated program year (mm/dd/yyyy).

Column a: Housing Inventory: Column a lists housing inventory including 1937 Housing Act units, Section 8 Vouchers and Certificates, and NAHASDA units.

Column b: Number of Units (Subtotal): Enter the subtotal amount for the number of units as requested.

Column c: Number of Units (Total): Enter the total amount for the numbers of units as requested.

Part I: 1937 Housing Act Inventory Under Management

Line 1: Mutual Help Units Under Management as of September 30: Enter the number of Mutual Help units which are/were owned or operated pursuant to an Annual Contributions Contract (ACC) and under management as of September 30 of the Federal fiscal year preceding the Federal fiscal year that funding will be received for this 1-year plan. For example, October 1, 1997 to September 30, 1998 is Federal fiscal year 1998. If a tribe's 1-year plan will cover the period of time from October 1, 1997 to September 30, 1998, the number of Mutual Help units entered on this line should be the number of units as of September 30, 1997.

Line 2: Low Rent Units Under Management as of September 30: Enter the number of Low Rent units which are/were owned or operated pursuant to an ACC and under management as of September 30 of the Federal fiscal year preceding the Federal fiscal year that funding will be received for this 1-year plan. For example, October 1, 1997 to September 30, 1998 is Federal fiscal year 1998. If a tribe's 1-year plan will cover the period of time from October 1, 1997 to September 30, 1998, the number of Low Rent units entered on this line should be the number of units as of September 30, 1997.

Line 3: Turnkey III Units Under Management as of September 30: Enter the number of Turnkey III units which are/were owned or operated pursuant to an Annual Contributions Contract ACC and under management as of September 30 of the Federal fiscal year preceding the Federal fiscal year that funding will be received for this 1-year plan. For example, October 1, 1997 to September 30, 1998 is Federal fiscal year 1998. If a tribe's 1-year plan will cover the period of time from October 1, 1997 to September 30, 1998, the number of Turnkey III units entered on this line should be the number of units as of September 30, 1997.

Line 4: Total beginning 1937 Housing Act Inventory: Enter the total of lines 1 through 3.

Line 5a: Mutual Help Units Planned to be Demolished or Disposed of During Plan Period: Enter the number of Mutual Help units planned to be demolished or disposed of during the 1-year plan period. Do not include conveyed units.

Line 5b: Low Rent Units Planned to be Demolished or Disposed of During Plan Period: Enter the number of Low Rent units planned to be demolished or disposed of during the 1-year plan period. Do not include conveyed units.

Line 5c: Turnkey III Units Planned to be Demolished or Disposed of During Plan Period: Enter the number of Turnkey III units planned to be demolished or disposed of during the 1-year plan period. Do not include conveyed units.

Line 5d: Total: Enter the total of lines 5a through 5c.

Line 6a: Mutual Help Units Planned to be Conveyed During Plan Period: Enter the number of Mutual Help units planned to be conveyed to homebuyers during the 1-year plan period.

Line 6b: Low Rent Units Planned to be Conveyed During Plan Period: Enter the number of Low Rent units planned to be conveyed to tenants during the 1-year plan period.

Line 6c: Turnkey III Units Planned to be Conveyed During Plan Period: Enter the number of Turnkey III units planned to be conveyed to homebuyers during the 1-year plan period.

Line 6d: Total: Enter the total of lines 6a through 6c.

Line 7: Total Planned Ending 1937 Housing Act Inventory as of September 30: Enter the total of line 4 minus lines 5d and 6d. This is the estimated total assisted housing stock which is owned or operated pursuant to an ACC and under management by a tribe/TDHE at the end of the Federal fiscal year for which funding will be received for this 1-year plan.

Part II: 1937 Housing Act Inventory in the Development Pipeline

Line 8: Mutual Help Units in the Pipeline as of September 30: Enter the number of Mutual Help units which are in the development pipeline (planned or under construction) as of September 30 of the Federal fiscal year preceding the Federal fiscal year that funding will be received for this 1-year plan. For example, October 1, 1997 to September 30, 1998 is Federal fiscal year 1998. If a tribe's 1-year plan will cover the period of time from October 1, 1997 to September 30, 1998, the number of Mutual Help units entered on this line should be the number of units as of September 30, 1997.

Line 9: Low Rent Units in the Pipeline as of September 30: Enter the number of Low Rent units which are in the development pipeline (planned or under construction) as of September 30 of the Federal fiscal year preceding the Federal fiscal year that funding will be received for this 1-year plan. For example, October 1, 1997 to September 30, 1998 is Federal fiscal year 1998. If a tribe's 1-year plan will cover the period of time from October 1, 1997 to September 30, 1998, the number of Low Rent units entered on this line should be the number of units as of September 30, 1997.

Line 10: Total Units in Pipeline as of September 30: Enter the total of lines 8 and 9.

Part III: Section 8 Vouchers and Certificates

Line 11: Section 8 Vouchers and Certificates as of October 1: Enter the total number of Section 8 Vouchers and Certificates approved for the tribe/TDHE as of September 30 of the Federal fiscal year preceding the Federal fiscal year that funding will be received for this 1-year plan. For example, October 1, 1997 to September 30, 1998 is Federal fiscal year 1998. If a tribe's 1-year plan will cover the period of time from October 1, 1997 to September 30, 1998, the number of Section 8 Vouchers and Certificates entered on this line should be the number of units as of September 30, 1997.

Part IV: NAHASDA Units

Line 12: Total NAHASDA Units as of October 1: Enter the total number of units that have been completed (are occupied or are ready for occupancy) with NAHASDA funds as of September 30 of the Federal fiscal year preceding the Federal fiscal year that funding will be received for this 1-year plan. For example, October 1, 1997 to September 30, 1998 is Federal fiscal year 1998. If a tribe's 1-year plan will cover the period of time from October 1, 1997 to September 30, 1998, the number of NAHASDA units entered on this line should be the number of units as of September 30, 1997. No data is required on this line for the first year of NAHASDA.

Other Submissions:

Recipients of NAHASDA funds are required to prepare and submit the following information:

1. **Useful Life:** Sections 205(a)(2) and 209 of NAHASDA requires that housing remain affordable. Each recipient will determine the “useful life” period for its units. The useful life of each assisted housing unit in each development must be described. This information may be described here or in the affordable housing resources section of the 1-year plan.
2. **Model Housing Activities:** Recipients are required to submit proposals to operate model housing activities or other housing programs as defined in NAHASDA sections 201(b)(2) and 202(6) for non low-income families. Assistance to non low-income Indian families must be in accordance with the Final Rule. If a model housing activity is to be undertaken during the 1-year plan period, proposals may be included here, in the affordable housing resources section of the 1-year plan, as an amendment to the IHP, or by special request to HUD at any time. All proposals must be approved by the Secretary prior to beginning any model housing activity.
3. **Tribal and other Indian Preference:** Section 201(b)(4) of NAHASDA allows preference for tribal members and other Indian families. If preference will be given to tribal members or other Indian families, the preference policy must be described. This information may be provided here or in the affordable housing resources section of the 1-year plan.
4. **Planning and Administration:** In accordance with the Final Rule, state the percentage of annual grant funds which will be used for planning and administrative purposes. If the amount is over 20 percent of the annual grant amount, HUD approval is required.
5. **Minimal Funding:** As stated in the Final Rule, the first year of NAHASDA participation, a tribe whose allocation is less than \$50,000 under the need component of the formula shall have its need component of the grant adjusted to \$50,000. Certify here that there is a need for funding.
6. **Method of Payment:** In accordance with the Final Rule, state the method of payment the tribe/THDE will use to request its grant funds.

Native American Housing Assistance and Self-Determination Act

Environmental Review - Expression of Intent

To facilitate the completion of environmental review responsibilities under the Indian Housing Block Grant program, this Expression of Intent will provide HUD with information needed to assist the tribe in completion of these activities and to schedule resources needed to complete environmental review responsibilities. Environmental reviews are completed for individual activities included in the Indian Housing Plan. The tribe can choose to complete the environmental review for some or all activities and can decide at a later date to change its decision.

- The tribe plans to assume the status of a Federal official under the National Environmental Policy Act of 1969 and the other provisions of law listed in 24 CFR 58.5 insofar as the provisions of the Act and such other provisions of law apply to the Indian tribe's proposed program pursuant to 24 CFR part 58.
- The tribe plans to request HUD to fulfill environmental review responsibilities stated above pursuant to 24 CFR part 50.
- The tribe plans to work with HUD and provide information and studies to HUD to allow HUD to fulfill environmental review responsibilities stated above pursuant to 24 CFR part 50.
- The tribe plans to assume the responsibilities stated above except for the following listed activities for which it will request HUD to fulfill the environmental review responsibilities.

Native American Housing Assistance and
Self-Determination Act
Indian Housing Plan
Standard Certification of Compliance

This certification is for use with the Indian Housing Plan (IHP). If the IHP is prepared and submitted by a Tribally Designated Housing Entity on behalf of a tribe, it must be accompanied by a tribal certification from the recognized tribal government covered under the IHP.

In accordance with the applicable statutes, the recipient certifies that:

(A) it will comply with title II of the Civil Rights Act of 1968 in carrying out this Act, to the extent that such title is applicable, and other applicable Federal statutes;

The following certifications will only apply where applicable based on program activities

- (B) it will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under the Native American Housing and Self-Determination Act of 1996 (the Act), in compliance with such requirements as may be established by the Secretary;
- (C) policies are in effect and are available for review by the Secretary and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under the Act;
- (D) policies are in effect and are available for review by the Secretary and the public governing rents charged, including the methods by which such rents or homebuyer payments are determined, for housing assisted with grant amounts provided under the Act; and
- (E) policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under the Act.

Signature of Authorized Official

Date

X

Title

Native American Housing Assistance and Self-Determination Act

Indian Housing Plan Tribal Certification

This certification is for use with the Indian Housing Plan (IHP) when a Tribally Designated Housing Entity (TDHE) prepares the IHP on behalf of an Indian tribe. This certification must be executed by the recognized tribal government covered under the IHP.

The recognized tribal government of the grant beneficiary certifies that:

- (1) it had an opportunity to review the IHP and has authorized the submission of the IHP by the housing entity; or
- (2) it has delegated to such TDHE the authority to submit an IHP and amendments to the IHP on behalf of the tribe without prior review by the tribe.

Signature of Authorized Official

Date

X

Title

**Native American Housing Assistance and Self-Determination Act of 1996,
as amended October 21, 1998
P.L. 104-330 (25 U.S.C. 4101 - 4212)**

TITLE I--BLOCK GRANTS AND GRANT REQUIREMENTS

Sec. 101. BLOCK GRANTS.

- (c) LOCAL COOPERATION AGREEMENT - Notwithstanding any other provision of this Act, grant amounts provided under this Act on behalf of an Indian tribe may not be used for rental or lease-purchase homeownership units that are owned by the recipient for the tribe unless the governing body of the locality within which the property subject to the development activities to be assisted with the grant amounts is or will be situated has entered into an agreement with the recipient for the tribe providing for local cooperation required by the Secretary pursuant to this Act.

- (d) EXEMPTION FROM TAXATION - Notwithstanding any other provision of this Act, grant amounts provided under this Act on behalf of an Indian tribe may not be used for affordable housing activities under this Act for rental or lease-purchase dwelling units developed under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or with amounts provided under this Act that are owned by the recipient for the tribe unless --
 - (1) such dwelling units (which, in the case of units in a multi-unit project, shall be exclusive of any portions of the project not developed under the United States Housing Act of 1937 or with amounts provided under this Act) are exempt from all real and personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision; and

 - (2) the recipient for the tribe makes annual payments of user fees to compensate such governments for the costs of providing governmental services, including police and fire protection, roads, water and sewerage systems, utilities systems and related facilities, or payments in lieu of taxes to such taxing authority, in an amount equal to the greater of \$150 per dwelling unit or 10 percent of the difference between the shelter rent and the utility cost, or such lesser amount as --

- (A) is prescribed by State, tribal, or local law;
- (B) is agreed to by the local governing body in the agreement under subsection (c); or
- (C) the recipient and the local governing body agree that such user fees or payments in lieu of taxes shall not be made.

(e) **EFFECT OF FAILURE TO EXEMPT FROM TAXATION -**
Notwithstanding subsection (d), a grant recipient that does not comply with the requirements under such subsection may receive a block grant under this Act, but only if the tribe, State, city, county, or other political subdivision in which the affordable housing development is located contributes, in the form of cash or tax remission, the amount by which the taxes paid with respect to the development exceed the amounts prescribed in subsection (d)(2).

**Native American Housing Assistance and Self-Determination Act of 1996,
as amended October 21, 1998
P.L. 104-330 (25 U.S.C. 4101 - 4212)**

TITLE II -- AFFORDABLE HOUSING ACTIVITIES

Sec. 202. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES.

Affordable housing activities under this title are activities, in accordance with the requirements of this title, to develop or to support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, through the following activities:

- (1) INDIAN HOUSING ASSISTANCE - The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority.
- (2) DEVELOPMENT - The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities.
- (3) HOUSING SERVICES - The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or homeownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted pursuant to this section.
- (4) HOUSING MANAGEMENT SERVICES - The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and management of affordable housing projects.

- (5) CRIME PREVENTION AND SAFETY ACTIVITIES - The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.
- (6) MODEL ACTIVITIES - Housing activities under model programs that are designed to carry out the purposes of this Act and are specifically approved by the Secretary as appropriate for such purpose.

**Native American Housing Assistance and Self-Determination Act of 1996,
as amended October 21, 1998
P.L. 104-330 (25 U.S.C. 4101 - 4212)**

TITLE IV -- COMPLIANCE, AUDITS, AND REPORTS

Sec. 403. MONITORING OF COMPLIANCE.

- (a) ENFORCEABLE AGREEMENTS - Each recipient, through binding contractual agreements with owners and otherwise, shall ensure long-term compliance with the provisions of this Act. Such measures shall provide for (1) enforcement of the provisions of this Act by the grant beneficiary or by recipients and other intended beneficiaries, and (2) remedies for the breach of such provisions.
- (b) PERIODIC MONITORING - Not less frequently than annually, each recipient shall review the activities conducted and housing assisted under this Act to assess compliance with the requirements of this Act. Such review shall include onsite inspection of housing to determine compliance with applicable requirements. The results of each review shall be included in the performance report of the recipient submitted to the Secretary under section 404 and made available to the public.
- (c) PERFORMANCE MEASURES - The Secretary shall establish such performance measures as may be necessary to assess compliance with the requirements of this Act.

Sec. 404. PERFORMANCE REPORTS.

- (a) REQUIREMENT - For each fiscal year, each recipient shall --
 - (1) review the progress it has made during such fiscal year in carrying out the Indian housing plan (or plans) for the Indian tribes for which it administers grant amounts; and
 - (2) submit a report to the Secretary (in a form acceptable to the Secretary) describing the conclusions of the review.

- (b) CONTENT - Each report under this section for a fiscal year shall --
 - (1) describe the use of grant amounts provided to the recipient for such fiscal year;
 - (2) assess the relationship of such use to the goals identified in the Indian housing plan of the grant beneficiary;
 - (3) indicate the programmatic accomplishments of the recipient; and
 - (4) describe the manner in which the recipient would change its programs as a result of its experiences.
- (c) SUBMISSION - The Secretary shall establish dates for submission of reports under this section, and review such reports and make such recommendations as the Secretary considers appropriate to carry out the purposes of this Act.
- (d) PUBLIC AVAILABILITY - A recipient preparing a report under this section shall make the report publicly available to the citizens in the jurisdiction of the recipient in sufficient time to permit such citizens to comment on such report prior to its submission to the Secretary, and in such manner and at such times as the recipient may determine. The report shall include a summary of any comments received by the grant beneficiary or recipient from citizens in its jurisdiction regarding its program.

Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule

24 CFR PART 1000 -- NATIVE AMERICAN HOUSING ACTIVITIES

Subpart C--Indian Housing Plan (IHP)

Sec. 1000.201 How are funds made available under NAHASDA?

Every fiscal year HUD will make grants under the IHBG program to recipients who have submitted to HUD for that fiscal year an IHP in accordance with Sec. 1000.220 to carry out affordable housing activities.

Sec. 1000.202 Who are eligible recipients?

Eligible recipients are Indian tribes, or TDHEs when authorized by one or more Indian tribes.

Sec. 1000.204 How does an Indian tribe designate itself as recipient of the grant?

- (a) By resolution of the Indian tribe; or
- (b) When such authority has been delegated by an Indian tribe's governing body to a tribal committee(s), by resolution or other written form used by such committee(s) to memorialize the decisions of that body, if applicable.

Sec. 1000.206 How is a TDHE designated?

- (a)(1) By resolution of the Indian tribe or Indian tribes to be served; or
 - (2) When such authority has been delegated by an Indian tribe's governing body to a tribal committee(s), by resolution or other written form used by such committee(s) to memorialize the decisions of that body, if applicable.
- (b) In the absence of a designation by the Indian tribe, the default designation as provided in section 4(21) of NAHASDA shall apply.

Sec. 1000.208 What happens if an Indian tribe had two IHAs as of September 30, 1996?

Indian tribes which had established and were operating two IHAs as of September 30, 1996, under the 1937 Act shall be allowed to form and operate two TDHEs under NAHASDA. Nothing in this section shall affect the allocation of funds otherwise due to an Indian tribe under the formula.

Sec. 1000.210 What happens to existing 1937 Act units in those jurisdictions for which Indian tribes do not or cannot submit an IHP?

NAHASDA does not provide the statutory authority for HUD to grant NAHASDA grant funds to an Indian housing authority, Indian tribe or to a default TDHE which cannot obtain a tribal certification, if the requisite IHP is not submitted by an Indian tribe or is determined to be out of compliance by HUD. There may be circumstances where this may happen, and in those cases, other methods of tribal, Federal, or private market support may have to be sought to maintain and operate those 1937 Act units.

Sec. 1000.212 Is submission of an IHP required?

Yes. An Indian tribe or, with the consent of its Indian tribe(s), the TDHE, must submit an IHP to HUD to receive funding under NAHASDA, except as provided in section 101(b)(2) of NAHASDA. If a TDHE has been designated by more than one Indian tribe, the TDHE can submit a separate IHP for each Indian tribe or it may submit a single IHP based on the requirements of Sec. 1000.220 with the approval of the Indian tribes.

Sec. 1000.214 What is the deadline for submission of an IHP?

IHPs must be initially sent by the recipient to the Area ONAP no later than July 1. Grant funds cannot be provided until the plan is submitted and determined to be in compliance with section 102 of NAHASDA and funds are available.

Sec. 1000.216 What happens if the recipient does not submit the IHP to the Area ONAP by July 1?

If the IHP is not initially sent by July 1, the recipient will not be eligible for IHBG funds for that fiscal year. Any funds not obligated because an IHP was not received before the deadline has passed shall be distributed by formula in the following year.

Sec. 1000.218 Who prepares and submits an IHP?

An Indian tribe, or with the authorization of a Indian tribe, in accordance with section 102(d) of NAHASDA a TDHE may prepare and submit a plan to HUD.

Sec. 1000.220 What are the minimum requirements for the IHP?

The minimum IHP requirements are set forth in sections 102(b) and 102(c) of NAHASDA. In addition, Secs. 1000.56, 1000.108, 1000.120, 1000.134, 1000.142, 1000.238, 1000.328, and 1000.504 require or permit additional items to be set forth in the IHP for HUD determinations required by those sections. Recipients are only required to provide IHPs that contain these minimum elements in a form prescribed by HUD. If a TDHE is submitting a single IHP that covers two or more Indian tribes, the IHP must contain a separate certification in accordance with section 102(d) of NAHASDA and IHP Tables for each Indian tribe when requested by such Indian tribes. However, Indian tribes are encouraged to perform comprehensive housing needs assessments and develop comprehensive IHPs and not limit their planning process to only those housing efforts funded by NAHASDA. An IHP should be locally driven.

Sec. 1000.222 Are there separate IHP requirements for small Indian tribes and small TDHEs?

No. HUD requirements for IHPs are reasonable.

Sec. 1000.224 Can any part of the IHP be waived?

Yes. HUD has general authority under section 101(b)(2) of NAHASDA to waive any IHP requirements when an Indian tribe cannot comply with IHP requirements due to circumstances beyond its control. The waiver authority under section 101(b)(2) of NAHASDA provides flexibility to address the needs of every Indian tribe, including small Indian tribes. The waiver may be requested by the Indian tribe or its TDHE (if such authority is delegated by the Indian tribe).

Sec. 1000.226 Can the certification requirements of section 102(c)(5) of NAHASDA be waived by HUD?

Yes. HUD may waive these certification requirements as provided in section 101(b)(2) of NAHASDA.

Sec. 1000.228 If HUD changes its IHP format will Indian tribes be involved?

Yes. HUD will first consult with Indian tribes before making any substantial changes to HUD's IHP format.

Sec. 1000.230 What is the process for HUD review of IHPs and IHP amendments?

HUD will conduct the IHP review in the following manner:

- (a) HUD will conduct a limited review of the IHP to ensure that its contents:
 - (1) Comply with the requirements of section 102 of NAHASDA which outlines the IHP submission requirements;
 - (2) Are consistent with information and data available to HUD;
 - (3) Are not prohibited by or inconsistent with any provision of NAHASDA or other applicable law; and
 - (4) Include the appropriate certifications.
- (b) If the IHP complies with the provisions of paragraphs (a)(1), (a)(2), and (a)(3) of this section, HUD will notify the recipient of IHP compliance within 60 days after receiving the IHP. If HUD fails to notify the recipient, the IHP shall be considered to be in compliance with the requirements of section 102 of NAHASDA and the IHP is approved.
- (c) If the submitted IHP does not comply with the provisions of paragraphs (a)(1), and (a)(3) of this section, HUD will notify the recipient of the determination of non-compliance. HUD will provide this notice no later than 60 days after receiving the IHP. This notice will set forth:
 - (1) The reasons for noncompliance;
 - (2) The modifications necessary for the IHP to meet the submission requirements; and
 - (3) The date by which the revised IHP must be submitted.

- (d) If the recipient does not submit a revised IHP by the date indicated in the notice provided under paragraph (c) of this section, the IHP will be determined by HUD to be in non-compliance unless a waiver is requested and approved under section 101(b)(2) of NAHASDA. If the IHP is determined by HUD to be in non-compliance and no waiver is granted, the recipient may appeal this determination following the appeal process in Sec. 1000.234.
- (e)(1) If the IHP does not contain the certifications identified in paragraph (a)(4) of this section, the recipient will be notified within 60 days of submission of the IHP that the plan is incomplete. The notification will include a date by which the certification must be submitted.
- (2) If the recipient has not complied or cannot comply with the certification requirements due to circumstances beyond the control of the Indian tribe(s), within the timeframe established, the recipient can request a waiver in accordance with section 101(b)(2) of NAHASDA. If the waiver is approved, the recipient is eligible to receive its grant in accordance with any conditions of the waiver.

Sec. 1000.232 Can an Indian tribe or TDHE amend its IHP?

Yes. Section 103(c) of NAHASDA specifically provides that a recipient may submit modifications or revisions of its IHP to HUD. Unless the initial IHP certification provided by an Indian tribe allowed for the submission of IHP amendments without further tribal certifications, a tribal certification must accompany submission of IHP amendments by a TDHE to HUD. HUD's review of an amendment and determination of compliance will be limited to modifications of an IHP which adds new activities or involve a decrease in the amount of funds provided to protect and maintain the viability of housing assisted under the 1937 Act. HUD will consider these modifications to the IHP in accordance with Sec. 1000.230. HUD will act on amended IHPs within 30 days.

Sec. 1000.234 Can HUD's determination regarding the non-compliance of an IHP or a modification to an IHP be appealed?

- (a) Yes. Within 30 days of receiving HUD's disapproval of an IHP or of a modification to an IHP, the recipient may submit a written request for reconsideration of the determination. The request shall include the justification for the reconsideration.
- (b) Within 21 days of receiving the request, HUD shall reconsider its initial determination and provide the recipient with written notice of its decision to affirm, modify, or reverse its initial determination. This notice will also contain the reasons for HUD's decision.

- (c) The recipient may appeal any denial of reconsideration by filing an appeal with the Assistant Secretary within 21 days of receiving the denial. The appeal shall set forth the reasons why the recipient does not agree with HUD's decision and include justification for the reconsideration.
- (d) Within 21 days of receipt of the appeal, the Assistant Secretary shall review the recipient's appeal and act on the appeal. The Assistant Secretary will provide written notice to the recipient setting forth the reasons for the decision. The Assistant Secretary's decision constitutes final agency action.

Sec. 1000.236 What are eligible administrative and planning expenses?

- (a) Eligible administrative and planning expenses of the IHBG program include, but are not limited to:
 - (1) Costs of overall program and/or administrative management;
 - (2) Coordination monitoring and evaluation;
 - (3) Preparation of the IHP including data collection and transition costs;
 - (4) Preparation of the annual performance report; and
 - (5) Challenge to and collection of data for purposes of challenging the formula.
- (b) Staff and overhead costs directly related to carrying out affordable housing activities can be determined to be eligible costs of the affordable housing activity or considered administration or planning at the discretion of the recipient.

Sec. 1000.238 What percentage of the IHBG funds can be used for administrative and planning expenses?

The recipient can use up to 20 percent of its annual grant amount for administration and planning. The recipient shall identify the percentage of grant funds which will be used in the IHP. HUD approval is required if a higher percentage is requested by the recipient. When HUD approval is required, HUD must take into consideration any cost of preparing the IHP, challenges to and collection of data, the recipient's grant amount, approved cost allocation plans, and any other relevant information with special consideration given to the circumstances of recipients receiving minimal funding.

Sec. 1000.240 When is a local cooperation agreement required for affordable housing activities?

The requirement for a local cooperation agreement applies only to rental and lease-purchase homeownership units assisted with IHBG funds which are owned by the Indian tribe or TDHE.

Sec. 1000.242 When does the requirement for exemption from taxation apply to affordable housing activities?

The requirement for exemption from taxation applies only to rental and lease-purchase homeownership units assisted with IHBG funds which are owned by the Indian tribe or TDHE.



NAHASDA Listening Session

Financial Issues

Shared Visions: Summit I, Sponsored by HUD

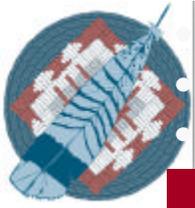




NAHASDA Listening Session

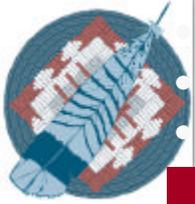
Listening Session Objectives

- Hear Your Concerns
- Gather your Suggestions
- Develop Blueprint for Action



NAHASDA Listening Session

- Financial Issues
 - LOCCS
 - Program Income
 - Investments



LOCCS & IHBG

Jennifer Bullough

Headquarters ONAP

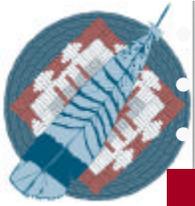
451 7th St., S.W., Room 4128

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LOCCS & IHBG

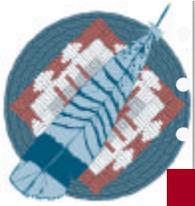
PIH Notice 98-36 (ONAP)

Issued June 26, 1998 - Line of Credit
Control System/Voice Response System
(LOCCS/VRS) for the Indian Housing
Block Grant Program



LOCCS & IHBG

- Budget Line Items
 - 1600 - Current Assisted Stock (CAS)
Operating Subsidy
 - ✓ component of the formula
 - ✓ use for operating subsidy drawdowns
or any other eligible activity

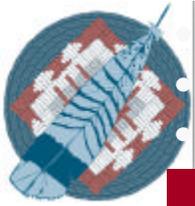


LOCCS & IHBG

□ Budget Line Items

● 1601 - Investments

- ✓ amount is calculated at half of the formula amount minus CAS Operating Subsidy
- ✓ amount on BLI may be decreased at the grant recipient's request
- ✓ draws will be tracked to verify 2 year investment limitation, see 24 CFR 1000.58



LOCCS & IHBG

□ Budget Line Items

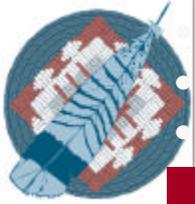
● 1602 - IHBG Balance

- ✓ calculated as the balance of grant (annual grant amount minus CAS Operating Subsidy and Investments)
- ✓ use for any eligible activity



LOCCS & IHBG

- ❑ Issues,
- ❑ Problems, or
- ❑ Comments?



Program Income

Jackie Kruszek

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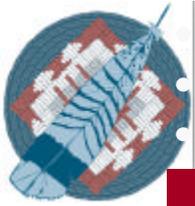
Applicable Regulations

- ❑ 24 CFR 1000.62
 - Defines what IS program income
 - Defines what is NOT program income
 - Regulates retention of program income
- ❑ 24 CFR 1000.26(5) references 85.21
 - Regulates disbursement



Program Income Workgroup

- ❑ Preamble Calls for Joint Workgroup
 - Consisting of HUD & Tribal Rep
 - To Develop Accounting Procedures
- ❑ Workgroup Formed & Meeting



What **IS** Program Income?

- ❑ **Net** Income from grant acquired items
- ❑ Includes:
 - Fees from real or rental property
 - Sale of items
 - Principal and interest earned



What is **NOT** Program Income?

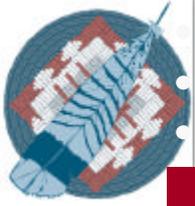
- ❑ **Net** income from 1937 Act units unless:
 - Units are assisted with grant amounts
 - And income attributable to such assistance
- ❑ Program Income < \$25,000 annually
- ❑ Income generated from other funds



Retention & Disbursement

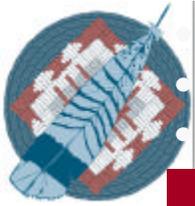
- ❑ Retaining Program Income
 - Must use for affordable housing activity
 - Must use in accordance with Sect 202

- ❑ Disbursing Program Income
 - 24 CFR 85.21 (f)(2)
 - Disbursement Prior Additional Grant Funds



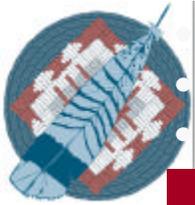
Investments

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Investment of IHBG Funds

- ❑ 24 CFR 1000.58, Are there Limitations on the Investment of IHBG Funds?
- ❑ Notice PIH 99-4 (TDHEs), Administrative Requirements for Investing IHBG Funds



24 CFR 1000.58

- ❑ To Invest Funds, Recipient Must Demonstrate:
 - No Unresolved Significant and Material Audit Findings from Most Recent Single Audit Act; AND
 - Be a Self-Governance Indian tribe
- OR



CFR 24.1000.58 (continued)

- No Unresolved Significant and Material Audit Findings from most Recent Single Audit Act; AND
- Have the Administrative Capacity and Controls to Responsibly Manage the Investment



How Much Can Be Invested?



Shared Visions: Summit I, Sponsored by HUD





How Much Can Be Invested?

Annual Formula Amount **Minus**
the Formula Grant Amount Allocated for
the Operating Subsidy Element of
the Formula Current Assisted Stock

Multiplied by:

50 % in FY 1998 and 1999

75 % in FY 2000

100 % in FY 2001 and thereafter



How Much Can Be Invested?

Example for 1998 or 1999 Grant

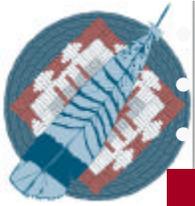
Annual Formula Amount \$1,000,000

Minus

Operating Subsidy \$200,000
\$800,000

Multiplied by 50% 0.50

Equals \$400,000

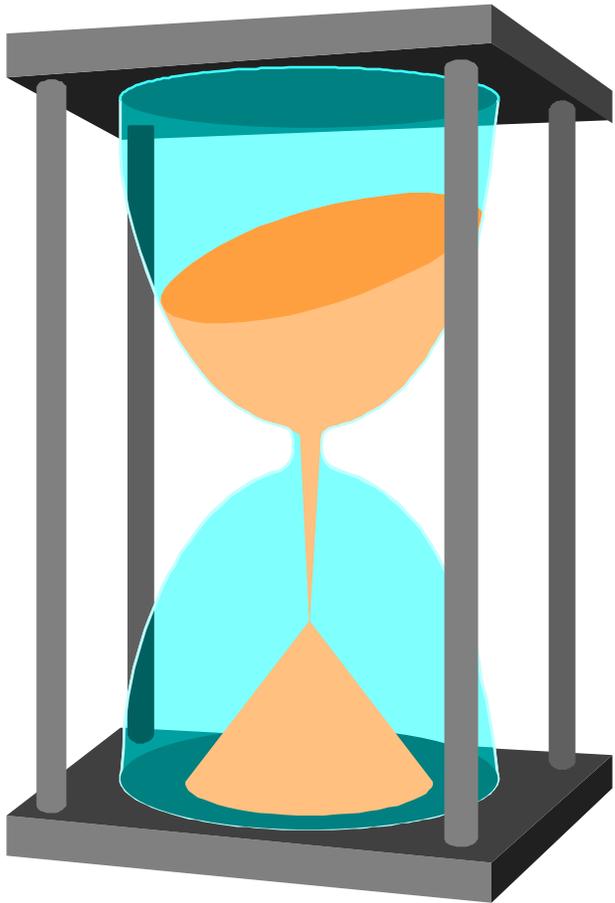


Length of Investment

Investment Can Be For a Period of
No Longer Than Two Years



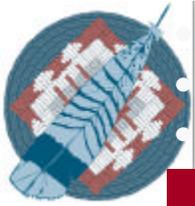
Length of Investment



Investment
can
be for a period
of no longer
than two years

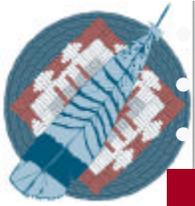
Shared Visions: Summit I, Sponsored by HUD





PIH Notice 99-4

- ❑ PIH Notice 99-4, Administrative Requirements For Investing Indian Housing Block Grants
 - Issued February 3, 1999
 - Provides Recipients With Information On How To Demonstrate Capacity



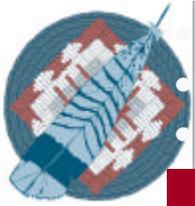
Audit Findings

- ❑ No Unresolved Significant and Material Audit Findings
 - Recipient must Submit Most Recent Audit;
 - Evidence that Cognizant Agency Reviewed and Accepted the Audit;
 - Status of Findings; and
 - Audit must be current



Self-Governance Tribes

- ❑ Certification from Tribe or Copy of the Designation from the BIA or HIS
- ❑ Tribe must be Recipient



Administrative Capacity & Controls

- ❑ Financial Management System must Comply with 85.20
- ❑ Recipient must Submit:
 - Copy of Internal Control Policy
 - Copy of Investment Policy
 - Certification that there are no HUD Audit or Review Findings

Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule

Subpart A -- General

Sec. 1000.58 Are there limitations on the investment of IHBG funds?

- (a) A recipient may invest IHBG funds for the purposes of carrying out affordable housing activities in investment securities and other obligations as provided in this section.
- (b) The recipient may invest IHBG funds so long as it demonstrates to HUD:
 - (1) That there are no unresolved significant and material audit findings or exceptions in the most recent annual audit completed under the Single Audit Act or in an independent financial audit prepared in accordance with generally accepted auditing principles; and
 - (2) That it is a self-governance Indian tribe or that it has the administrative capacity and controls to responsibly manage the investment. For purposes of this section, a self-governance Indian tribe is an Indian tribe that participates in tribal self-governance as authorized under Public Law 93-638, as amended (25 U.S.C. 450 et seq.).
- (c) Recipients shall invest IHBG funds only in:
 - (1) Obligations of the United States; obligations issued by Government sponsored agencies; securities that are guaranteed or insured by the United States; mutual (or other) funds registered with the Securities and Exchange Commission and which invest only in obligations of the United States or securities that are guaranteed or insured by the United States; or
 - (2) Accounts that are insured by an agency or instrumentality of the United States or fully collateralized to ensure protection of the funds, even in the event of bank failure.
- (d) IHBG funds shall be held in one or more accounts separate from other funds of the recipient. Each of these accounts shall be subject to an agreement in a form prescribed by HUD sufficient to implement the regulations in this part and permit HUD to exercise its rights under Sec.1000.60.
- (e) Expenditure of funds for affordable housing activities under section 204(a) of NAHASDA shall not be considered investment.

- (f) A recipient may invest its IHBG annual grant in an amount equal to the annual formula grant amount less any formula grant amounts allocated for the operating subsidy element of the Formula Current Assisted Housing Stock (FCAS) component of the formula (see Secs.1000.316(a) and 1000.320) multiplied by the following percentages, as appropriate:
- (1) 50% in Fiscal Years 1998 and 1999;
 - (2) 75% in Fiscal Year 2000; and
 - (3) 100% in Fiscal Years 2001 and thereafter.
- (g) Investments under this section may be for a period no longer than two years.

Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule

III. Discussion of Public Comments on the July 2, 1997 Proposed Rule.

Subpart A – General

Section 1000.62. NAHASDA grant amounts will often generate interest funds from investment and program funds from tribal housing activities. The question of whether recipients could keep interest funds was a nonconsensus issue in the proposed rule. Many commenters and tribal committee members strongly supported the right of the recipients to keep all interest income earned on grant amounts. The Committee agrees and has drafted a new § 1000.62 to the final rule.

Tribal representatives and HUD agree that § 1000.62 provides that all program income must be used for affordable housing activities, but Indian tribes argue that program income is not subject to the requirements applicable to NAHASDA grant amounts. HUD disagrees, and interprets § 1000.62 to mean that the use of program income is subject to the same requirements as grant amounts and intends to implement § 1000.62 accordingly. This would have the effect of requiring program income to be subject to other statutory requirements such as environmental review requirements and maximum rent requirements applicable to grant amounts.

The Committee recognizes the importance of the need for developing guidance for accounting for program income grant amounts generated by the combined use of NAHASDA grant amounts and other funds. This guidance will be jointly developed by HUD and tribal representatives appointed by the Committee co-chairs. Every attempt will be made to develop and issue this guidance as expeditiously as possible.

PART 1000--NATIVE AMERICAN HOUSING ACTIVITIES

Subpart A--General

Sec. 1000.26 What are the administrative requirements under NAHASDA?

(a) Except as addressed in Sec. 1000.28, recipients shall comply with the requirements and standards of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments," and with the following sections of 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." For purposes of this part, "grantee" as defined in 24 CFR part 85 has the same meaning as "recipient."

(1) Section 85.3, "Definitions."

- (2) Section 85.6, "Exceptions."
- (3) Section 85.12, "Special grant or subgrant conditions for 'high risk' grantees."
- (4) Section 85.20, "Standards for financial management systems," except paragraph (a).
- (5) Section 85.21, "Payment."
- (6) Section 85.22, "Allowable costs."
- (7) Section 85.26, "Non-federal audits."
- (8) Section 85.32, "Equipment," except in all cases in which the equipment is sold, the proceeds shall be program income.
- (9) Section 85.33, "Supplies."
- (10) Section 85.35, "Subawards to debarred and suspended parties."
- (11) Section 85.36, "Procurement," except paragraph (a). There may be circumstances under which the bonding requirements of Sec. 85.36(h) are inconsistent with other responsibilities and obligations of the recipient. In such circumstances, acceptable methods to provide performance and payment assurance may include:
 - (i) Deposit with the recipient of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;
 - (ii) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk; or
 - (iii) Letter of credit for 10 percent of the total contract price unconditionally payable upon demand of the recipient subject to reduction during any warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.
- (12) Section 85.37, "Subgrants."
- (13) Section 85.40, "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f).
- (14) Section 85.41, "Financial reporting," except paragraphs (a), (b), and (e).

(15) Section 85.44, ``Termination for convenience."

(16) Section 85.51 ``Later disallowances and adjustments."

(17) Section 85.52, ``Collection of amounts due."

(b)(1) With respect to the applicability of cost principles, all items of cost listed in Attachment B of OMB Circular A-87 which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in Attachment A of this circular and are otherwise eligible under this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without specific approval of HUD or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties are unallowable costs to the IHBG program.

(2) In addition, no person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with IHBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

Sec. 1000.62 What is considered program income and what restrictions are there on its use?

(a) Program income is defined as any income that is realized from the disbursement of grant amounts. Program income does not include any amounts generated from the operation of 1937 Act units unless the units are assisted with grant amounts and the income is attributable to such assistance. Program income includes income from fees for services performed from the use of real or rental of real or personal property acquired with grant funds, from the sale of commodities or items developed, acquired, etc. with grant funds, and from payments of principal and interest earned on grant funds prior to disbursement.

(b) Any program income can be retained by a recipient provided it is used for affordable housing activities in accordance with section 202 of NAHASDA. If the amount of income received in a single year by a recipient and all its subrecipients, which would otherwise be considered program income, does not exceed \$25,000, such funds may be retained but will not be considered to be or treated as program income.

(c) If program income is realized from an eligible activity funded with both grant funds as well as other funds (i.e., funds that are not grant funds), then the amount of

program income realized will be based on a percentage calculation that represents the proportional share of funds provided for the activity generating the program income.

- (d) Costs incident to the generation of program income shall be deducted from gross income to determine program income.

**24 CFR Part 85: ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND
COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY
RECOGNIZED INDIAN TRIBAL GOVERNMENTS**

Subpart C--Post-Award Requirements

Financial Administration

Sec. 85.21 Payment.

- (f) Effect of program income, refunds, and audit recoveries on payment.
 - (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.
 - (2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.



U.S. Department of Housing and Urban Development
Public and Indian Housing

Special Attention of:

Notice: PIH 98-36 (ONAP)

ONAP Administrators;
Tribes; and Tribally
Designated Housing
Entities

Issued: June 26, 1998
Expires: June 30, 1999

Cross Reference: 24 CFR Part 1000

Subject: Line of Credit Control System/Voice Response
System (LOCCS/VRS) for the Indian Housing Block
Grant Program

- 1. Purpose:** This Notice provides specific guidance on the use of the Line of Credit Control System (LOCCS) and the Voice Response System (VRS) for the Indian Housing Block Grant (IHBG) program. The Notice includes guidance for both the grant recipient and staff from the Office of Native American Programs (ONAP).
- 2. Background:** The IHBG program is authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) and the regulations governing the program that are found at 24 CFR Part 1000. These regulations became effective on April 13, 1998, and fiscal year (FY) 1998 is the initial year for the IHBG program. This Notice provides program specific guidance for the IHBG program area created in LOCCS. More general, or non-program specific guidance is still provided by the LOCCS User Guide.
- 3. Overview:** LOCCS is an automated payment system used by HUD to provide grant recipients with a convenient system of requesting funds. The system allows for timely disbursements and accountability of funds. LOCCS provides ONAP with a method of establishing payment thresholds and reviewing the history of payments to the grant recipient. The grant recipient uses the VRS to requisition grant funds as needed via a touch-tone telephone.

4. **Program Guidance:**

a. **Program Area:** Each program within LOCCS has a three or four-character LOCCS program area identifier code. The LOCCS program area code for the Indian Housing Block Grant program is **IHBG**. Grant recipients will use this code in block 2 of the LOCCS/VRS Indian Housing Block Grant Payment Voucher, form HUD-50080-IHBG (Attachment 1). ONAP staff will use this code at the initial sign-on screen in LOCCS for access to the IHBG program area.

b. **VRS Number:** Each grant established in LOCCS is automatically assigned a unique all-numeric 10-digit number. This number is used by the grant recipient in the VRS to specify which grant is being accessed. The LOCCS VRS number format is **BBBBB-NSSSS**, where:

BBBBB	represents a base number assigned by LOCCS to the recipient.
NN	is a numeric code assigned by LOCCS to the program area. The numeric code for the IHBG program area is 79 .
SSS	is a sequential number beginning with 001 representing the number of grants assigned to the recipient within the program area.

The VRS number is generated by LOCCS after the Area ONAP staff spreads the grant funds to one or more Budget Line Items (BLI). LOCCS automatically generates a letter to the grant recipient notifying them of the assigned VRS number.

c. **Establishing a Grant in LOCCS:** To establish a grant in LOCCS, the Funding Approval/Agreement, form HUD-52734-B, (Attachment 2) must be submitted to the Field Accounting Division (FAD) by the Area ONAP (See NOTE below). The FAD will enter the fund obligation amount from the HUD-52734-B into the Program Accounting System (PAS). LOCCS will automatically retrieve this information from PAS. For a detailed listing of the various actions which must take place before a grant is established in LOCCS, please refer to pages 2-3 and 2-4 of the LOCCS User Guide dated October 1996. NAHASDA Guidances 98-7 (Tribe/TDHE) and

98-3A (ONAP) also provides additional details on the various forms required for an IHBG grant.

If the grant recipient is a tribally designated housing entity (TDHE) and the TDHE submits an Indian Housing Plan (IHP) for each tribe it serves, a HUD-52734-B should be executed for each tribe. If the TDHE submits one IHP for all the tribes it serves, a single HUD-52734-B should be executed with an addendum identifying the tribes and amounts included in the HUD-52734-B. In this case, ONAP will use the representative tribe (in agreement with the representative tribe for the IHP in the Lotus Notes system) to determine the grant number for block 5 of the HUD-52734-B. If the TDHE submits one IHP, but provides separate tables within the IHP for each tribe it serves, the Area ONAP should contact the TDHE to verify whether a single or multiple HUD-52734-B's should be executed.

NOTE: HUD is in the process of reorganizing the Accounting Division. Area ONAPs will be notified when the address to forward accounting documents changes from the FAD to the Fort Worth Accounting Center.

- d. **Budget Line Items:** Disbursements from IHBG grants will be directed against specific funding activities called Budget Line Items (BLIs). The BLIs for IHBG grants are specific to this program and have unique four-digit numbers associated with each BLI as follows:

Line Item #	Line Item Activity
1600	Current Assisted Stock (CAS) Operating Subsidy - In accordance with 24 CFR 1000.58(f), the operating subsidy element of the Formula Current Assisted Housing Stock (FCAS) component of the formula is subtracted from the IHBG annual grant to allow for calculation of the allowable funds for investment. This BLI identifies the amount of operating subsidy from the FCAS for each grant recipient as identified in the formula listing; however, disbursements from this BLI may be

used by the grant recipient for operating subsidy purposes or for any other eligible affordable housing activity.

1601 **Investments** - In accordance with 24 CFR 1000.58(b) and 1000.58(f), a grant recipient that demonstrates to HUD the capacity to invest IHBG funds (A Notice providing guidance on this topic will be issued as soon as possible) may invest a portion of its IHBG annual grant. Because the regulations established a two-year limitation on the term of the investments, this BLI will be used to monitor the timing of investment activity as discussed in item f. below. This BLI is used to record the maximum amount of funds from the grant which may be invested. However, disbursements from this BLI may be used by the grant recipient for investment purposes or for any eligible affordable housing activity.

1602 **IHBG Balance** - This BLI will reflect the balance of the grant funds (annual grant amount minus FCAS Operating Subsidy and Investments). Funds disbursed from this BLI may be used for any eligible affordable housing activity.

9900 **Post Audit Adjustment** - This is a "Protected", "Undisbursable" BLI used to record any funds which might be recaptured when the grant is "Closed Out" in LOCCS. For additional information on "Protected", "Undisbursable" BLIs refer to page 2-8 in the LOCCS User Guide dated October 1996. The "Close Out" of IHBG grants in LOCCS is discussed in item g. below.

While environmental review requirements apply to certain IHBG activities, due to the nature of the IHBG program and the range of activities which can be performed under the IHBG, ONAP will not control the release of funds in LOCCS. It

is the grant recipient's responsibility to ensure that prior to obligating funds and/or requesting funds from LOCCS, all environmental review requirements have been met in accordance with 24 Parts 50 or 58. **Any funds obligated and/or disbursed by a grant recipient prior to the completion of required environmental review activities are ineligible costs and must be repaid by the grant recipient.**

e. **Grant Thresholds and Edits**

- i) **BLI Edits** - The three BLIs specific to the IHBG program (1600, 1601, and 1602) have been established with a "hard" edit which limits the amount of funds a grant recipient may drawdown from that BLI to no more than 100% of the BLI. The VRS will not accept a voucher request that causes the disbursements from that BLI to exceed the amount budgeted. Because of the nature of the IHBG program and its BLIs, once a "hard" edit is reached on either BLI 1600, CAS Operating Subsidy, or BLI 1602, IHBG Balance, the grant recipient may drawdown funds from the other BLI until both BLI 1600 and 1602 are fully disbursed. However, if the "hard" edit is reached on BLI 1601, Investments, the grant recipient may not draw funds from either of the two other BLIs for investment purposes.

Area ONAP staff are responsible for spreading the IHBG funds to the three BLIs in accordance with 24 CFR 1000.58(f) and formula amounts using the F01 screen in LOCCS. If the grant recipient does not qualify to invest funds (based upon a Notice which will be issued as soon as possible) or the procedures to qualify to invest funds have not yet been established, then **no funds** should be spread to BLI 1601. Instead all funds would be spread in accordance with the proceeding instructions to BLIs 1600 and 1602.

- ii) **Monthly Thresholds** - The IHBG program in LOCCS has a monthly threshold of 10 percent. If a grant recipient's voucher request in VRS would cause drawdowns in that month to exceed 10 percent of the full grant amount, the

voucher request will be sent to the Area ONAP for review and approval. VRS will notify the caller if an Area ONAP review is required before a payment can be disbursed. The grant recipient should notify the Area ONAP after the voucher has been entered into VRS so that the approval can be expedited. In some cases the Area ONAP may request supporting documentation in order to approve the request. If the voucher request is for BLI 1601, Investments, the Area ONAP will approve such vouchers without requesting supporting documentation after verifying that the grant recipient has established capacity to invest funds in accordance with 24 CFR 1000.58(b). Because of the anticipated size of drawdowns from BLI 1601, Investments, any voucher request which follows a disbursement of investment funds within the month will most likely be sent for review because of the 10 percent threshold; therefore, it is suggested that investment drawdowns be requested from VRS toward the end of a month.

The Area ONAP also has the ability to establish a lower, project specific, monthly threshold using the M09 screen. Area ONAPs may only take this action in accordance with 24 CFR 1000.530, 1000.532, or 1000.538.

- f. **Investments** - In accordance with 24 CFR 1000.58(g), investment of IHBG funds may be for a period no longer than two years. Therefore, it is the responsibility of the Area ONAP to monitor disbursements from BLI 1601, Investments, and verify that within two years of disbursement, the funds have been expended for affordable housing activities under section 202 of NAHASDA. It is anticipated that by year 2000 LOCCS will be able to assist the Area ONAP in tracking investment funds which have reached two years from disbursement.

- g. **Control Dates** - The IHBG program area in LOCCS has only one control date which is maintained by the Area ONAP, the Close Out Date. The Area ONAP will use the A01 screen to record the date when it has been verified that all funds from the grant have been audited and any questioned costs have been resolved. A grant should **NOT** be closed out if

funds disbursed for investment have not subsequently been spent for affordable housing activities under section 202 of NAHASDA. Entry of the Close Out date will automatically stop any further disbursements and all LOCCS reporting requirements. Any funds remaining in the grant will be recaptured by HUD. (It is not anticipated that a project will be closed out before all funds are disbursed; however, exceptions may occur which will require the recapture of funds. This will probably occur when pennies remain in a grant but must be accounted for to comply with HUD accounting procedures.) Recaptured funds will be reflected on BLI 9900, Post Audit Adjustment.

h. Reporting Requirements

- i) **Federal Cash Transaction Report, SF-272** - In accordance with 24 CFR 85.41, the SF-272 (Attachment 3) must be submitted to the Area ONAP within 30 calendar days of the end of each quarter (i.e., April 30th, July 30th, October 30th, and January 30th). LOCCS will automatically generate a letter for each grant without a Close Out date 15 days prior to the end of each quarter, to remind the grant recipient of the requirement to submit the SF-272 (For more information on this requirement see NAHASDA Guidance 98-4 (Tribe/TDHE)). The Area ONAP is responsible for entering into LOCCS the receipt date of the form using the M10 screen. If the Area ONAP does not receive the SF-272 by the due date, LOCCS will automatically notify the grant recipient that the report is overdue. ONAP may proceed with actions in accordance with 24 CFR 1000 Subpart F to address this deficiency.
- ii) **FY 1998 Annual Performance Report** - In accordance with 24 CFR 1000.512, 514, and 516, the Annual Performance Report must be submitted to the Area ONAP within 60 calendar days of the end of the grant recipient's program year. In federal fiscal year (FFY) 1998, the end of the program year for all grant recipients is September 30, 1998. Subsequently, the end of the program year will depend upon the grant recipient's fiscal year. Due to system limitations, LOCCS will

only perform the following functions for FFY 1998. LOCCS will automatically generate a letter for each grant without a Close Out date on September 15, 1998, to remind the grant recipient of the requirement to submit the Annual Performance Report. The Area ONAP is responsible for entering into LOCCS the receipt date of the report. If the Area ONAP does not receive the Annual Performance Report by the due date, LOCCS will automatically notify the grant recipient that the report is overdue. ONAP may proceed with actions in accordance with 24 CFR 1000 Subpart F to address this deficiency.

iii) **Annual Performance Report, FY 1999 and Forward** - In accordance with 24 CFR 1000.516, Annual Performance Reports for all program years except for FFY 1998 must be submitted to the Area ONAP within 60 calendar days of the end of the grant recipient's fiscal year. Because LOCCS cannot perform the following functions automatically, the Area ONAPs are responsible for notifying the grant recipient 15 days prior to the end of the grant recipient's fiscal year of the requirement to submit the Annual Performance Report for each grant without a Close Out date. If the Annual Performance Report is not received by the Area ONAP within 60 calendar days of the end of the grant recipient's fiscal year, the Area ONAP will notify the grant recipient that the report is overdue. ONAP may proceed with actions in accordance with 24 CFR 1000 Subpart F to address this deficiency.

i. **Vouchers** - The grant recipient must prepare a voucher for every payment request made using the VRS. The grant recipient should complete items 2-14 of the LOCCS/VRS Indian Housing Block Grant Payment Voucher, form HUD-50080-IHBG (Attachment 1), prior to placing the call to VRS. During the call the VRS will generate the voucher number to be inserted in item 1. All voucher numbers for the IHBG program area in LOCCS will begin with the number **079** which has been pre-printed on the form HUD-50080-IHBG. For detailed steps and information on the VRS call-in process see pages 4-1 through 4-8 of the LOCCS User Guide dated October 1996. The grant recipient must keep the

original voucher and backup documentation on file to support expenditures. No copies of the voucher are to be sent to HUD unless specifically requested by the Area ONAP.

5. **LOCCS Security:** To gain access to the IHBG program area in LOCCS, all users of either LOCCS or VRS must be authorized for that program area. To obtain authorization, the staff person for the grant recipient must submit a LOCCS VRS Access Authorization, form HUD-27054, (Attachment 4), with the IHBG code in block 5a and Indian Housing Block Grant in block 5b. The form must specify what type of access is required in block 5c (Query Only or Drawdown), based on the activities that staff person will perform within VRS. If the LOCCS VRS Access Authorization form is requesting access for a new user in LOCCS, the form must be notarized. The form should then be sent to the Area ONAP for review. The Area ONAP should retain a copy and forward the original HUD-27054 to the following address instead of the address on the form:

U.S. Department of Housing and Urban Development
Office of the Chief Financial Officer, FBSM
Attn: LOCCS Security Team
P.O. Box 23774
Washington, DC 20026-3774

ONAP staff must also request authorization for access to the IHBG program area in LOCCS. To do so, ONAP staff must complete the LOCCS Access Authorization Security Form for HUD Staff, form HUD-27054-A. (Attachment 5 - This form is available to ONAP staff on the Local Area Network (LAN) from both Fast Forms Filler and Graphics Form Filler.) Include the IHBG code in block 12 along with the type of access requested (see the form instructions for additional information on the types of access available) and forward the form to the address above.

LOCCS will automatically generate a notification letter when the request for access has been processed. For additional information see pages 3-1 through 3-13 of the LOCCS User Guide dated October 1996.

6. **Banking Information:** If a grant recipient has not previously used LOCCS, the grant recipient should submit to the Area ONAP a Direct Deposit Sign-Up, form

SF-1199A (Attachment 6) and a cancelled check or copy of a cancelled check from the bank account to which the funds are going to be deposited. The Area ONAP will review the form, retain a copy, and then forward the original SF-1199A and cancelled check to:

U.S. Department of Housing and Urban Development
Office of the Chief Financial Officer, FBSM
Attn: ACH Team
P.O. Box 44816
Washington, DC 20026-4816

This form allows for the automatic deposit of funds requested from LOCCS. The form identifies the grant recipient's Tax Identification Number (TIN), bank name, account number, and the type of account.

Since banking information can be maintained in LOCCS at three different levels (i.e., TIN, Program Area, or Grant), if a grant recipient has previously used LOCCS for other programs, an SF-1199A would be used to establish different banking information specific to either the IHBG program area or to the grant itself. To establish banking information specific to the IHBG program area, specify IHBG in Section 1, block G of the SF-1199A. If a grant recipient wishes to have banking information specific to a project or projects, the project number(s) must be listed in Section 1, block G or on an attachment to the SF-1199A. See the pages 2-1 through 2-5 of LOCCS User Guide dated October 1996 for further information.

NOTE: The banking policy stated in the second paragraph of section 2.1 of the LOCCS User Guide dated October 1996 does not pertain to IHBG. Grant recipients may designate different bank accounts for the deposit of IHBG funds that are received from HUD.

- 7. Additional Guidance:** For program specific guidance, grant recipients should contact their Area ONAP. For detailed, non-program specific LOCCS/VRS guidance please refer to the LOCCS User Guide. To obtain copies of the User Guide, please call (800) 767-7468.

/s/Deborah Vincent, General Deputy A/S



U.S. Department of Housing and Urban Development
Public and Indian Housing

Special Attention of:

Notice: PIH 99-4 (TDHEs)

Tribes, Tribally Designated
Housing Entities, Indian
Housing Authorities, ONAP
Administrators

Issued: February 3, 1999
Expires: February 28, 2000
Cross Reference:

SUBJECT: Administrative Requirements for Investing Indian
Housing Block Grant Funds

1. **PURPOSE:** This Notice establishes the basis upon which the Department will determine if a recipient of Indian Housing Block Grant (IHBG) funds, as authorized by the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996 (Pub. L. 104-330, approved October 26, 1996), has the administrative capacity to draw down IHBG funds for investment purposes.
2. **BACKGROUND:** NAHASDA is implemented through HUD regulations at 24 CFR Part 1000. These regulations were developed by a Negotiated Rulemaking Committee comprised of 48 tribal members and 10 HUD representatives. One provision of the regulation, 24 CFR §1000.58, authorizes a recipient to invest certain grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by the Secretary. The recipient may continue to invest NAHASDA funds in accordance with 24 CFR §1000.58 as long as it demonstrates to HUD that it has administrative capacity.
3. **DEFINITIONS:**
 - a. Self governance tribe - For purposes of this notice, a self-governance Indian tribe is an Indian tribe that participates in tribal self-governance as authorized under Public Law 93-638, as amended (25 U.S.C. 450 et seq).

- b. Recipient - An Indian tribe or the entity for one or more Indian tribes that is authorized to receive grant amounts under this Act on behalf of the tribe or tribes.
- c. Significant and Material Audit Findings - For purposes of this notice, a significant or material finding is one that (1) identifies a material weakness in financial or accounting controls; or (2) a finding of substantial financial mismanagement or misapplication of funds that has not been resolved; or (3) has any questioned costs for HUD Programs which were subsequently disallowed which total 5 percent or more of the total expenditures for HUD Programs identified in the audit.

4. PROCEDURE:

Pursuant to 24 CFR §1000.58 (b), an IHBG **recipient** must demonstrate, to HUD's satisfaction, that:

- a. There are no unresolved significant and material audit findings or exceptions in the most recent annual audit completed under the Single Audit Act or in an independent financial audit prepared in accordance with generally accepted auditing principles; and
- b. it is a self-governance Indian tribe or that it has the administrative capacity and controls to responsibly manage the investment.

5. DOCUMENTATION REQUIRED:

- a. In order to document that there are no unresolved significant and material audit finding or exceptions, the recipient must submit to the Area ONAP the most recent audit of the recipient together with evidence that the cognizant audit agency (if other than HUD) reviewed and accepted the Single Audit Act report. ONAP must also be provided with a status of the Single Audit Act findings controlled by the cognizant agency (if other than HUD). This audit must be current in

accordance with the Single Audit Act requirements. If an independent financial audit was conducted in place of an annual audit or in addition to an annual audit, a copy of this financial audit must be submitted. Based on the information provided, the Area ONAP will determine if there are any unresolved significant and material audit findings. If the recipient is not required to submit an audit report under the Single Audit Act, an audit will not be required to comply with this provision. If the recipient is a newly created tribally designated housing entity (TDHE) without a current audit, an audit will not be required to comply with this provision.

- b. To document that the recipient is a self-governance tribe as defined above, a certification from the tribe that it is a self-governance tribe or a copy of the designation from the Bureau of Indian Affairs. This provision applies only if the tribe is the recipient. If the tribe has designated a TDHE, the recipient is the TDHE, not the tribe.
- c. If the recipient is not a self-governance tribe, the recipient must demonstrate it has the administrative capacity and controls to responsibly manage the investment.
 1. The recipient's financial management system must comply with 24 CFR §85.20. This includes accurate, current and complete financial reporting, adequate accounting records, effective internal controls, budget control and reasonable procedures for cash management. In order to document to ONAP that a system is in place, the recipient shall submit the following:
 - a. A copy of the internal control policy. The policy must provide for adequate safeguard of all grant and subgrant cash, real and personal property and other assets. Additional provisions of the policy must be as follows:
 - authorization by the appropriate oversight body (e.g., the Board of Commissioners) for the

transaction, documented in the official records of that body;

- safekeeping procedures covering security of investment documents;
- separation of responsibilities for custody of securities from maintenance of accounting records;
- maintenance of investments in a custodian or trust account;
- investments made only in the name of the IHBG recipient;
- investments recorded in detail in an investment ledger;
- use of a system to insure that all interest earned is collected, recorded and credited to appropriate accounts;
- periodic reconciliation to the investment ledger; and
- requirement to maintain a maturity schedule (See Paragraph 7.b.)

b. The recipient must also adopt and use a written investment policy. The policy must be submitted to ONAP. The policy must include a statement of purpose, list the eligible investment instruments, contain an assignment of authority to staff, and outline each staff member's responsibilities.

2. The recipient shall have no outstanding findings as a result of a HUD audit or review (including Inspector General Audits) that affects the administrative capacity and controls to responsibly manage the investment. The recipient shall submit a certification that there are no findings which affect the administrative capacity.

6. PROCESSING REQUESTS:

- a. A recipient requesting approval to invest IHBG funds in accordance with 24 CFR §1000.58 must submit the documentation outlined above to the Area ONAP. The Area ONAP will review the documentation and approve or disapprove the request within 60 calendar days of receipt of the request.
- b. If the request is approved, the recipient will receive written notification with the effective date that the investment draw down will be available in LOCCS and the amount available for investment purposes based on the calculation in 24 CFR §1000.58(f).
- c. If the request is not approved by the Area ONAP, the recipient will be notified in writing with the specific reasons for the denial. Within thirty calendar days of receiving HUD's denial of a request for investment, the recipient may request reconsideration of the denial in writing. The request shall set forth justification for the reconsideration. Within 30 calendar days of receiving the request, HUD shall reconsider the recipient's request and either affirm or reverse its initial decision in writing, setting forth its reason for the decision. If the decision was made by the Assistant Secretary, the decision will constitute final agency action.
- d. If the request is denied and an appeal is not successful, the tribe or TDHE may request another determination when the conditions for denial have been corrected. This resubmittal will be processed in accordance with the procedures in 6.a. above.

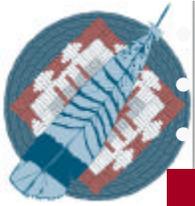
7. ADDITIONAL INFORMATION

- a. **Depository Agreement:** IHBG funds shall be held in one or more accounts separate from other funds of the recipient. Each of these accounts shall be subject to a general depository agreement.
- b. **Maturity Schedule:** Investments may be for a period no longer than two years. The recipient shall maintain a schedule evidencing that the proposed investments will

mature on the approximate dates the funds will be needed and that investment maturity dates do not exceed two years.

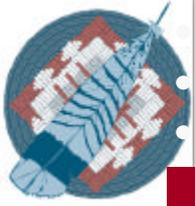
8. **ELIGIBLE INVESTMENT INSTRUMENTS:** 24 CFR §1000.58(c) states that recipients shall invest IHBG funds only in:
- a. Obligations of the United States; obligations issued by Government sponsored agencies; securities that are guaranteed or insured by the United States; mutual (or other) funds registered with the Securities and Exchange Commission and which invest only in obligations of the United States or securities that are guaranteed or insured by the United States; or
 - b. accounts that are insured by an agency or instrumentality of the United States or accounts that ensure the continuous and full collateralization of deposits that are in excess of FDIC insurance amounts to ensure protection of the funds, even in the event of bank failure. Collateralization shall consist of identifiable U.S. Government securities as prescribed by HUD and specific authority contained in the agreement permitting HUD to exercise its rights pursuant to 24 CFR §1000.60.
9. **CONTACTS:** Should you need additional information, please contact your Area Office of Native American Programs.

/s/ Harold Lucas
Assistant Secretary for Public
and Indian Housing



NAHASDA Listening Session

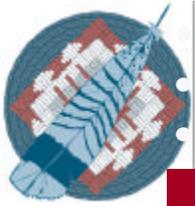
Formula and Cost Limits (DC&E)



NAHASDA Listening Session

Listening Session Objectives

- Hear Your Concerns
- Gather your Suggestions
- Develop Blueprint for Action



IHBG Formula

Jackie Kruszek

National ONAP

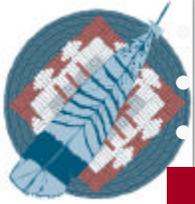
1999 Broadway, Suite 3390

Denver, CO 80202

Tele: (303) 675-1600 ext. 3306

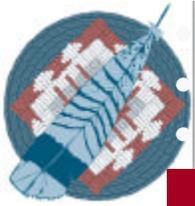
Fax: (303) 675-1660

Jacqueline_A._Kruszek@hud.gov



IHBG Formula

24 CFR 1000 Subpart D
and
Appendices A & B



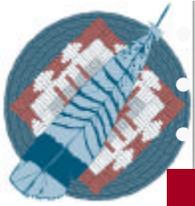
Formula Development

- Guiding Principals
- Variables Examined
- Data Sources Examined
- Appeal Process



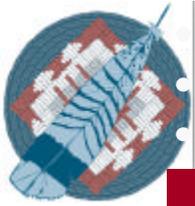
The Formula

- Formula Current Assisted Stock (FCAS)
- Formula Area
- Need Variables
- Population Cap
- Minimum Needs Funding
- Minimum Grant Funding



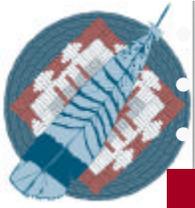
Challenging U.S. Census Data

- ❑ Deadline for Submissions is June 15
- ❑ Acceptable Methodologies
- ❑ Information to Include in Submission



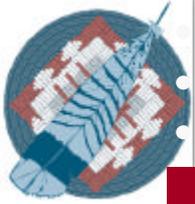
Correcting Other Data

- Deadline for Submissions is Sept 1
- Formula Response Form
- Adjustment Factors



Areas to Revisit

- Definition of Formula Area
- Needs Variables & Weights
- Needs Data
- Method for Splitting Overlapping Areas
- Population Cap
- Minimum Needs Funding



Cost Limits

Justina Walls

National ONAP

1999 Broadway, Suite 3390

Denver, CO 80202

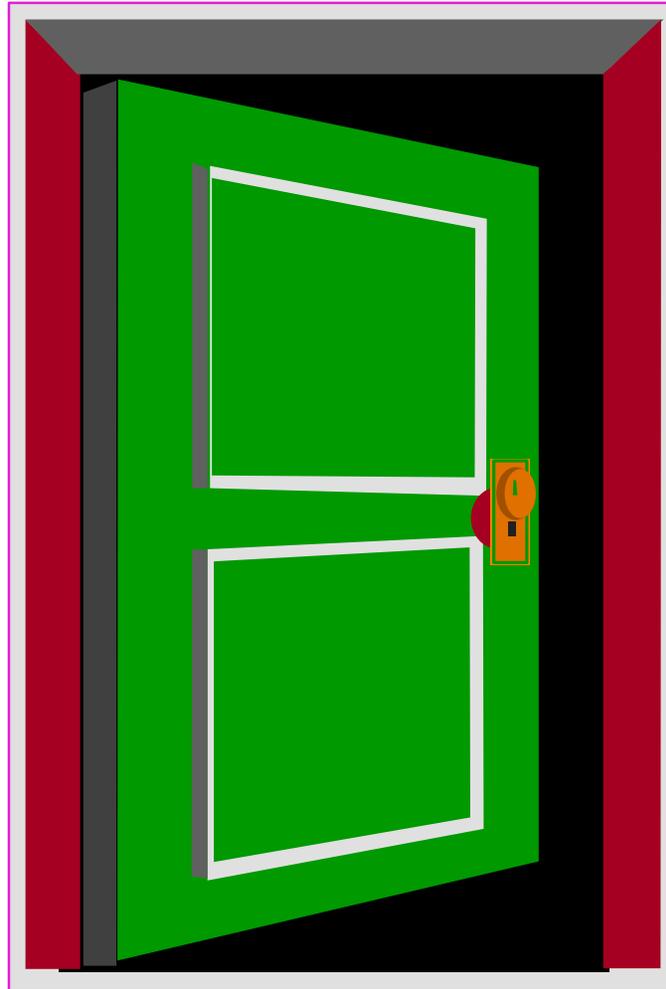
Tele: (303) 675-1600 ext. 3310

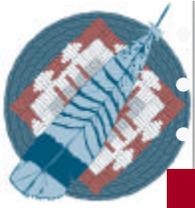
Fax: (303) 675-1662

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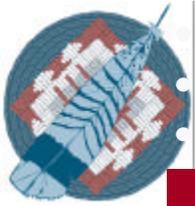
Cost Limits





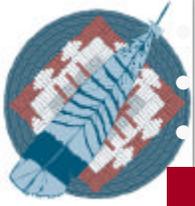
Cost Limits

- History of cost limits
 - 1937 Housing Act
 - ✓ $TDCs = DC\&Es \times Multiplier$

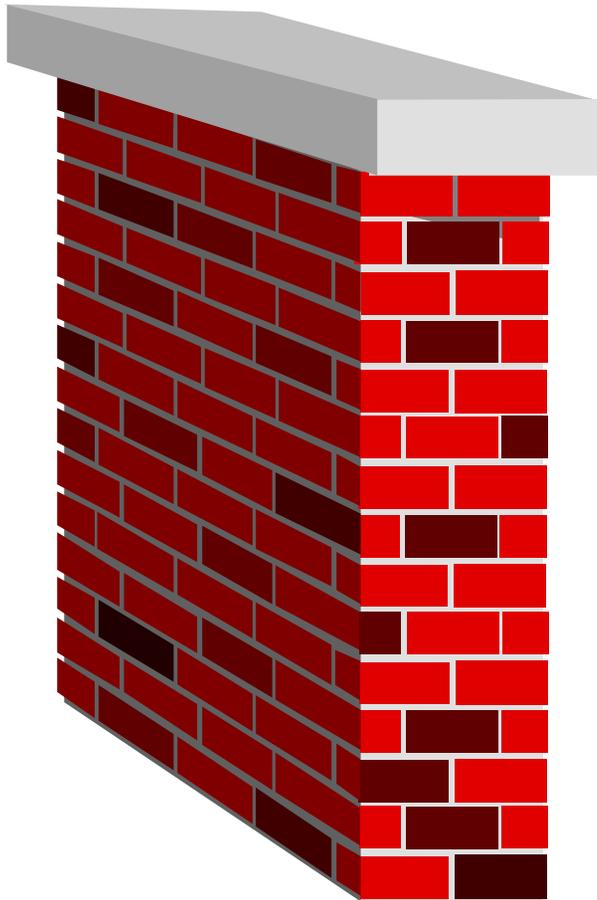


Cost Limits

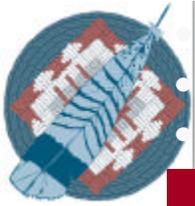
- NAHASDA
 - Neg Reg Committee designs Dwelling Construction and Equipment (DC&E) cost limits
 - ✓ 24 CFR 1000.156



Cost Limits

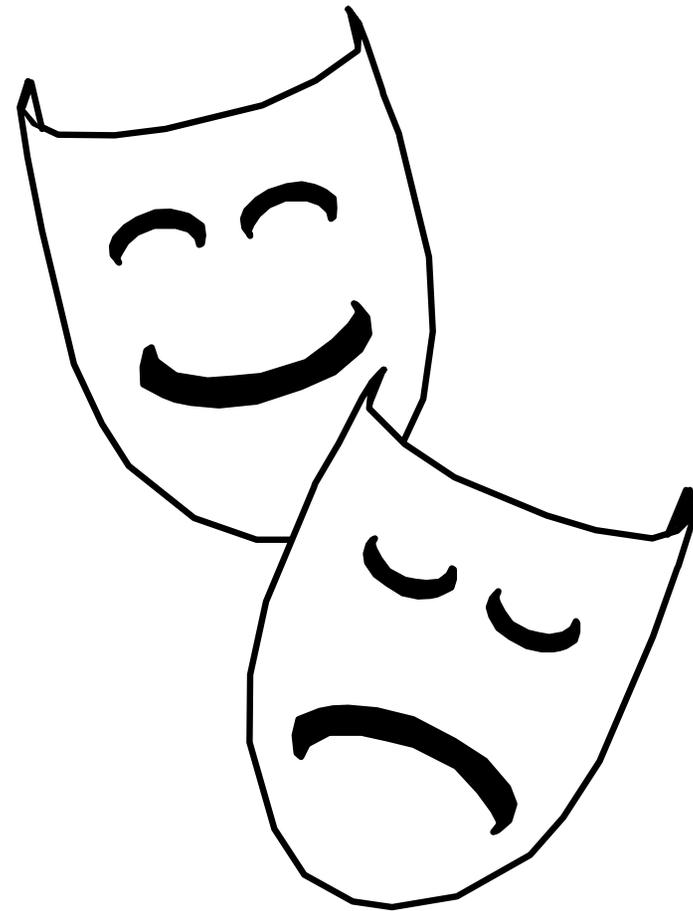


- ❑ “Sticks and Bricks” -
Hard costs only
 - no site
 - no admin



Cost Limits

- some tribes elated
- some tribes upset



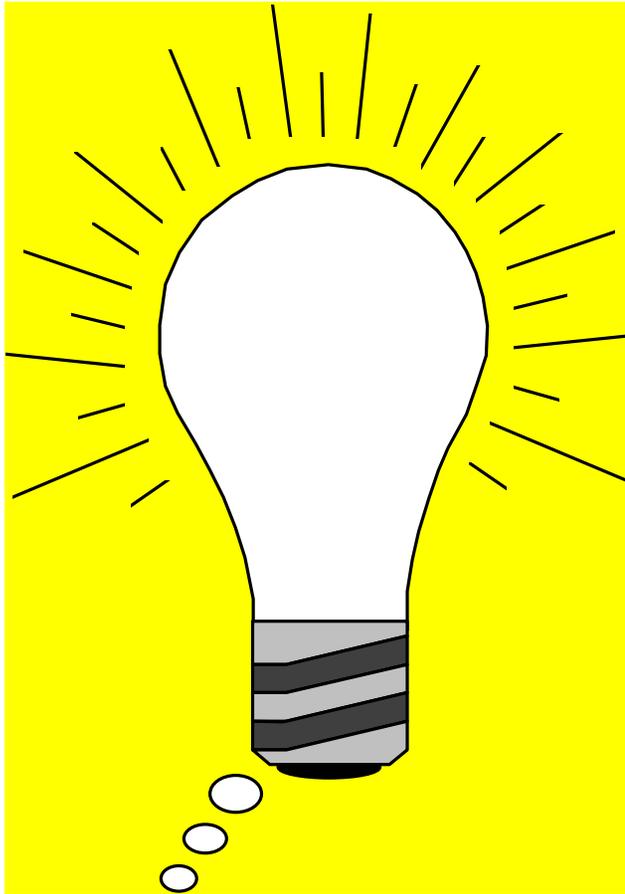


Cost Limits

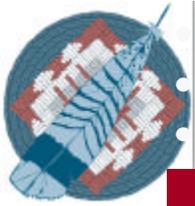
- Workgroup convened - Fall, 1998
 - 1 tribal/TDHE representative from each HUD jurisdiction (6)
 - 1 HUD field office rep
 - 2 HUD National office reps



Cost Limits

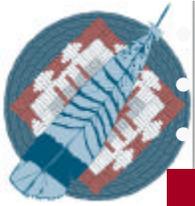


- Solutions
 - short term
 - longer term



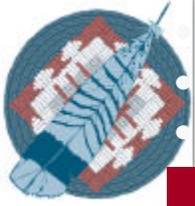
Cost Limits

- Short term
 - Revise base house
 - Publish new DC&Es
 - ✓ December 18, 1998



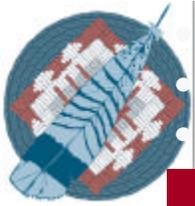
Cost Limits

- Longer term solution
- Revise regulations



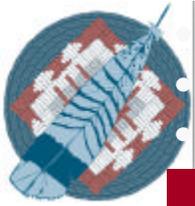
Cost Limits

- Proposed Regs
 - Use TDCs published by HUD
 - Design own standards

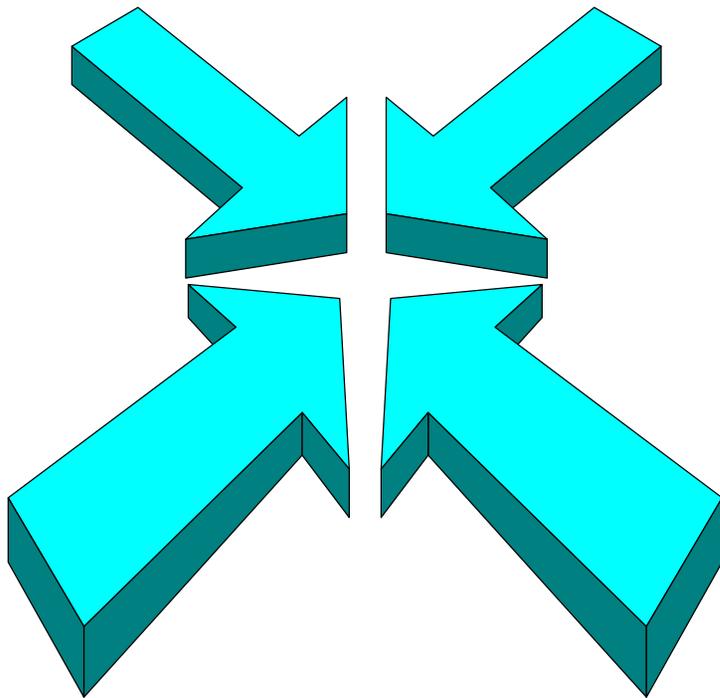


Cost Limits

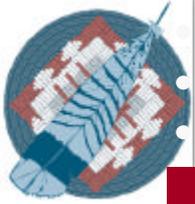
- Proposed regs for comment
 - informal - to tribes/TDHEs 1/99
 - comments compiled & back to workgroup - 2/99
 - formal - 3/99



Cost Limits



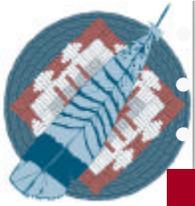
After review process, what will new regs say?



Cost Limits

Remains to
be seen

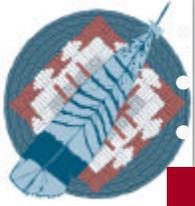




Cost Limits

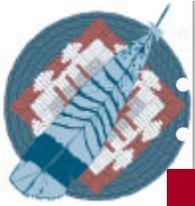
What
now?





Cost Limits

Use currently approved DC&E regs (found at 24 CFR 1000.156) until new regs are published.



Cost Limits



Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule

Subpart B--Affordable Housing Activities

Sec. 1000.156 Is there a per unit limit on the amount of IHBG funds that may be used for dwelling construction and dwelling equipment?

- (a) Yes. The per unit amount of IHBG funds that may be used for dwelling construction and dwelling equipment cannot exceed the limit established by HUD except as allowed in the definition below. Other costs associated with developing a project, including all undertakings necessary for administration, planning, site acquisition, water and sewer, demolition, and financing may be eligible NAHASDA costs but are not subject to this limit.
- (b) Dwelling construction and equipment (DC&E) costs include all construction costs of an individual dwelling within five feet of the foundation. Excluded from the DC&E are any administrative, planning, financing, site acquisition, site development more than five feet from the foundation, and utility development or connection costs. HUD will publish and update on a regular basis DC&E amounts for appropriate geographic areas.
- (c) DC&E amounts will be based on a moderately designed house or multi-family structure and will be determined by averaging the current construction costs, as listed in not less than two nationally recognized residential construction cost indices, for publicly bid construction of a good and sound quality. If a recipient determines that published DC&E amounts are not representative of construction costs in its area, it may request a re-evaluation of DC&E amounts and provide HUD with relevant information for this re-evaluation.

Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule

Appendix A TO PART 1000--Indian Housing Block Grant Formula Mechanics

This appendix shows the different components of the IHBG formula. The following text explains how each component of the IHBG formula works.

1. The Indian Housing Block Grant (IHBG) formula is calculated by initially determining the amount a tribe receives for Formula Current Assisted Stock (FCAS) (See Secs. 1000.310 and 1000.312. FCAS funding is comprised of two components, operating subsidy (Sec. 1000.316(a)) and modernization (Sec. 1000.316(b)). The operating subsidy component is calculated based on the national per unit subsidy provided in FY 1996 (adjusted to a 100 percent funding level) for each of the following types of programs--Low Rent, Homeownership (Mutual Help and Turnkey III), and Section 8. A tribe's total units in each of the above categories is multiplied times the relevant national per unit subsidy amount. That amount is summed and multiplied times a local area cost adjustment factor for management.
2. The local area cost adjustment factor for management is called AELFMR. AELFMR is the greater of a tribe's Allowable Expense Level (AEL) or Fair Market Rent (FMR) factor, where the AEL and FMR factors are determined by dividing each tribe's AEL and FMR by their respective national weighted average (weighted on the unadjusted allocation under FCAS operating subsidy). The adjustment made to the FCAS component of the IHBG formula is then the new AELFMR factor divided by the national weighted average of the AELFMR (See Sec. 1000.320).
3. The modernization component of FCAS is based on the national per unit modernization funding provided in FY 1996 to Indian Housing Authorities (IHAs). The per unit amount is determined by dividing the modernization funds by the total Low Rent, Mutual Help, and Turnkey III units operated by IHAs in 1996. A tribe's total Low Rent, Mutual Help, and Turnkey III units are multiplied times the per unit modernization amount. That amount is then multiplied times a local area cost adjustment factor for construction (e.g. the Total Development Cost) (See Sec. 1000.320).
4. The construction adjustment factor is Total Development Cost (TDC) for the area divided by the weighted national average for TDC (weighted on the unadjusted allocation for modernization) (See Sec. 1000.320).
5. After determining the total amount allocated under FCAS for each tribe, it is summed for every tribe. The national total amount for FCAS is subtracted from the Fiscal Year appropriation to determine the total amount to be allocated under the Need component of the IHBG formula.

6. The Need component of the IHBG formula is calculated using seven factors weighted as set forth in Sec. 1000.324 as follows: 22 percent of the allocated funds will be allocated by a tribe's share of the total Native American households paying more than 50 percent of their income for housing living in the Indian tribe's formula area, 25 percent of the funds allocated under Need will be allocated by a tribe's share of the total Native American households overcrowded and or without kitchen or plumbing living in their formula area, and so on. The current national totals for each of the need variables will be distributed annually by HUD with the Formula Response Form (See Sec. 1000.332). The national totals will change as tribes update information about their formula area and data for individual areas are challenged (See Secs. 1000.334 and 1000.336). The Need component is then calculated by multiplying a tribe's share of housing need by a local area cost adjustment factor for construction (the Total Development Cost) (See Sec. 1000.338).
7. No tribe in its first year of funding will receive less than \$50,000 under the Need component of the formula. In subsequent allocations to a tribe, it will receive no less than \$25,000 under the Need component of the formula. This increase in funding for the tribes receiving the minimum Need allocation is funded by a reallocation from all tribes receiving more than \$50,000 under their Need component. This is necessary in order to keep the total allocation within the appropriation level. Such minimum Need allocations will only continue through FY 2002 (See Sec. 1000.328).
8. A tribe's total grant is calculated by summing the FCAS and Need allocations. This preliminary grant is compared to how much a tribe received in FY 1996 for operating subsidy and modernization. If a tribe received more in FY 1996 for operating subsidy and modernization than they do under the IHBG formula, their grant is adjusted up to the FY 1996 level (See Sec. 1000.340). Indian tribes receiving more under the IHBG formula than in FY 1996 "pay" for the upward adjustment for the other tribes by having their grants adjusted downward. Because many more Indian tribes have grant amounts above the FY 1996 level than those with grants below the FY 1996 level, each tribe contributes very little relative to their total grant to fund the adjustment.

Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule

Appendix B to Part 1000--IHBG Block Grant Formula Mechanisms

1. The Indian Housing Block Grant Formula consists of two components, the Formula Current Assisted Stock (FCAS) and Need. Therefore, the formula allocation before adjusting for the statutory requirement that a tribe's minimum grant will not be less than the tribe's FY 1996 Operating Subsidy and Modernization funding, can be represented by:

$$\text{unadjGRANT} = \text{FCAS} + \text{NEED}.$$

2. NAHASDA requires the current assisted stock be provided for before allocating funds based on need. Therefore, FCAS must be calculated first. FCAS consists of two components, Operating Subsidy (OPSUB) and Modernization (MOD) such that:

$$\text{FCAS} = \text{OPSUB} + \text{MOD}.$$

3. OPSUB consists of three main parts: Number of Low-Rent units; Number of Section 8 units; and Number of Mutual Help and Turnkey III units. Each of these main parts are adjusted by the FY 1996 national per unit subsidy, an inflation factor, and local area costs as reflected by the greater of the AEL factor or FMR factor. The AEL factor as defined in Sec. 1000.302 as the difference between a local area Allowable Expense Level (AEL) and the national weighted average for AEL. The FMR factor is also defined in Sec. 1000.302 as the difference between a local area Fair Market Rent (FMR) and the national weighted average for FMR. So, expanding OPSUB gives:

$$\text{OPSUB} = [\text{LR} * \text{LRSUB} + (\text{MH}+\text{TK}) * \text{HOSUB} + \text{S8} * \text{S8SUB}] * \text{INF} * \text{AELFMR}$$

Where:

LR = number of Low-Rent units.

LRSUB = FY 1996 national per unit average subsidy for Low-Rent units = \$2,440.

MH+TK = number of Mutual Help and Turnkey III units.

HOSUB = FY 1996 national per unit average subsidy for Homeownership units = \$528.

S8 = number of Section 8 units.

S8SUB = FY 1996 national per unit average subsidy for Section 8 units = \$3,625.

INF = inflation adjustment determined by the Consumer Price Index for housing.

AELFMR = greater of AEL Factor or FMR Factor weighted by national average of AEL Factor and FRM Factor.

AEL FACTOR = AEL/NAAEL.

AEL = local Allowable Expense Level.

NAAEL = national weighted average for AEL.

FMR FACTOR = FMR/NAFMR.

FMR = local Fair Market Rent.

NAFMR = national weighted average for FMR.

NAAELFMR = national weighted average for greater of AEL Factor or FMR factor.

For estimating FY 1998 allocations:

NAAEL = 240.224.

NAFMR = 459.437.

NAAELFMR = 1.144.

4. MOD considers only the number of Low-Rent, and Mutual Help and Turnkey III units. Each of these are adjusted by the FY 1996 national per unit subsidy for modernization, an inflation factor and the local Total Development Costs relative to the weighted national average for TDC. So, expanding MOD gives us:

$$\text{MOD} = [\text{LR} + (\text{MH} + \text{TK})] * \text{SUB} * \text{INF} * \text{TDC} / \text{NATDC}.$$

Where:

LR = number of Low-Rent units.

MH+TK = number of Mutual Help and Turnkey III units.

SUB = FY 1996 national per unit average subsidy for modernization.

INF = inflation adjustment determined by the Consumer Price Index for housing.

TDC = Local Total Development Costs defined in Sec. 1000.302.

NATDC = weighted national average for TDC.

For estimating FY 1998 allocations:

SUB = \$1,974.

NATDC = \$103,828.

5. Now that calculation for FCAS is complete, we can determine how many funds will be available to allocate over the NEED component of the formula by calculating:

$$\text{NEED FUNDS} = \text{APPROPRIATION} - \text{NATCAS}.$$

Where:

APPROPRIATION = dollars provided by Congress for distribution by the IHBG formula.

NATCAS = summation of CAS allocations for all tribes.

For estimating FY 1998 allocations:

APPROPRIATION = \$590 million.

NATCAS = \$236,147,110.

6. Two iterations are necessary to compute the final Need allocation. The first iteration consists of seven weighted criteria that allocate need funds based on a tribe's population and housing data. This allocation is then adjusted for local area cost differences based on TDC relative to the national weighted average. This can be represented by:

$$\begin{aligned} \text{NEED1} = & [(0.11 * \text{PER} / \text{NPER}) + (0.13 * \text{HHLE30} / \text{NHHLE30}) \\ & + (0.07 * \text{HH30T50} / \text{NHH30T50}) + (0.07 * \text{HH50T80} / \text{NHH50T80}) \\ & + (0.25 * \text{OCRPR} / \text{NOCRPR}) + (0.22 * \text{SCBTOT} / \text{NSCBTOT}) \\ & + (0.15 * \text{HOUSHOR} / \text{NHOUSHOR})] * \text{NEED FUNDS} * (\text{TDC}/\text{NATDC}). \end{aligned}$$

Where:

PER = American Indian and Alaskan Native (AIAN) persons.

NPER = national total of PER.

HHLE30 = AIAN households less than 30% of median income.

NHHLE30 = national total of HHLE30.

HH30T50 = AIAN households 30% to 50% of median income.

NHH30T50 = national total of HH30T50.

HH50T80 = AIAN households 50% to 80% of median income.

NHH50T80 = national total of HH50T80.

OCRPR = AIAN households crowded or without complete kitchen or plumbing.

NOCRPR = national total of OCRPR.

SCBTOT = AIAN households paying more than 50% of their income for housing.

NSCBTOT = national total SCBTOT.

HOUSHOR = AIAN households with an annual income less than or equal to 80% of formula median income reduced by the combination of current assisted stock and units developed under NAHASDA.

NHOUSHOR = national total of HOUSHOR.

TDC = Local Total Development Costs defined in Sec. 1000.302.

NATDC = weighted national average for TDC.

For estimating FY 1998 allocations:

NPER = 953,254.

NHHLE30 = 78,496.

NHH30T50 = 52,514.

NHH50T80 = 59,793.

NOCPR = 80,581.

NSCBTOT = 34,080.

NHOUSHOR = 23,840.

NEEDFUNDS = \$353,852,890.

NATDC = \$104,956.

7. The second iteration in computing Need allocation consists of adjusting the Need allocation computed above to take into account the \$50,000 baseline funding for the first year only and then \$25,000 per year for each year thereafter through FY 2002. So, if in the first Need computation you have less than the minimum Needs funding level, your Need allocation will go up. But, if you have more than the minimum Needs funding level, your Need allocation will go down to adjust for the other Need allocations going up. We can represent this by:

If NEED1 is less than MINFUNDING, then $NEED = MINFUNDING$.

If NEED1 is greater than or equal to MINFUNDING, then $NEED = NEED1 - \{UNDERMIN\$ * [(NEED1 - MINFUNDING) / OVERMIN\$]\}$.

Where:

MINFUNDING = minimum needs funding level.

UNDERMIN\$ = for all tribes with NEED1 less than MINFUNDING, sum of the differences between MINFUNDING and NEED1.

OVERMIN\$ = for all tribes with NEED1 greater than or equal to MINFUNDING, sum of the difference between NEED1 and MINFUNDING.

For estimating FY 1998 allocations:

MINFUNDING = \$50,000.

UNDERMIN\$ = \$4,919,224.

OVERMIN\$ = \$335,022,114.

8. Now we have computed values for FCAS and NEED. This final step in computing the grant allocation is to adjust the sum of FCAS and NEED to reflect the statutory requirement that a tribe's minimum grant will not be less than that tribe's FY 1996 Operating Subsidy and Modernization funding. So, before adjusting for the minimum grant compute:

$unadjGRANT = FCAS + NEED$ where both FCAS and NEED are calculated above.

9. Now, apply test to determine if the GRANT (unadjusted for FY 1996) levels is greater than or equal to FY 1996 Operating Subsidy and Modernization funding.

Let $TEST = unadjGRANT - OPMOD96$.

If $TEST$ is less than 0, then $GRANT = OPMOD96$.

If $TEST$ is greater than or equal to 0, then $GRANT = unadjGRANT - [UNDER1996 * (TEST / OVER1996)]$.

Where:

$OPMOD96$ = funding received by tribe in FY 1996 for Operating Subsidy and Modernization
 $UNDER1996$ = for all tribes with $TEST$ less than 0, sum of the absolute value of $TEST$.

$OVER1996$ = for all tribes with $TEST$ greater than or equal to 0, sum of $TEST$.

For estimating FY 1998 allocations:

$UNDER1996 = \$5,378,558$.

$OVER1996 = \$326,095,837$.

$GRANT$ is the approximate grant amount in any given year for any given tribe.



NAHASDA GUIDANCE

National Office of Native American Programs

No. 98-19

Tribe/TDHE

September 11, 1998

TO: All Tribal Government Leaders and Tribally Designated Housing Entities (TDHE)

FROM: Jacqueline Johnson, Acting Deputy Assistant Secretary, 8APIN

TOPIC: Reviewing Formula Current Assisted Stock (FCAS) as listed on a tribe's Formula Response Form

SUBJECT: Regulatory requirements regarding FCAS as listed on a tribe's Formula Response Form

PURPOSE: This guidance highlights the regulatory requirements that tribes, TDHEs, and HUD must consider when reviewing the FCAS section of a tribe's Formula Response Form. In addition, this guidance specifies what procedures tribes, TDHEs, and HUD must follow if a discrepancy is noted when reviewing a tribe's Formula Response Form.

What is FCAS?

According to 24 CFR 1000.314, FCAS is housing units owned or operated pursuant to an Annual Contributions Contract (ACC) including all Low-Rent, Mutual Help, and Turnkey III housing units under management as of September 30, 1997, plus units in the pipeline when they become owned or operated by the recipient and are under management as indicated in the Formula Response Form. FCAS also includes Section 8 units when their current contract expires and the Indian tribe continues to manage the assistance in a manner similar to the Section 8 program, as reported on the Formula Response Form.

When are units no longer considered FCAS?

According to 24 CFR 1000.318, units under FCAS cease to be counted or expire from the inventory used for the formula when the Indian tribe, TDHE, or IHA no longer has the legal right to own, operate, or maintain the unit, whether such right is lost by conveyance, demolition, or otherwise provided that conveyance of each Mutual Help or Turnkey III unit occurs as soon as practicable after a unit becomes eligible for conveyance by the terms of the Mutual Help Occupancy Agreement (MHOA), and, the Indian tribe, TDHE, or IHA actively enforce strict compliance by the homebuyer with the terms and condition of the MHOA, including the requirements for full and timely payment. Rental units shall continue to be included for formula purposes as long as they continue to be operated as low income rental units by the Indian tribe, TDHE, or IHA. Expired contract Section 8 units shall continue as rental units and be included in the formula as long as they are operated as low income rental units as included in the Indian tribe's or TDHE's Formula Response Form.

For further information, contact your Area ONAP

How are converted units counted under FCAS?

If units were converted prior to October 1, 1997, as evidenced by an amended ACC, then those units will be counted as the type of unit to which they were converted for formula purposes. If units were converted on or after October 1, 1997, then those units will be counted as the type of unit specified on the original ACC for formula purposes.

What corrections should a tribe/TDHE report when reviewing their tribe's Formula Response Form?

A tribe/TDHE shall review the FCAS section of their tribe's Formula Response Form for accuracy. The tribe/TDHE shall report corrections to unit counts, unit types, and actual or expected Dates of Full Availability. The tribe/TDHE shall not include units that have been conveyed, demolished, or otherwise lost in a year prior to the fiscal year that the Formula Response Form reports. The tribe/TDHE shall not include units that have been paid-off but not conveyed unless the tribe/TDHE can demonstrate that reasons beyond the tribe/TDHE or IHA's control have not made conveyance practical. The tribe/TDHE or IHA must demonstrate that the tribe/TDHE or IHA has actively enforced strict compliance by the homebuyers with the terms and conditions of the MHOA, including the requirements for full and timely payment. Because promissory notes can be issued, Tenant account receivables alone are not adequate for non-conveyance.

What if HUD discovers that a tribe/TDHE received formula funds for FCAS units they did not have in management during that time period?

If HUD discovers that a tribe/TDHE received formula funds for FCAS units that the tribe/TDHE did not have in management during that fiscal year, HUD will:

- Notify the tribe/TDHE of this information.
- Inform the tribe/TDHE that HUD will recoup these funds by adjusting the upcoming fiscal year's grant.
- Provide the tribe/TDHE with the opportunity to present additional information regarding the status of the units for HUD's consideration.
- Distribute any recouped funds through the formula mechanism in the upcoming fiscal year.

Cases where this might arise include Mutual Help/Turnkey III units that have conveyed or are eligible for conveyance and the tribe/TDHE or IHA cannot show sufficient evidence demonstrating that reasons beyond the tribe/TDHE or IHA's control have made conveyance not practical; units that have been sold or demolished; and, actual DOFA dates that differ expected DOFA dates.

Who should I contact if I have additional questions?

If you have any questions about reviewing FCAS as it appears on your tribe's/TDHEs Formula Response Form, please contact the appropriate staff in your Area Office of Native American Programs.

Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule

Subpart D--Allocation Formula

Sec. 1000.301 What is the purpose of the IHBG formula?

The IHBG formula is used to allocate equitably and fairly funds made available through NAHASDA among eligible Indian tribes. A TDHE may be a recipient on behalf of an Indian tribe.

Sec. 1000.302 What are the definitions applicable for the IHBG formula?

Allowable Expense Level (AEL) factor. In rental projects, AEL is the per-unit per-month dollar amount of expenses which was used to compute the amount of operating subsidy used prior to October 1, 1997 for the Low Rent units developed under the 1937 Act. The "AEL factor" is the relative difference between a local area AEL and the national weighted average for AEL.

Date of Full Availability (DOFA) means the last day of the month in which substantially all the units in a housing development are available for occupancy.

Fair Market Rent (FMR) factors are gross rent estimates; they include shelter rent plus the cost of all utilities, except telephones.

HUD estimates FMRs on an annual basis for 354 metropolitan FMR areas and 2,355 non-metropolitan county FMR areas. The "FMR factor" is the relative difference between a local area FMR and the national weighted average for FMR.

Formula Annual Income. For purposes of the IHBG formula, annual income is a household's total income as currently defined by the U.S. Census Bureau.

Formula area. (1) Formula area is the geographic area over which an Indian tribe could exercise court jurisdiction or is providing substantial housing services and, where applicable, the Indian tribe or TDHE has agreed to provide housing services pursuant to a Memorandum of Agreement with the governing entity or entities (including Indian tribes) of the area, including but not limited to:

- (i) A reservation;
- (ii) Trust land;

- (iii) Alaska Native Village Statistical Area;
- (iv) Alaska Native Claims Settlement Act Corporation Service Area;
- (v) Department of the Interior Near-Reservation Service Area;
- (vi) Former Indian Reservation Areas in Oklahoma as defined by the Census as Tribal Jurisdictional Statistical Area;
- (vii) Congressionally Mandated Service Area; and
- (viii) State legislatively defined Tribal Areas as defined by the Census as Tribal Designated Statistical Areas.

(2) For additional areas beyond those identified in the above list of eight, the Indian tribe must submit on the Formula Response Form the area that it wishes to include in its Formula Area and what previous and planned investment it has made in the area. HUD will review this submission and determine whether or not to include this area. HUD will make its judgment using as its guide whether this addition is fair and equitable for all Indian tribes in the formula.

(3) In some cases the population data for an Indian tribe within its formula area is greater than its tribal enrollment. In general, for those cases to maintain fairness for all Indian tribes, the population data will not be allowed to exceed twice an Indian tribe's enrolled population. However, an Indian tribe subject to this cap may receive an allocation based on more than twice its total enrollment if it can show that it is providing housing assistance to substantially more non-member Indians and Alaska Natives who are members of another Federally recognized Indian tribe than it is to members.

(4) In cases where an Indian tribe is seeking to receive an allocation more than twice its total enrollment, the tribal enrollment multiplier will be determined by the total number of Indians and Alaska Natives the Indian tribe is providing housing assistance (on July 30 of the year before funding is sought) divided by the number of members the Indian tribe is providing housing assistance. For example, an Indian tribe which provides housing to 300 Indians and Alaska Natives, of which 100 are members, would then be able to receive an allocation for up to three times its tribal enrollment if the Indian and Alaska Native population in the area is three or more times the tribal enrollment.

Formula Median Income. For purposes of the formula median income is determined in accordance with section 567 of the Housing and Community Development Act of 1987 (42 U.S.C. 1437a note).

Formula Response Form is the form recipients use to report changes to their Formula Current Assisted stock, formula area, and other formula related information before each year's formula allocation.

Indian Housing Authority (IHA) financed means a homeownership program where title rests with the homebuyer and a security interest rests with the IHA.

Mutual Help Occupancy Agreement (MHOA) means a lease with option to purchase contract between an IHA and a homebuyer under the 1937 Act.

Overcrowded means households with more than 1.01 persons per room as defined by the U.S. Decennial Census.

Section 8 means the making of housing assistance payments to eligible families leasing existing housing pursuant to the provisions of the 1937 Act.

Section 8 unit means the contract annualized housing assistance payments (certificates, vouchers, and project based) under the Section 8 program.

Total Development Cost (TDC) is the sum of all costs for a project including all undertakings necessary for administration, planning, site acquisition, demolition, construction or equipment and financing (including payment of carrying charges) and for otherwise carrying out the development of the project, excluding off site water and sewer.

Total Development Cost amounts will be based on a moderately designed house and will be determined by averaging the current construction costs as listed in not less than two nationally recognized residential construction cost indices.

Without kitchen or plumbing means, as defined by the U.S. Decennial Census, an occupied house without one or more of the following items:

- (1) Hot and cold piped water;
- (2) A flush toilet;
- (3) A bathtub or shower;
- (4) A sink with piped water;
- (5) A range or cookstove; or
- (6) A refrigerator.

Sec. 1000.304 May the IHBG formula be modified?

Yes, as long as any modification does not conflict with the requirements of NAHASDA.

Sec. 1000.306 How can the IHBG formula be modified?

(a) The IHBG formula can be modified upon development of a set of measurable and verifiable data directly related to Indian and Alaska Native housing need. Any data set developed shall be compiled with the consultation and involvement of Indian tribes and examined and/or implemented not later than 5 years from the date of issuance of these regulations and periodically thereafter.

(b) Furthermore, the IHBG formula shall be reviewed within five years to determine if subsidy is needed to operate and maintain NAHASDA units or any other changes are needed in respect to funding under the Formula Current Assisted Stock component of the formula.

(c) During the five year review of housing stock for formula purposes, the Section 8 units shall be reduced by the same percentage as the current assisted rental stock has diminished since September 30, 1999.

Sec. 1000.308 Who can make modifications to the IHBG formula?

HUD can make modifications in accordance with Sec. 1000.304 and Sec. 1000.306 provided that any changes proposed by HUD are published and made available for public comment in accordance with applicable law before their implementation.

Sec. 1000.310 What are the components of the IHBG formula?

The IHBG formula consists of two components:

- (a) Formula Current Assisted Housing Stock (FCAS); and
- (b) Need.

Sec. 1000.312 What is current assisted stock?

Current assisted stock consists of housing units owned or operated pursuant to an ACC. This includes all low rent, Mutual Help, and Turnkey III housing units under management as of September 30, 1997, as indicated in the Formula Response Form.

Sec. 1000.314 What is formula current assisted stock?

Formula current assisted stock is current assisted stock as described in Sec. 1000.312 plus 1937 Act units in the development pipeline when they become owned or operated by the recipient and are under management as indicated in the Formula Response Form. Formula current assisted stock also includes Section 8 units when their current contract expires and the Indian tribe continues to manage the assistance in a manner similar to the Section 8 program, as reported on the Formula Response Form.

Sec. 1000.316 How is the Formula Current Assisted Stock (FCAS) Component developed?

The Formula Current Assisted Stock component consists of two elements. They are:

(a) Operating subsidy. The operating subsidy consists of three variables which are:

(1) The number of low-rent FCAS units multiplied by the FY 1996 national per unit subsidy (adjusted to full funding level) multiplied by an adjustment factor for inflation;

(2) The number of Section 8 units whose contract has expired but had been under contract on September 30, 1997, multiplied by the FY 1996 national per unit subsidy adjusted for inflation; and

(3) The number of Mutual Help and Turnkey III FCAS units multiplied by the FY 1996 national per unit subsidy (adjusted to full funding level) multiplied by an adjustment factor for inflation.

(b) Modernization allocation. Modernization allocation consists of the number of Low Rent, Mutual Help, and Turnkey III FCAS units multiplied by the national per unit amount of allocation for FY 1996 modernization multiplied by an adjustment factor for inflation.

Sec. 1000.317 Who is the recipient for funds for current assisted stock which is owned by state-created Regional Native Housing Authorities in Alaska?

If housing units developed under the 1937 Act are owned by a state-created Regional Native Housing Authority in Alaska, and are not located on an Indian reservation, then the recipient for funds allocated for the current assisted stock portion of NAHASDA funds for the units is the regional Indian tribe.

Sec. 1000.318 When do units under Formula Current Assisted Stock cease to be counted or expire from the inventory used for the formula?

(a) Mutual Help and Turnkey III units shall no longer be considered Formula Current Assisted Stock when the Indian tribe, TDHE, or IHA no longer has the legal right to own, operate, or maintain the unit, whether such right is lost by conveyance, demolition, or otherwise, provided that:

- (1) Conveyance of each Mutual Help or Turnkey III unit occurs as soon as practicable after a unit becomes eligible for conveyance by the terms of the MHOA; and
- (2) The Indian tribe, TDHE, or IHA actively enforce strict compliance by the homebuyer with the terms and conditions of the MHOA, including the requirements for full and timely payment.

(b) Rental units shall continue to be included for formula purposes as long as they continue to be operated as low income rental units by the Indian tribe, TDHE, or IHA.

(c) Expired contract Section 8 units shall continue as rental units and be included in the formula as long as they are operated as low income rental units as included in the Indian tribe's or TDHE's Formula Response Form.

Sec. 1000.320 How is Formula Current Assisted Stock adjusted for local area costs?

There are two adjustment factors that are used to adjust the allocation of funds for the Current Assisted Stock portion of the formula. They are:

- (a) Operating Subsidy as adjusted by the greater of the AEL factor or FMR factor (AELFMR); and
- (b) Modernization as adjusted by TDC.

Sec. 1000.322 Are IHA financed units included in the determination of Formula Current Assisted Stock?

No. If these units are not owned or operated at the time (September 30, 1997) pursuant to an ACC then they are not included in the determination of Formula Current Assisted Stock.

Sec. 1000.324 How is the need component developed?

After determining the FCAS allocation, remaining funds are allocated by need component. The need component consists of seven criteria. They are:

- (a) American Indian and Alaskan Native (AIAN) Households with housing cost burden greater than 50 percent of formula annual income weighted at 22 percent;
- (b) AIAN Households which are overcrowded or without kitchen or plumbing weighted at 25 percent;
- (c) Housing Shortage which is the number of AIAN households with an annual income less than or equal to 80 percent of formula median income reduced by the combination of current assisted stock and units developed under NAHASDA weighted at 15 percent;
- (d) AIAN households with annual income less than or equal to 30 percent of formula median income weighted at 13 percent;
- (e) AIAN households with annual income between 30 percent and 50 percent of formula median income weighted at 7 percent;
- (f) AIAN households with annual income between 50 percent and 80 percent of formula median income weighted at 7 percent;
- (g) AIAN persons weighted at 11 percent.

Sec. 1000.325 How is the need component adjusted for local area costs?

The need component is adjusted by the TDC.

Sec. 1000.326 What if a formula area is served by more than one Indian tribe?

- (a) If an Indian tribe's formula area overlaps with the formula area of one or more other Indian tribes, the funds allocated to that Indian tribe for the geographic area in which the formula areas overlap will be divided based on:
 - (1) The Indian tribe's proportional share of the population in the overlapping geographic area; and

(2) The Indian tribe's commitment to serve that proportional share of the population in such geographic area.

(3) In cases where a State recognized Indian tribe's formula area overlaps with a Federally recognized Indian tribe, the Federally recognized Indian tribe receives the allocation for the overlapping area.

(b) Tribal membership in the geographic area (not to include dually enrolled tribal members) will be based on data that all Indian tribes involved agree to use. Suggested data sources include tribal enrollment lists, Indian Health Service User Data, and Bureau of Indian Affairs data.

(c) If the Indian tribes involved cannot agree on what data source to use, HUD will make the decision on what data will be used to divide the funds between the Indian tribes by August 1.

Sec. 1000.327 What is the order of preference for allocating the IHBG formula needs data for Indian tribes in Alaska not located on reservations due to the unique circumstances in Alaska?

(a) Data in areas without reservations. The data on population and housing within an Alaska Native Village is credited to the Alaska Native Village. Accordingly, the village corporation for the Alaska Native Village has no needs data and no formula allocation. The data on population and housing outside the Alaska Native Village is credited to the regional Indian tribe, and if there is no regional Indian tribe, the data will be credited to the regional corporation.

(b) Deadline for notification on whether an IHP will be submitted. By September 15 of each year, each Indian tribe in Alaska not located on a reservation, including each Alaska Native village, regional Indian tribe, and regional corporation, or its TDHE must notify HUD in writing whether it or its TDHE intends to submit an IHP. If an Alaska Native village notifies HUD that it does not intend either to submit an IHP or to designate a TDHE to do so, or if HUD receives no response from the Alaska Native village or its TDHE, the formula data which would have been credited to the Alaska Native village will be credited to the regional Indian tribe, or if there is no regional Indian tribe, to the regional corporation.

Sec. 1000.328 What is the minimum amount an Indian tribe can receive under the need component of the formula?

In the first year of NAHASDA participation, an Indian tribe whose allocation is less than \$50,000 under the need component of the formula shall have its need component of the grant adjusted to \$50,000. An Indian tribe's IHP shall contain a certification of the need for the \$50,000 funding. In subsequent years, but not to extend beyond Federal Fiscal Year 2002, an Indian tribe whose allocation is less than \$25,000 under the need component of the formula shall have its need component of the grant adjusted to \$25,000. The need for Sec. 1000.328 will be reviewed in accordance with Sec. 1000.306.

Sec. 1000.330 What are data sources for the need variables?

The sources of data for the need variables shall be data available that is collected in a uniform manner that can be confirmed and verified for all AIAN households and persons living in an identified area. Initially, the data used are U.S. Decennial Census data.

Sec. 1000.332 Will data used by HUD to determine an Indian tribe's or TDHE's formula allocation be provided to the Indian tribe or TDHE before the allocation?

Yes. HUD shall provide notice to the Indian tribe or TDHE of the data to be used for the formula and projected allocation amount by August 1.

Sec. 1000.334 May Indian tribes, TDHEs, or HUD challenge the data from the U.S. Decennial Census or provide an alternative source of data?

Yes. Provided that the data are gathered, evaluated, and presented in a manner acceptable to HUD and that the standards for acceptability are consistently applied throughout the Country.

Sec. 1000.336 How may an Indian tribe, TDHE, or HUD challenge data?

- (a) An Indian tribe, TDHE, or HUD may challenge data used in the IHBG formula. The challenge and collection of data for this purpose is an allowable cost for IHBG funds.
- (b) An Indian tribe or TDHE that has data in its possession that it contends are more accurate than data contained in the U.S. Decennial Census, and the data were collected in a manner acceptable to HUD, may submit the data and proper documentation to HUD. Beginning with the Fiscal Year 1999 allocation, in order for the challenge to be

considered for the upcoming Fiscal Year allocation, documentation must be submitted by June 15. HUD shall respond to such data submittal not later than 45 days after receipt of the data and either approve or challenge the validity of such data. Pursuant to HUD's action, the following shall apply:

(1) In the event HUD challenges the validity of the submitted data, the Indian tribe or TDHE and HUD shall attempt in good faith to resolve any discrepancies so that such data may be included in formula allocation. Should the Indian tribe or TDHE and HUD be unable to resolve any discrepancy by the date of formula allocation, the dispute shall be carried forward to the next funding year and resolved in accordance with the dispute resolution procedures set forth in this part for model housing activities (Sec. 1000.118).

(2) Pursuant to resolution of the dispute:

(i) If the Indian tribe or TDHE prevails, an adjustment to the Indian tribe's or TDHE's subsequent allocation for the subsequent year shall be made retroactive to include only the disputed Fiscal Year(s); or

(ii) If HUD prevails, no further action shall be required.

(c) In the event HUD questions that the data contained in the formula does not accurately represent the Indian tribe's need, HUD shall request the Indian tribe to submit supporting documentation to justify the data and provide a commitment to serve the population indicated in the geographic area.

Sec. 1000.340 What if an Indian tribe is allocated less funding under the block grant formula than it received in Fiscal Year 1996 for operating subsidy and modernization?

If an Indian tribe is allocated less funding under the formula than an IHA received on its behalf in Fiscal Year 1996 for operating subsidy and modernization, its grant is increased to the amount received in Fiscal Year 1996 for operating subsidy and modernization. The remaining grants are adjusted to keep the allocation within available appropriations.

HUD MONITORING AND OVERSIGHT

ACTIONS TO ADDRESS PERFORMANCE PROBLEMS WHICH DO NOT A HEARING BEFORE THE ACTION ARE TAKEN

Authority: Title IV of NAHASDA & 24 CFR Part 1000, Subpart F

HUD reviews the IHBG recipient's performance.

HUD must send a draft report to the recipient and the Indian tribe within 30 days of the completion of HUD's review on the results of the review.

The recipient has at least 30 days to review and comment and to provide additional information.

HUD must consider the comments and any additional information.

If after consideration of the comments and any additional information, HUD concludes that there is a performance problems, HUD may seek corrective and remedial actions:

HUD may issue a letter of warning, describing the corrective actions that HUD believes should be taken, establishing a completion date for corrective actions, and notifying the recipient that more serious actions may be taken if the performance problem is not corrected or is repeated.

HUD may request the recipient to submit progress schedules for completing activities or complying with the regulations.

HUD may recommend that the recipient suspend, discontinue, or not incur costs for the affected activity.

HUD may recommend that the recipient redirect funds from affected activities to other eligible activities.

HUD may recommend that the recipient reimburse the recipient's program account in the amount improperly expended.

HUD may recommend that the recipient obtain technical assistance using grant funds or other available money to overcome the performance problem.

If the recipient doesn't address the performance problems, HUD may take other action.

HUD may also take actions under 24 CFR §85.12 to designate the recipient as “high risk” and may impose special conditions or restrictions on the grant.

HUD may make adjustments in the amount of the recipient’s future year’s IHBG grant. HUD may adjust, reduce, or withdraw the grant, or take other action as appropriate in accordance with HUD reviews and audits; however, HUD cannot make adjustments based on IHBG funds already spent on affordable housing activities.

Before taking this action, HUD must notify the recipient in writing of the action and provide the recipient with an opportunity for informal meeting to resolve the problem. If the problem is not resolved, HUD may go ahead and take the action.

Within the 30 days of notice of the action, the recipient may request a hearing before an administrative law judge.

The money that was taken from the grant will not be reallocated by HUD until 15 days after the hearing and HUD has made a final decision.

When a recipient is not complying significantly with a major activity of its Indian Housing Plan (for reasons other than circumstances beyond the recipient’s control), HUD must adjust, reduce, or withdraw the recipient’s future year’s grant.

**Due Process Requirements Under NAHASDA Regulations:
Lessons Learned from *Kansas City* ***

by Matthew S. Jaffe **

The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), 25 U.S.C. § 4101 et seq., represents a fundamental shift in the Federal government's thinking about how housing needs are to be addressed in Indian country. For the first time, Congress has placed responsibility in the hands of the Indian tribes themselves to design, administer and monitor housing programs for the benefit of their members. Separated from urban housing laws, and the regulations which implement those laws, NAHASDA is designed to foster new and creative thinking by tribes as to how best to address the housing needs of primarily low-income Indian families.

Congress mandated that the regulations to implement NAHASDA be drafted with tribal representatives at the table under the procedures of the Negotiated Rulemaking Act, in recognition of the government-to-government relationship that exists between the United States and the Indian nations. Under NAHASDA's final regulations, a three-tiered system of monitoring, oversight and accountability was established whereby the Tribally Designated Housing Entity (TDHE), where utilized, the Indian tribe for whose benefit the program is operated and HUD all shoulder responsibility for the program's success or shortcomings. The intent of this monitoring system is to better ensure that performance problems are identified early and corrected quickly by the recipients, so that enforcement actions by HUD are not required or, if warranted, are minimized. All three entities share the common goal of ensuring that the NAHASDA grant is put to good and lawful use and that eligible Indian families receive the benefit of a tribally-driven Indian housing program.

One issue of considerable importance to the tribes participating in the rulemaking was the regulatory requirements for procedural due process that would apply when a dispute arose between HUD and a tribe or a tribe's TDHE regarding the administration of the housing program.

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This article focuses on the regulatory requirements under NAHASDA for procedural due process for tribes and TDHEs operating housing programs, especially where HUD makes an adjustment to a recipient's future year's grant pursuant to section 405(c) of NAHASDA. The final regulations were guided, in part, by a 1988 decision of the United States Court of Appeals for the District of Columbia Circuit, *City of Kansas City, Missouri v. HUD*, 861 F.2d 739 (D.C. Cir. 1988) ("*Kansas City*"), which interpreted provisions of the Housing and Community Development Act of 1974 ("CDBG Act"), 42 U.S.C. § 5301 et seq., which are similar to enforcement provisions in NAHASDA.

Final regulations which implement NAHASDA were published by HUD in the *Federal Register* on March 12, 1998.¹ The regulations are divided into six subparts (A through F). Subpart F ("Recipient Monitoring, Oversight and Accountability") implements Title IV of NAHASDA,² the enforcement title of that Act which contains provisions that afford HUD various remedial actions which it can take against a tribe or TDHE when such entities act contrary to NAHASDA, the regulations, the Indian Housing Plan (IHP), or other applicable laws.

Two statutory provisions, section 401 and section 405 of NAHASDA,³ authorize the Secretary to take remedial measures against a tribe or TDHE, and therefore trigger due process considerations. Both NAHASDA provisions allow the Secretary to make adjustments to a tribe's or TDHE's grant funding to rectify program deficiencies. Section 401 addresses past noncompliance by the tribe or TDHE that does not affect current or future performance. Section 405 primarily addresses current or future performance.⁴ But there are other important differences between the two provisions, including the requirements for procedural due process. Section 401(a) of NAHASDA provides that:

¹ Until printed in Title 24, Code of Federal Regulations Part 1000, the regulations can be found at 63 Fed. Reg. 12324-12374 (Mar. 12, 1998) as well as on the Internet at "<http://www-DOMINO.HUD.GOV/IHP/REFERENC.nsf/FEDREGsort?openview>".

² 25 U.S.C. §§ 4161 - 4167 (1998).

³ 25 U.S.C. §§ 4161, 4165.

⁴ The legislative history to NAHASDA is quite scant. There are no committee reports accompanying the legislation, only floor statements by the bill's sponsors. As a result, courts will primarily be guided by the plain words of NAHASDA and its regulations. But to the extent that similar provisions are found in other statutes, such as the CDBG Act, court decisions interpreting that Act's provisions may offer some guidance as to how courts will interpret provisions in NAHASDA.

" ... [I]f the Secretary finds *after reasonable notice and opportunity for hearing* that a recipient of assistance under this chapter *has failed to comply substantially* with any provision of this chapter, the Secretary shall-

- (1) terminate payments under this chapter to the recipient;
- (2) reduce payments under this chapter to the recipient by an amount equal to the amount of such payments that were not expended in accordance with this chapter;
- (3) limit the availability of payments under this chapter to programs, projects, or activities not affected by such failure to comply; or
- (4) in the case of noncompliance described in section 4162(b) of this title, provide a replacement tribally designated housing entity for the recipient, under section 4162 of this title.

"If the Secretary takes an action under paragraph (1), (2), or (3), the Secretary shall continue such action until the Secretary determines that the failure to comply has ceased."

25 U.S.C. § 4161(a), emphasis added.⁵ Section 401(a) expressly provides for notice and a hearing. The substantial noncompliance, however, must be in the past. Section 401(a) of NAHASDA uses the phrase "has *failed to comply substantially*." This conclusion is also based on court decisions, like the *Kansas City* case, discussed below, which interpreted similar statutory language found in the CDBG Act. The formal hearing requirement imposed by section 401(a) of NAHASDA is mandatory and the Secretary cannot take any of the remedial measures available to HUD under Section 401(a) unless the Secretary concludes, after the required hearing, that the tribe or TDHE has failed to comply substantially with the Act.⁶

Another enforcement option available to the Secretary is found in Section 405 of NAHASDA. Section 405 of NAHASDA differs from Section 401 in that it focuses on current or future conduct affecting the grant. Section 405(a) of

⁵ In lieu of, or in addition to these actions, the Secretary may also refer the matter to the Attorney General who may chose to bring a civil action. See 25 U.S.C. § 4161(c).

⁶ Regulations which implement section 401 of NAHASDA are found at 24 CFR §§ 1000.534-1000.540 (63 *Fed. Reg.* 12371 (1998)). 24 CFR § 1000.534 defines the term "substantial noncompliance", the key finding which the agency must make before taking remedial action. 24 CFR § 1000.536 clarifies what happens to NAHASDA funds recovered from a tribe or TDHE. 24 CFR § 1000.538 repeats the statute's remedial measures that are available to HUD when a tribe or TDHE fails to comply and 24 CFR § 1000.540 identifies the applicable hearing procedures.

NAHASDA requires the Secretary, at least annually, to perform a review and audit to determine whether: 1) the tribe or TDHE has carried out eligible activities in a timely manner and in accordance with the requirements and primary objectives of the Act, and has a continuing capacity to carry out the program's activities; 2) the tribe or TDHE has complied with its Indian Housing Plan (IHP); and 3) performance reports required by section 404 of NAHASDA are accurate.⁷

Section 405(c) of NAHASDA, like section 401(a), provides the Secretary with a number of remedial measures to impose on a tribe or TDHE. These remedial measures, however, are based not on findings resulting from a formal hearing, but instead are based on findings by the Secretary following review and audit. The statute provides that:

"The Secretary may make appropriate adjustments in the amount of the annual grants under this chapter in accordance with the findings of the Secretary pursuant to reviews and audits under this section. The Secretary may adjust, reduce or withdraw grant amounts, or take other action as appropriate in accordance with the reviews and audits of the Secretary under this section, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided on behalf of an Indian tribe."⁸

Both sections 401 and 405 of NAHASDA permit the Secretary to alter the amount of the grant to a tribe or TDHE in some manner (whether it be to "terminate," "reduce," or "limit" under section 401(a) or "adjust," "reduce," or "withdraw" under section 405(c)). Section 405(c), however, does not mandate that HUD provide a tribe or TDHE with any due process hearing either before or after HUD takes one of its enumerated actions against the NAHASDA recipient. That is where the challenge for the NAHASDA Negotiated Rulemaking Committee lay; to ensure that due process was afforded tribes and TDHEs under the regulations in cases where HUD chose to make a section 405(c) adjustment to a NAHASDA recipient's grant. The tribal position was motivated, in part, by the *Kansas City* decision.

Kansas City, Missouri was an entitlement city under the CDBG Act and a recipient of Community Development Block Grant ("CDBG") funds. Under the CDBG Act, HUD awards CDBG funds to eligible recipients. In 1986, a dispute

⁷ 25 U.S.C. § 4165(a).

⁸ 25 U.S.C. § 4165(c).

arose between HUD and Kansas City over the city's use of the CDBG award.⁹ Kansas City's on-going activities were not at issue. In December, 1986, Kansas City filed suit seeking declaratory and injunctive relief to require HUD to provide the City with its full 1987 CDBG award prior to the start of the City's fiscal year on March 1, 1987, and to require HUD to give the City the notice and hearing required by the CDBG Act before taking any remedial action. HUD took remedial action against Kansas City and conditioned some \$3.7 million of the City's \$6.5 million FY 1987 CDBG grant, requiring the City to repay \$500,000 for "improper assessments" and withheld \$3.2 million until the City took certain actions.¹⁰ HUD did this without affording Kansas City any hearing.

Like NAHASDA, the CDBG Act contains two agency monitoring provisions. The first provision, which section 401 of NAHASDA may well have been patterned after, requires HUD to provide "reasonable notice and opportunity for hearing" when the Secretary finds the grantee has failed to comply substantially with the CDBG Act. See section 111 of the CDBG Act, 42 U.S.C. § 5311(a). The second provision, similar to section 405(c) of NAHASDA, allows the Secretary to make "appropriate adjustments" to a grant without any statutory requirement for procedural due process. See section 104(e) of the CDBG Act, as amended, 42 U.S.C. § 5304(e).¹¹

HUD asserted that its conduct, in conditioning Kansas City's CDBG award, was carried out under section 104(d), which required no hearing, and not section 111 of the CDBG Act where a hearing was required. The United States District Court for the District of Columbia found in favor of the city, and HUD appealed.¹² The United States Court of Appeals for the District of Columbia Circuit upheld the lower court's decision in favor of Kansas City. As phrased by the Court of Appeals:

⁹ In 1975, Kansas City used the CDBG funds to establish a fund to improve its streets, gutters and sidewalks. It assessed property owners and placed the proceeds into the fund for additional improvements. HUD subsequently prohibited such assessments by regulations. Following an audit, HUD found that Kansas City had continued making assessments after the prohibition became effective. A second dispute involved a question of program income, but Kansas City complied with HUD's request, under protest, and received from HUD the withheld funds. *City of Kansas City, Mo. v. HUD*, 669 F.Supp. 525, 526, fn. 2 (1987).

¹⁰ *Kansas City, Mo.*, 861 F.2d at 741.

¹¹ Pub.L. 100-242, § 509(a)(1), 101 Stat. 1927 (1988), redesignated former subsection 104(d) of the CDBG Act as subsection 104(e).

¹² *Kansas City, Mo.*, 861 F.2d at 741-742.

"The narrow question before this court is whether HUD must provide notice and an opportunity for a hearing when it proposes to condition, reduce or terminate an entitlement city's annual CDBG grant because of alleged *past noncompliance that does not affect current or future performance.*"

Kansas City, Mo., 861 F.2d at 742, emphasis added.

The Court of Appeals found that the sanction sought by HUD -- namely, to reduce Kansas City's grant by the same amount that HUD alleged the City had spent contrary to the CDBG Act or applicable regulations -- was a section 111 sanction where "reasonable notice and opportunity for hearing" is required. The Court concluded that "a recipient like Kansas City is entitled to a formal opportunity to contest the Secretary's allegations before being subject to sanctions." *Id.* at 742.

Significant, however, was the Court of Appeals rejection of HUD's argument that no due process was owed Kansas City because the Department had a "choice" of whether to proceed under section 111 (requiring notice and a hearing to the grantee) or section 104 of the CDBG Act (which allowed the Secretary to make "appropriate adjustments" without following the formal notice and hearing requirements).¹³ This allowed HUD, in the words of the district court, the "unilateral ability to reach a Section 111 result through Section 104," where no hearing was required.¹⁴

As concerns the interpretation of section 104 of the CDBG Act, the Court of Appeals in *Kansas City* stated:

"Nothing in section 104(d) suggests that it covers sanctions sought for *past* substantial noncompliance The Secretary has not charged that the City's current use of CDBG funds is improper, but rather seeks to impose sanctions to remedy the City's alleged *past* noncompliance. Section 104(d) is therefore inapplicable, and the Secretary may not avoid the procedural requirements of section 111 by invoking the adjustment authority of section 104(d)."

Id. at 743, emphasis added; see also *City of Houston, Tex. v. HUD*, 24 F.3d 1421 (D.C.Cir. 1994)(citing *Kansas City, Mo.*).

¹³ *Id.* at 743.

¹⁴ *Kansas City, Mo.*, 669 F.Supp. at 528.

In holding that HUD was required to provide notice and a hearing to Kansas City before taking the remedial action it selected, the Court also noted the importance of giving effect to the intent of Congress:

"[I]n most cases, Congress has been silent on the question of a grantee's procedural rights when an agency decides to terminate some or all of its federal grant.' [Citation omitted.] When, as in this case, Congress has not been silent, a court has a special obligation to ensure that the agency does not 'end-run the clear procedural protections which Congress provided.'" [Citations omitted.]

Kansas City, Mo., 861 F.2d at 745.

The same possibility for an agency "end-run" was present in developing regulations to implement NAHASDA, where one enforcement provision of NAHASDA, section 401(a), mandates procedural protections and another provision, section 405(c), does not. The challenge faced by the NAHASDA Negotiated Rulemaking Committee was twofold: first, to learn from the lessons of the *Kansas City* decision to develop regulations that would better ensure that HUD utilizes the appropriate enforcement provision when taking remedial action against a NAHASDA recipient; and second, to provide, by regulations, procedural due process protections in a section 405(c) action by HUD, where the statute provided none. That challenge was met. The *Kansas City* decision did not hold that HUD is mandated to provide notice and hearing when it takes remedial action against a recipient under section 104(d) of the CDBG Act. The case holding is limited to the procedural due process which HUD must provide a CDBG recipient in situations involving substantial noncompliance of a past nature. The NAHASDA Negotiated Rulemaking Committee, however, removed any ambiguity that may have existed under NAHASDA as to whether a recipient would receive procedural due process when HUD took remedial action under section 405(c) of NAHASDA (NAHASDA's counterpart to section 104(d) of the CDBG Act). The final regulations afford a recipient with written notice of the section 405(c) actions HUD intends to take, an opportunity for an informal meeting prior to HUD taking the sanction and an opportunity for a formal hearing following HUD's imposition of the section 405(c) sanction.

The Committee included a number of regulatory provisions in the final NAHASDA regulations which should guide HUD in choosing the correct enforcement provision when a tribe or TDHE may not be using its NAHASDA funds consistent with the Act or applicable regulations. Three are worth noting - 24 CFR § 1000.532, § 1000.534 and § 1000. 540.

Section 1000.534 ("What constitutes substantial noncompliance") defines the term "substantial noncompliance," the key finding which the Secretary must make after notice and a hearing and before taking remedial action under section 401(a).¹⁵

Defining the term "substantial noncompliance" in the NAHASDA regulations serves two purposes. First, both HUD and tribes are on notice as to what that term means in the context of section 401(a) of NAHASDA. Second, by knowing what "substantial noncompliance" is, it also sheds light on what it is not. If the noncompliance is not substantial, HUD cannot bring a section 401(a) action. Depending on the nature of the noncompliance, however, it may be appropriate for HUD to bring an action against a tribe or TDHE under section 405(c) of NAHASDA (i.e., when the allegedly improper conduct is ongoing or affects future performance). A key goal for many tribal representatives to the rulemaking committee was to ensure that HUD officials provide a uniform interpretation of this statutory phrase.

The second NAHASDA regulation provision worth noting is 24 CFR § 1000.532 ("What are the adjustments HUD makes to a recipient's future year's grant amount under section 405 of NAHASDA?"), which requires HUD to provide a recipient with procedural due process rights both before and after HUD takes remedial action under section 405. Section 1000.532(b) requires HUD, before imposing a section 405 sanction, to provide written notice to a recipient of the actions it intends to take and provide the recipient an opportunity for an informal meeting. Only in the event the deficiency is not resolved may HUD then take the remedial action under section 405. Following the action by HUD, section 1000.532(b) allows a recipient an opportunity, within 30 days of the notice of the action, to request a hearing in accordance with section 1000.540 (the hearing procedures in 24 CFR Part 26) to challenge HUD's

¹⁵ 24 CFR § 1000.534 provides that the determination by HUD of whether a tribe or TDHE has failed to comply substantially with the Act is a two-step process. First, there must be a noncompliance. Second, it must be substantial. The regulation defines noncompliance as substantial if:

- "(a) The noncompliance has a material effect on the recipient meeting its major goals and objectives as described in its Indian Housing Plan;
- (b) The noncompliance represents a material pattern or practice of activities constituting willful noncompliance with a particular provision of NAHASDA or the regulations, even if a single instance of noncompliance would not be substantial;
- (c) The noncompliance involves the obligation or expenditure of a material amount of the NAHASDA funds budgeted by the recipient for a material activity; or
- (d) The noncompliance places the housing program at substantial risk of fraud, waste or abuse."

decision to "adjust," "reduce," or "withdraw" a tribe's or TDHE's future year's grant.¹⁶

Based on the Court of Appeal's interpretation of the similar provisions of the CDBG Act in *Kansas City*, it appears that a court will be guided, in determining whether HUD should be operating under section 401(a) or 405(c) of NAHASDA, by whether the noncompliance by a tribe or TDHE is of a past nature that does not affect current or future performance (suggesting section 401(a) remedies) and whether the noncompliance is substantial or not.¹⁷

This is not to suggest that all insubstantial noncompliance by a tribe or TDHE must fall under section 405(c) of NAHASDA because it does not meet the requirement of section 401(a) of NAHASDA of being "substantial". Even the Court of Appeals, in the *Kansas City* decision, deferred on that question in the context of the CDBG Act's similar provisions.¹⁸

¹⁶ The sanctions contained in section 405(c) are prospective in nature. There are a number of regulatory provisions which emphasize that HUD's enforcement actions under section 405(c) of NAHASDA are to the tribe's or TDHE's "future grant funds," "future year's grant," or "subsequent year grant." See, e.g., 24 CFR § 1000.530(b), § 1000.532 (heading) and § 1000.532(c).

¹⁷ As to its interpretation of section 104 of the CDBG Act, the Court of Appeals in *Kansas City* noted:

"Section 111 on its face covers only acts of substantial noncompliance whereas section 104(d) appears to reach only current or future performance," *id.* at 743, fn. 5, and

"Both the language and the context of section 104(d) suggest that the review and adjustment authority under this provision is designed to ensure that current grants will be spent in compliance with the Act. As the House Report accompanying the CDBG Act explained, 'the post-audit and review requirements ... will serve as the basic assurance that block grant funds *are being used* properly to achieve the bill's objectives.'" Citation omitted.

Id. at 743, fn. 6, emphasis in the original.

¹⁸ The Court simply noted:

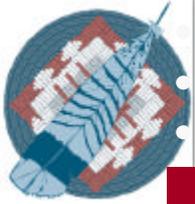
"We do not address the question whether the Secretary may use the adjustment authority of section 104(d) [of the CDBG Act] to remedy past *insubstantial* noncompliance with the Act. ... [S]ection 104(d) appears to reach only current or future performance. We leave to another day the question of how the Secretary may respond to an act of truly insubstantial past noncompliance."

Id. at 743, fn. 5.

The last NAHASDA regulation to note is 24 CFR § 1000.540 ("What hearing procedures will be used under NAHASDA?"). This regulation applies to HUD actions contemplated under section 401(a) relating to substantial noncompliance as well as to the post-reduction hearing procedures relating to HUD action under section 405(c). The reference in the NAHASDA regulation to 24 CFR Part 26 contains general regulations governing the powers and duties of an Administrative Law Judge (ALJ) and the rights of the parties to the proceeding (conduct discovery, present evidence, cross-examine witnesses, etc.); prehearing procedures such as those concerning discovery and subpoenas; and hearing regulations on such topics as the timing of the hearing, witnesses, evidence, the record, issuance of an initial decision, and judicial review.¹⁹

It is hoped that NAHASDA's regulations which address the enforcement actions HUD may take against tribes and TDHEs and the procedural due process rights afforded tribes and TDHEs when confronted by HUD sanctions provide better guidance to HUD when enforcing NAHASDA than was the case under the CDBG Act prior to *Kansas City*. There is an inherent tension between section 401(a) and 405(c) of NAHASDA. Whether the NAHASDA regulations successfully implement the lessons of *Kansas City* remain to be seen. For the immediate future, it will be up to HUD and the tribes and TDHEs which operate housing programs to map out the parameters. Of course, the courts will have the final word.

¹⁹ Although the NAHASDA regulations do not specify that the hearing procedures of 24 CFR Part 26, Subpart B ("Hearings Pursuant to the Administrative Procedure Act") apply, rather than those of 24 CFR Part 26, Subpart A ("Hearings Before Hearing Officers"), the language of NAHASDA appears to support the conclusion that the hearing procedures relating to the Administrative Procedure Act, 24 CFR Part 26, Subpart B, are the appropriate regulations to govern a NAHASDA-related hearing.



TITLE VI Loan Guarantee Program

Presented By

IHA MANAGEMENT SYSTEMS, INC.

Shared Visions: Summit I, Sponsored by HUD





Guiding Principles

- ❑ NAHASDA Statute - TITLE VI
- ❑ Regulations - 24 CFR 1000
Subpart E
- ❑ Notice and NOFA



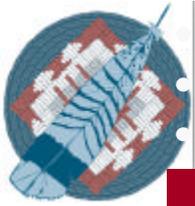
NAHASDA - TITLE VI

- ❑ Sec. 601 - Authority and Requirements
- ❑ Sec. 602 - Security and Repayment
- ❑ Sec 603 - Payment of Interest
- ❑ Sec. 604 - Training and Information (e.g., IHAMS)
- ❑ Sec. 605 - Limitation on Amount of Guarantees
- ❑ Sec. 606 - Effective Date



Regulations 24 CFR 1000 Subpart E

- Defines Eligible Issuers/ Borrowers/Lenders
- Tribal Approval and Certification of Need for Guarantee
- HUD Conditions
- Limit on Obligations
- Issuer Financial Capacity
- Repayment contract acceptable to HUD
- Other eligible costs



Regulations 24 CFR 1000 Subpart E

- Application procedure
- Application requirements
- HUD review of application
- Reasons for HUD disapproval/reduction of amount requested
- Timeframe for approval
- Amending Guarantee
- Allocation of Guarantees
- HUD monitoring



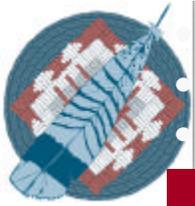
Notice of TITLE VI Loan Guarantee Demonstration Program

- ❑ To develop models of affordable housing, while increasing access to private capital, economic growth, and encourage new participation of financial institutions.
- ❑ Applications may be submitted to HUD any time - on a first-come, first served basis.



Notice of TITLE VI Loan Guarantee Demonstration Program

- Defines:
 - Eligible Activities (3)
 - Eligible Borrowers
- Application Submission Requirements:
 - Anytime
 - Contain information in 24 CFR 1000.424
 - Contain Subpart A Certifications
 - Environmental Review where applicable.



Capacity-Building Grant

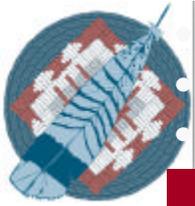
CAP-Grant Funds Awarded to IHAMS are to:

- ❑ Strengthen Economic Feasibility of Title VI Guaranteed Projects
- ❑ Directly Enhance the Security of Guaranteed Loans
- ❑ Finance Affordable Housing and Related Activities
- ❑ Demonstrate Economic Benefits (e.g., increased housing availability, job creation, etc.)
- ❑ Attainment of Indian Housing Plan Goals and Objectives



CAPACITY BUILDING GRANT

- ❑ NOFA Dated July 23, 1998
- ❑ 4 Million Noted In The NOFA - Reduced to 3 Million Prior To TAP Award
- ❑ IHAMS Was Selected AS The Technical Assistance Provider
- ❑ Tribes/TDHE's Can Access The Available Assistance In One Of Two Ways:



ACCESS TO TAP FUNDING

□ IHAMS

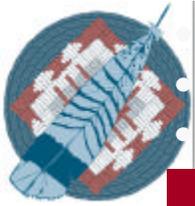
- IHAMS Conducts Assessment
- Develops TAP and Budget
- NONAP Approves TAP and Budget
- Provides Assistance and Training In Accordance With The Technical Assistance Plan



ACCESS TO TAP FUNDING

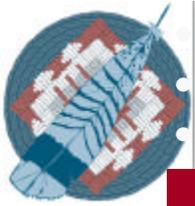
□ SUB-RECIPIENT

- IHAMS Conducts Assessment
- Develops TAP and Budget
- NONAP Approves TAP and Budget
- Tribe/ TDHE Signs Sub-recipient Agreement with IHAMS
- IHAMS Assists in RFP Development for Outside Consultant
- IHAMS Assists In Response Evaluation
- Outside Consultant Selected
- Consultant Provides Assistance In Accordance With The Technical Assistance Plan



TAP FUNDING ACCESS CONTINUED

- ❑ IHAMS Monitors Consultant's Progress
- ❑ Tribe/TDHE Requests Pass Through Funds Through IHAMS for Payment of Consultant(s)
- ❑ IHAMS Draws Down Funds through LOCCS
- ❑ IHAMS Monitors Expenditure of Pass Through Funds
- ❑ Tribe/TDHE Reports to IHAMS In Accordance With Subrecipient Agreement



TECHNICAL ASSISTANCE PLAN

- Management Strategy
- Work Plans
- Establishment of Priorities
- Location of Activities
- Anticipated Improved Performance
- Methods for Measuring Programmatic Success



TA Plan continued

- ❑ Tasks and Sub-tasks For Each Program
- ❑ Implementation Schedule
- ❑ Budgetary Needs to Accomplish Tasks
- ❑ Staffing Plan
- ❑ Administrative Budget



IHAMS STANDARD TRAINING

- ❑ PROJECT DEVELOPMENT PLANNING
- ❑ CONSTRUCTION DOCUMENT DEVELOPMENT
- ❑ CONSTRUCTION INSPECTION PROCEDURES
- ❑ HANDICAPPED ACCESSIBILITY - VISITABILITY
- ❑ ENVIRONMENTAL ASSESSMENT
- ❑ NAHASDA TRAINING



OUTSIDE FUNDING SOURCES

- ❑ Low Income Housing Tax Credits
 - Usually State Administered
 - Requires Locating Interested Investor
- ❑ Tax Exempt or Taxable Bonds
 - Sold by the Tribe or TDHE
 - Fixed or Variable Rate
 - Structured to cover some financing costs
- ❑ Pooled Financing
 - Variable Methodologies



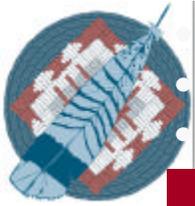
MORE OUTSIDE FUNDING

- Rural Development
 - Rural Housing Service
 - ✓ Administered by the US Dept of Agriculture
 - ✓ Section 502 - Homeownership Loans
 - ✓ Section 504 - Home Improvement/Repair
 - Loans and Grants



STILL MORE OUTSIDE FUNDING

- ❑ State Housing Funds
 - Primarily CDBG Grants
 - ✓ State Administered
 - Loans For Development Of:
 - Homeownership Units
 - Rental Units (Permanent and Transitional)
 - Emergency Shelters & Temporary Housing Units



MORE ABOUT STATE HOUSING FUNDS

- Pre Development Expenses
- Grants For:
 - Development Project Planning
 - Community Housing Plans
 - Tenant Based Rental Assistance Programs
 - Owner-Occupied Housing Rehab Programs
 - Operating Subsidies for Emergency and Transitional Housing Programs

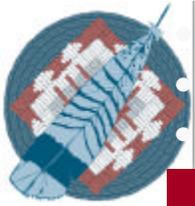


NAHASDA Listening Session

Title VI

Shared Visions: Summit I, Sponsored by HUD

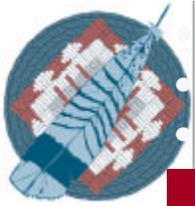




NAHASDA Listening Session

Listening Session Objectives

- Hear Your Concerns
- Gather your Suggestions
- Develop Blueprint for Action



Title VI

Karen Garner-Wing

National ONAP

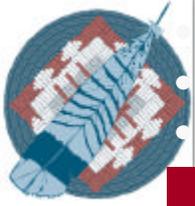
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**Native American Housing Assistance and Self-Determination Act of 1996,
as amended October 21, 1998
P.L. 104-330 (25 U.S.C. 4101 - 4212)**

**TITLE VI -- FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING
ACTIVITIES**

Sec. 601. AUTHORITY AND REQUIREMENTS.

- (a) **AUTHORITY** - To such extent or in such amounts as provided in appropriations Acts, the Secretary may, subject to the limitations of this title (including limitations designed to protect and maintain the viability of rental housing units owned or operated by the recipient that were developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937), and upon such terms and conditions as the Secretary may prescribe, guarantee and make commitments to guarantee, the notes or other obligations issued by Indian tribes or tribally designated housing entities with tribal approval, for the purposes of financing affordable housing activities described in section 202.
- (b) **LACK OF FINANCING ELSEWHERE** - A guarantee under this title may be used to assist an Indian tribe or housing entity in obtaining financing only if the Indian tribe or housing entity has made efforts to obtain such financing without the use of such guarantee and cannot complete such financing consistent with the timely execution of the program plans without such guarantee.
- (c) **TERMS OF LOANS** - Notes or other obligations guaranteed pursuant to this title shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary. The Secretary may not deny a guarantee under this title on the basis of the proposed repayment period for the note or other obligation, unless the period is more than 20 years or the Secretary determines that the period causes the guarantee to constitute an unacceptable financial risk.
- (d) **LIMITATION ON OUTSTANDING GUARANTEES** - No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the total outstanding notes or obligations of the issuer guaranteed under this title (excluding any amount defeased under the contract entered into under section 602(a)(1)) would thereby exceed an amount equal to 5 times the amount of the grant approval for the issuer pursuant to title III.

Sec. 602. SECURITY AND REPAYMENT.

- (a) **REQUIREMENTS ON ISSUER** - To assure the repayment of notes or other obligations and charges incurred under this title and as a condition for receiving such guarantees, the Secretary shall require the Indian tribe or housing entity issuing such notes or obligations to --
- (1) enter into a contract, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed under this title;
 - (2) pledge any grant for which the issuer may become eligible under this Act;
 - (3) demonstrate that the extent of such issuance and guarantee under this title is within the financial capacity of the tribe and is not likely to impair the ability to use grant amounts under title I, taking into consideration the requirements under section 203(b); and
 - (4) furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this Act or disposition proceeds from the sale of land or rehabilitated property.
- (b) **REPAYMENT FROM GRANT AMOUNTS** - Notwithstanding any other provision of this Act --
- (1) the Secretary may apply grants pledged pursuant to subsection (a)(2) to any repayments due the United States as a result of such guarantees; and
 - (2) grants allocated under this Act for an Indian tribe or housing entity (including program income derived therefrom) may be used to pay principal and interest due (including such servicing, underwriting, and other costs as may be specified in regulations issued by the Secretary) on notes or other obligations guaranteed pursuant to this title.
- (c) **FULL FAITH AND CREDIT** - The full faith and credit of the United States is pledged to the payment of all guarantees made under this title. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

Sec. 603. PAYMENT OF INTEREST.

The Secretary may make, and contract to make, grants, in such amounts as may be approved in appropriations Acts, to or on behalf of an Indian tribe or housing entity issuing notes or other obligations guaranteed under this title, to cover not to exceed 30 percent of the net interest cost (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) to the borrowing entity or agency of such obligations. The Secretary may also, to the extent approved in appropriations Acts, assist the issuer of a note or other obligation guaranteed under this title in the payment of all or a portion of the principal and interest amount due under the note or other obligation, if the Secretary determines that the issuer is unable to pay the amount because of circumstances of extreme hardship beyond the control of the issuer.

Sec. 604. TRAINING AND INFORMATION.

The Secretary, in cooperation with eligible public entities, shall carry out training and information activities with respect to the guarantee program under this title.

Sec. 605. LIMITATIONS ON AMOUNT OF GUARANTEES.

- (a) **AGGREGATE FISCAL YEAR LIMITATION** - Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities and to the authority provided in this title, to the extent approved or provided in appropriations Acts, the Secretary may enter into commitments to guarantee notes and obligations under this title with an aggregate principal amount not to exceed \$400,000,000 for each of fiscal years 1997, 1998, 1999, 2000, and 2001.
- (b) **AUTHORIZATION OF APPROPRIATIONS FOR CREDIT SUBSIDY** - There are authorized to be appropriated to cover the costs (as such term is defined in section 502 of the Congressional Budget Act of 1974) of guarantees under this title such sums as may be necessary for each of fiscal years 1997, 1998, 1999, 2000, and 2001.
- (c) **AGGREGATE OUTSTANDING LIMITATION** - The total amount of outstanding obligations guaranteed on a cumulative basis by the Secretary pursuant to this title shall not at any time exceed \$2,000,000,000 or such higher amount as may be authorized to be appropriated for this title for any fiscal year.

- (d) **FISCAL YEAR LIMITATIONS ON TRIBES** - The Secretary shall monitor the use of guarantees under this title by Indian tribes. If the Secretary finds that 50 percent of the aggregate guarantee authority under subsection (c) has been committed, the Secretary may --
- (1) impose limitations on the amount of guarantees any one Indian tribe may receive in any fiscal year of \$50,000,000; or
 - (2) request the enactment of legislation increasing the aggregate outstanding limitation on guarantees under this title.

Sec. 606. EFFECTIVE DATE.

This title shall take effect on the date of the enactment of this Act.

Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule

24 CFR Part 1000--NATIVE AMERICAN HOUSING ACTIVITIES

Subpart E--Federal Guarantees for Financing of Tribal Housing Activities

Sec. 1000.401 What terms are used throughout this subpart?

As used throughout title VI of NAHASDA and in this subpart:

Applicant means the entity that requests a HUD guarantee under the provisions of this subpart.

Borrower means an Indian tribe or TDHE that receives funds in the form of a loan with the obligation to repay in full, with interest, and has executed notes or other obligations that evidence that transaction.

Issuer means an Indian tribe or TDHE that issues or executes notes or other obligations. An issuer can also be a borrower.

Sec. 1000.402 Are State recognized Indian tribes eligible for guarantees under title VI of NAHASDA?

Those State recognized Indian tribes that meet the definition set forth in section 4(12)(C) of NAHASDA are eligible for guarantees under title VI of NAHASDA.

Sec. 1000.404 What lenders are eligible for participation?

Eligible lenders are those approved under and meeting the qualifications established in this subpart, except that loans otherwise insured or guaranteed by an agency of the United States, or made by an organization of Indians from amounts borrowed from the United States, shall not be eligible for guarantee under this part. The following lenders are deemed to be eligible under this subpart:

- (a) Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act;

- (b) Any lender whose housing loans under chapter 37 of title 38, United States Code, are automatically guaranteed pursuant to section 1802(d) of such title;
- (c) Any lender approved by the Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949;
- (d) Any other lender that is supervised, approved, regulated, or insured by any agency of the United States; and
- (e) Any other lender approved by the Secretary.

Sec. 1000.406 What constitutes tribal approval to issue notes or other obligations under title VI of NAHASDA?

Tribal approval is evidenced by a written tribal resolution that authorizes the issuance of notes or obligations by the Indian tribe or a TDHE on behalf of the Indian tribe.

Sec. 1000.408 How does an Indian tribe or TDHE show that it has made efforts to obtain financing without a guarantee and cannot complete such financing in a timely manner?

The Indian tribe or TDHE shall submit a certification that states that the Indian tribe has attempted to obtain financing and cannot complete such financing consistent with the timely execution of the program plans without such guarantee. Written documentation shall be maintained by the Indian tribe or TDHE to support the certification.

Sec. 1000.410 What conditions shall HUD prescribe when providing a guarantee for notes or other obligations issued by an Indian tribe?

HUD shall provide that:

- (a) Any loan, note or other obligation guaranteed under title VI of NAHASDA may be sold or assigned by the lender to any financial institution that is subject to examination and supervision by an agency of the Federal government, any State, or the District of Columbia without destroying or otherwise negatively affecting the guarantee; and
- (b) Indian tribes and housing entities are encouraged to explore creative financing mechanisms and in so doing shall not be limited in obtaining a guarantee. These creative financing mechanisms include but are not limited to:
 - (1) Borrowing from private or public sources or partnerships;

- (2) Issuing tax exempt and taxable bonds where permitted; and
- (3) Establishing consortiums or trusts for borrowing or lending, or for pooling loans.
- (c) The repayment period may exceed twenty years and the length of the repayment period cannot be the sole basis for HUD disapproval; and
- (d) Lender and issuer/borrower must certify that they acknowledge and agree to comply with all applicable tribal laws.

Sec. 1000.412 Can an issuer obtain a guarantee for more than one note or other obligation at a time?

Yes. To obtain multiple guarantees, the issuer shall demonstrate that:

- (a) The issuer will not exceed a total for all notes or other obligations in an amount equal to five times its grant amount, excluding any amount no longer owed on existing notes or other obligations; and
- (b) Issuance of additional notes or other obligations is within the financial capacity of the issuer.

Sec. 1000.414 How is an issuer's financial capacity demonstrated?

An issuer must demonstrate its financial capacity to:

- (a) Meet its obligations; and
- (b) Protect and maintain the viability of housing developed or operated pursuant to the 1937 Act.

Sec. 1000.416 What is a repayment contract in a form acceptable to HUD?

- (a) The Secretary's signature on a contract shall signify HUD's acceptance of the form, terms and conditions of the contract.
- (b) In loans under title VI of NAHASDA, involving a contract between an issuer and a lender other than HUD, HUD's approval of the loan documents and guarantee of the loan shall be deemed to be HUD's acceptance of the sufficiency of the security furnished. No other security can or will be required by HUD at a later date.

Sec. 1000.418 Can grant funds be used to pay costs incurred when issuing notes or other obligations?

Yes. Other costs that can be paid using grant funds include but are not limited to the costs of servicing and trust administration, and other costs associated with financing of debt obligations.

Sec. 1000.420 May grants made by HUD under section 603 of NAHASDA be used to pay net interest costs incurred when issuing notes or other obligations?

Yes. Other costs that can be paid using grant funds include but are not limited to the costs of servicing and trust administration, and other costs associated with financing of debt obligations, not to exceed 30 percent of the net interest cost.

Sec. 1000.422 What are the procedures for applying for loan guarantees under title VI of NAHASDA?

- (a) The borrower applies to the lender for a loan using a guarantee application form prescribed by HUD.
- (b) The lender provides the loan application to HUD to determine if funds are available for the guarantee. HUD will reserve these funds for a period of 90 days if the funds are available and the applicant is otherwise eligible under this subpart. HUD may extend this reservation period for an extra 90 days if additional documentation is necessary.
- (c) The borrower and lender negotiate the terms and conditions of the loan in consultation with HUD.
- (d) The borrower and lender execute documents.
- (e) The lender formally applies for the guarantee.
- (f) HUD reviews and provides a written decision on the guarantee.

Sec. 1000.424 What are the application requirements for guarantee assistance under title VI of NAHASDA?

The application for a guarantee must include the following:

- (a) An identification of each of the activities to be carried out with the guaranteed funds and a description of how each activity qualifies as an affordable housing activity as defined in section 202 of NAHASDA.
- (b) A schedule for the repayment of the notes or other obligations to be guaranteed that identifies the sources of repayment, together with a statement identifying the entity that will act as the borrower.
- (c) A copy of the executed loan documents, if applicable, including, but not limited to, any contract or agreement between the borrower and the lender.
- (d) Certifications by the borrower that:
 - (1) The borrower possesses the legal authority to pledge and that it will, if approved, make the pledge of grants required by section 602(a)(2) of NAHASDA.
 - (2) The borrower has made efforts to obtain financing for the activities described in the application without use of the guarantee; the borrower will maintain documentation of such efforts for the term of the guarantee; and the borrower cannot complete such financing consistent with the timely execution of the program plans without such guarantee.
 - (3) It possesses the legal authority to borrow or issue obligations and to use the guaranteed funds in accordance with the requirements of this subpart.
 - (4) Its governing body has duly adopted or passed as an official act a resolution, motion, or similar official action that:
 - (i) Identifies the official representative of the borrower, and directs and authorizes that person to provide such additional information as may be required; and
 - (ii) Authorizes such official representative to issue the obligation or to execute the loan or other documents, as applicable.
- (5) The borrower has complied with section 602(a) of NAHASDA.
- (6) The borrower will comply with the requirements described in subpart A of this part and other applicable laws.

Sec. 1000.426 How does HUD review a guarantee application?

The procedure for review of a guarantee application includes the following steps:

- (a) HUD will review the application for compliance with title VI of NAHASDA and these implementing regulations.
- (b) HUD will accept the certifications submitted with the application. HUD may, however, consider relevant information that challenges the certifications and require additional information or assurances from the applicant as warranted by such information.

Sec. 1000.428 For what reasons may HUD disapprove an application or approve an application for an amount less than that requested?

HUD may disapprove an application or approve a lesser amount for any of the following reasons:

- (a) HUD determines that the guarantee constitutes an unacceptable risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:
 - (1) The ratio of the expected annual debt service requirements to the expected available annual grant amount, taking into consideration the obligations of the borrower under the provisions of section 203(b) of NAHASDA;
 - (2) Evidence that the borrower will not continue to receive grant assistance under this part during the proposed repayment period;
 - (3) The borrower's inability to furnish adequate security pursuant to section 602(a) of NAHASDA; and
 - (4) The amount of program income the proposed activities are reasonably estimated to contribute toward repayment of the guaranteed loan or other obligations.
- (b) The loan or other obligation for which the guarantee is requested exceeds any of the limitations specified in sections 601(d) or section 605(d) of NAHASDA.
- (c) Funds are not available in the amount requested.
- (d) Evidence that the performance of the borrower under this part has been determined to be unacceptable pursuant to the requirements of subpart F of this part, and that the borrower has failed to take reasonable steps to correct performance.

- (e) The activities to be undertaken are not eligible under section 202 of NAHASDA.
- (f) The loan or other obligation documents for which a guarantee is requested do not meet the requirements of this subpart.

Sec. 1000.430 When will HUD issue notice to the applicant if the application is approved at the requested or reduced amount?

- (a) HUD shall make every effort to approve a guarantee within 30 days of receipt of a completed application including executed documents and, if unable to do so, will notify the applicant within the 30 day timeframe of the need for additional time and/or if additional information is required.
- (b) HUD shall notify the applicant in writing that the guarantee has either been approved, reduced, or disapproved. If the request is reduced or disapproved, the applicant will be informed of the specific reasons for reduction or disapproval.
- (c) HUD shall issue a certificate to guarantee the debt obligation of the issuer subject to compliance with NAHASDA including but not limited to sections 105, 601(a), and 602(c) of NAHASDA, and such other reasonable conditions as HUD may specify in the commitment documents in a particular case.

Sec. 1000.432 Can an amendment to an approved guarantee be made?

- (a) Yes. An amendment to an approved guarantee can occur if an applicant wishes to allow a borrower/issuer to carry out an activity not described in the loan or other obligation documents, or substantially to change the purpose, scope, location, or beneficiaries of an activity.
- (b) Any changes to an approved guarantee must be approved by HUD.

Sec. 1000.434 How will HUD allocate the availability of loan guarantee assistance?

- (a) Each fiscal year HUD may allocate a percentage of the total available loan guarantee assistance to each Area ONAP equal to the percentage of the total NAHASDA grant funds allocated to the Indian tribes in the geographic area of operation of that office.

- (b) These allocated amounts shall remain exclusively available for loan guarantee assistance for Indian tribes or TDHEs in the area of operation of that office until committed by HUD for loan guarantees or until the end of the second quarter of the fiscal year. At the beginning of the third quarter of the fiscal year, any residual loan guarantee commitment amount shall be made available to guarantee loans for Indian tribes or TDHEs regardless of their location. Applications for residual loan guarantee money must be submitted on or after April 1.

- (c) In approving applications for loan guarantee assistance, HUD shall seek to maximize the availability of such assistance to all interested Indian tribes or TDHEs. HUD may limit the proportional share approved to any one Indian tribe or TDHE to its proportional share of the block grant allocation based upon the annual plan submitted by the Indian tribe or TDHE indicating intent to participate in the loan guarantee allocation process.

Sec. 1000.436 How will HUD monitor the use of funds guaranteed under this subpart?

HUD will monitor the use of funds guaranteed under this subpart as set forth in section 403 of NAHASDA, and the lender is responsible for monitoring performance with the documents.

federal register

**Thursday
July 23, 1998**

Part III

**Department of
Housing and Urban
Development**

**Office of the Assistant Secretary for
Public and Indian Housing, Notice of
Title VI Loan Guarantee Demonstration
Program; Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4384-N-01]

**Notice of Title VI Loan Guarantee
Demonstration Program**

AGENCY: Office of the Assistant
Secretary for Public and Indian
Housing, HUD.

ACTION: Notice.

SUMMARY: The FY 1998 HUD Appropriations Act provided a \$5 million appropriation for the funding of a demonstration program which could guarantee up to \$45 million in Title VI loan guarantees. This notice announces HUD's loan guarantee demonstration program under Title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). Through the demonstration program, HUD is seeking to develop models which will provide innovative ways to enhance development of affordable, accessible, and visitable housing in Indian areas, while increasing access to private capital, economic growth, and the investment and participation of traditional financial institutions not customarily serving Indian reservations and other Native American areas. Indian tribes and Tribally Designated Housing Entities (TDHEs) are encouraged to form partnerships (financial, service/supportive and economic development oriented) with investors or financial institutions and submit model Title VI demonstration projects to be evaluated in accordance with criteria listed in this notice. Applications for Title VI loans may be submitted to HUD at any time during the demonstration program, and will be processed on a first-come, first-served basis.

EFFECTIVE DATE: This notice is effective July 23, 1998.

FOR FURTHER INFORMATION CONTACT: Karen Garner-Wing, Director, Office of Loan Guarantee, Department of Housing and Urban Development, 1999 Broadway—Suite 3390, Box 90, Denver, CO 80202-3390; telephone (303) 675-1600 (this is not a toll free number). Persons with speech or hearing impediments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

**I. Authority; Background; Definitions;
and Eligibility**

(A) Authority

Title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA)

(25 U.S.C. 4101 *et seq.*); Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105-65; 111 Stat. 1344, 1355, approved October 27, 1997).

(B) Background

Title VI of NAHASDA (entitled "Federal Guarantees for Financing for Tribal Housing Activities") establishes a Native American loan guarantee program. Title VI authorizes the Department to guarantee financial obligations issued by Indian tribes or their Tribally Designated Housing Entities (TDHEs) to finance affordable housing activities as defined in Title II of NAHASDA and outlined in their Indian Housing Plan (IHP). To assure the repayment of notes or other obligations, NAHASDA requires Title VI applicants to pledge their Indian Housing Block Grant (IHBG) funds and other security as required by the Department.

**(C) Applicability of 24 CFR Part 1000,
Subpart E**

HUD's regulations implementing Title VI of NAHASDA are located at 24 CFR part 1000, subpart E. Unless specifically referenced in this notice, these regulations do not apply to the Title VI Demonstration Program.

(D) Definitions

(1) *Definitions in 24 CFR part 1000, subpart E.* Unless otherwise defined in this notice, the definitions set forth in 24 CFR part 1000 apply to the Title VI Demonstration Program.

(2) *Definition of "Visitability".* The following definition also applies to the Title VI Demonstration Program:

Visitability means at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk; the entrance door and all interior passage doors provide a minimum 36-inch clear opening. Allowing use of 36-inch doors is consistent with the Fair Housing Act (at least for the interior doors), and may be more acceptable than requiring the 3 foot doors that are required in fully accessible areas under the Uniform Federal Accessibility Standards for a small percentage of units.

**(E) Eligible Activities for the Title VI
Demonstration Program**

Loans and bond issuances are authorized and guaranteed by HUD for the purposes of financing affordable housing activities as planned in the Tribes/TDHEs IHP. For the FY 1998 demonstration program, Title VI activities shall be limited in scope as

described in this notice. The activities authorized in this notice are those which include:

(1) *Indian housing assistance.* The provision of modernization or rehabilitation for housing previously developed or operated pursuant to a contract between the Secretary of HUD and an Indian Housing Authority.

(2) *Development.* The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities.

(3) *Model Activities.* Housing activities under model programs that are designed to carry out the purposes of the NAHASDA and are specifically approved by the Secretary and/or approved in connection with the IHP process.

In undertaking any of the above activities, program participants should design construction, rehabilitation or modifications to buildings and facilities to be accessible and visitable for persons with disabilities and others who may also benefit, such as mothers with strollers or persons delivering appliances. In providing technical assistance, educational opportunities, and loans, training and informational materials related to program activities should be made available in appropriate video, audio, or braille formats, if approved by HUD. If job opportunities are provided through this program, reasonable efforts should be made to employ Native Americans with disabilities in a variety of jobs. Employers should make reasonable accommodations for employees with disabilities.

**(F) Eligible Borrowers to Participate in
the Demonstration Program**

To be eligible to participate in the demonstration program, a borrower must:

(1) Be a Federally recognized Indian tribe or TDHE that is an approved recipient for IHBG funds;

(2) Have experience with complex financial transactions;

(3) Certify that the borrower was unable to obtain financing without the use of this guarantee and cannot complete such financing consistent with the timely execution of the program plans without such guarantee;

(4) Have tribal approval that authorizes the borrower to issue or undertake financial obligations;

(5) Have the capacity to repay the obligation (i.e. to meet the debt service requirement); and

(6) Pledge IHBG grants as security. Although a borrower is required by the NAHASDA to pledge current and future IHBG funds as collateral for the Title VI guarantee, the borrower will be required to furnish additional security to satisfy HUD requirements. Examples of additional security include:

(a) *Funding Reserves.* IHBG or other grant funds may be used to provide capital reserves to provide resource funds to enhance the economic feasibility of a project's early years. This capital advance can be made as a loan, with the intent to repay funds when the project begins to earn sufficient income.

(b) *Over-Collateralization.* The use of grant funds may be structured so that project-generated cash flow will be sufficient to cover debt service and directly enhance the guaranteed loan. One technique for accomplishing this approach is over-collateralization.

An example of this is where grant funds are combined and the borrower makes affordable housing loans to tribal members at an interest rate equal to or greater than the rate on the Title VI loan. The total loan portfolio would be pledged to the repayment of the Title VI loan.

(c) *Letter of Credit.* IHBG and Title VI Loan Guarantee Capacity-Building Grants (see the separate Notice of Funding Availability published elsewhere in today's **Federal Register**) may be used to cover the cost of a letter of credit, issued in favor of HUD. This letter of credit is then available to fund any amounts due on the Title VI loan provided a default should occur and debt obligations remain outstanding after 30 days.

(d) *Interest Rate Subsidy.* Title VI funds may be used to provide an interest rate subsidy to make financing affordable for low-income families or the borrower. NAHASDA funds could be used to "buy down" the interest rate or make full or partial interest payments, allowing the reduction and enhancement of the long term

affordability of homeownership for eligible families and for borrowers to carry out approved affordable housing activities.

II. Submission Requirements

Applications may be submitted to HUD at any time and must contain, at a minimum, the information required under 24 CFR § 1000.424. Applicants are reminded that § 1000.424(d)(6) requires the borrower to submit a certification of compliance with all of the requirements described in 24 CFR part 1000, subpart A, including the environmental review requirements set forth in §§ 1000.18, 1000.20, 1000.22, and 1000.24. No funds may be committed to a project (other than for certain nonphysical activities) before the completion of the environmental review and, where the Indian tribe assumes responsibility for the environmental review, before approval of the request for release of funds and related certification required by sections 105(b) and 105(c) of NAHASDA.

III. Clarifications

HUD will contact an applicant to clarify an item in the application. Applicants must submit clarifications in accordance with the request made by HUD or the Department will reject the application as incomplete.

IV. Notification of Title VI Approval or Disapproval

Upon completion of its review, HUD will notify the Title VI applicant of HUD's decision to approve or disapprove the proposed demonstration project, with an explanation of the reasons for the disapproval. Those applications that HUD approves will include a Firm Commitment notice from HUD to the applicant. Applicants will have 30 days in which to submit an appeal in the event of a disapproval. The appeal must include a narrative statement, with supporting documentation, that addresses the issues in HUD's disapproval and serves to mitigate HUD's reasons for disapproval.

V. Findings and Certifications

(A) Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The OMB approval number, once assigned, will be published in the **Federal Register**. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

(B) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

(C) Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order.

Dated: July 20, 1998.

Deborah Vincent,
General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 98-19675 Filed 7-20-98; 2:24 pm]

BILLING CODE 4210-33-P

REGISTRATION

Thursday
July 23, 1998

Part IV

**Department of
Housing and Urban
Development**

Office of the Assistant Secretary for
Public and Indian Housing, Notice of
Funding Availability for Title VI Loan
Guarantee Capacity-Building Grants;
Notice

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4384-N-02]

**Notice of Funding Availability for Title
VI Loan Guarantee Capacity-Building
Grants**

AGENCY: Office of the Assistant
Secretary for Public and Indian
Housing, HUD.

ACTION: Notice of funding availability
(NOFA).

SUMMARY: This NOFA announces the availability of \$4 million for assistance to organizations providing capacity building technical assistance to Indian tribes or Tribally Designated Housing Entities (TDHEs) that have been granted a loan guarantee under the Title VI Demonstration Program. Under the demonstration program (which HUD is announcing through a separate notice published elsewhere in today's Federal Register), HUD will guarantee the financial obligations issued by Indian tribes and TDHEs to finance affordable housing activities authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). This document sets forth the application instructions for the grants made available under the NOFA.

APPLICATION DUE DATES: Completed applications (an original and one copy) must be submitted no later than 4:00 pm, Mountain time, on August 24, 1998 to the address shown below.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all applicants, HUD will treat as ineligible for consideration any application that is not received by the application deadline. Applicants should submit their materials as early as possible to avoid any risk of loss of eligibility because of unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent by facsimile (FAX) transmission.

ADDRESSES AND APPLICATION SUBMISSION PROCEDURES: *Addresses:* Completed applications (one original and one copy) must be submitted to: National office of Native American Programs—Office of Loan Guarantee, Department of Housing and Urban Development, 1999 Broadway—Suite 3390, Box 90, Denver, CO 80202-3390; ATTN: Title VI Demonstration.

Application Procedures: Mailed Applications. Applications will be considered timely filed if post marked on or before 4:00 p.m. on the application due date and received at the

address above on or within five (5) days of the application due date.

Applications Sent by Overnight/ Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications. Hand carried applications delivered before and on the application due date must be brought to the specified location and room number between the hours of 8:30 am to 4:00 pm, Mountain time.

FOR FURTHER INFORMATION AND TECHNICAL ASSISTANCE CONTACT: Karen Garner-Wing, Director, Office of Loan Guarantee, Department of Housing and Urban Development, 1999 Broadway—Suite 3390, Box 90, Denver, CO 80202-3390; telephone (303) 675-1600 (this is not a toll free number). Persons with speech or hearing impediments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Authority; Background; Purpose; Definitions; Amounts Allocated; and Eligibility

(A) Authority

Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105-65, 111 Stat. 1344, 1357; approved October 27, 1997) (FY 1998 HUD Appropriations Act).

(B) Background

Title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (entitled "Federal Guarantees for Financing for Tribal Housing Activities") authorizes HUD to guarantee financial obligations issued by Indian tribes or their Tribally Designated Housing Entities (TDHEs) to finance affordable housing activities. To assure the repayment of notes or other obligations, NAHASDA requires Title VI applicants to pledge their Indian Housing Block Grant (IHBG) funds and other security as required by HUD. The FY 1998 HUD Appropriations Act provided \$5 million for the funding of a demonstration program which could guarantee up to \$45 million in Title VI loan guarantees. HUD's Title VI Loan Guarantee Demonstration program is being announced through a separate

notice published elsewhere in today's Federal Register.

(C) Purpose

(1) The FY 1998 HUD Appropriations Act provided \$25 million to test comprehensive approaches for developing jobs through economic development, developing affordable low- and moderate-income rental and homeownership housing, and increasing the investment of both private and nonprofit capital in rural and tribal areas of the United States. Of the \$25 million, \$4 million is being made available under this NOFA.

(2) The funds available under this NOFA will be competitively awarded to one or more technical assistance providers that will use the grant funds to provide capacity-building technical assistance to Indian tribes or TDHEs with an obligation approved under the Title VI Demonstration Program. The purposes of grants awarded under this NOFA are to: (a) strengthen the economic feasibility of projects guaranteed under Title VI of NAHASDA; (b) directly enhance the security of guaranteed loans; (c) finance affordable housing activities and related projects that will provide near-term results; (d) demonstrate economic benefits such as homeownership opportunities, increased housing availability, housing accessibility and visitability, and job creation related to the approved project; and (e) attainment of Indian Housing Plan goals and objectives.

(3) As a technical assistance provider, the organization will:

(a) Act as a pass-through agent to distribute the grant funds to Indian tribes and/or TDHEs that have hired a technical service provider to oversee the successful completion of their Title VI project; and/or;

(b) Act as a technical service provider to Indian tribes and/or TDHEs that request the organization's services in overseeing the successful implementation of their Title VI project, and/or;

(c) Act as a pass-through agent to distribute the grant funds to Indian tribes and/or TDHEs for eligible costs directly related to the approved Title VI project (but which are not specifically covered in NAHASDA) or other related activities as deemed appropriate by HUD. Examples of eligible costs include, but are not limited to: types of creative financing such as payment of private financial guaranty insurance policies, letters of credit or other forms of credit enhancement for obligations to be guaranteed, the payment of interest

due and costs such as underwriting and note servicing.

(D) Definitions

Capacity-building is the transferring of skills and knowledge in planning, developing and administering activities funded under this NOFA. For purposes of this NOFA, capacity-building may include provision of loans and grants as well as training and technical assistance activities.

Visitability means at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk; the entrance door and all interior passage doors provide a minimum 2 feet, 10 inches clear opening. Allowing use of 2'10" doors is consistent with the Fair Housing Act (at least for the interior doors), and may be more acceptable than requiring the 3 foot doors that are required in fully accessible areas under the Uniform Federal Accessibility Standards for a small percentage of units.

(E) Amounts Allocated

This NOFA makes available a total of \$4 million in FY 1998 funding on a competitive basis.

(F) Eligible Applicants

(1) Eligible applicants are private organizations (for profit and nonprofit) with experience in providing technical assistance and capacity-building skills in planning and developing affordable housing. Applicants must also have experience in assisting Indian tribes, TDHEs, and/or other entities having similar physical, social, or economic conditions to those that exist in Indian country.

(2) A technical assistance provider awarded a grant under this NOFA must demonstrate experience in providing technical assistance in housing development to Indian tribes, TDHEs, or other entities facing similar economic and social conditions to those that exist in Indian country.

(G) Eligible Activities

(1) Funding under this NOFA will be used to enhance and strengthen an approved Title VI demonstration project. All applicants must meet and comply with the requirements of this NOFA and the Title VI Demonstration Program (see notice published elsewhere in today's Federal Register). HUD desires to see the funds used to finance affordable housing activities and projects that will provide near-term results and demonstrate economic benefits (such as homeownership opportunities, increased availability of affordable/accessible housing, job

creation and attainment of Indian Housing Plan goals and objectives). Eligible activities include:

(a) Providing technical assistance which will enhance the completion of the Title VI demonstration project, including:

(i) Planning, training and pre-development assistance to tribes/TDHEs to expand their scope of expertise, to implement larger-scale and model Title VI projects;

(ii) Self-help assistance, including skill in fiscal management related to the Title VI demonstration project;

(iii) Dissemination of capacity-building information and citizen participation activities (including information on Title VI loans); and

(iv) Coordination of existing resources to maximize housing or economic opportunities funded under the provisions of this NOFA and/or the Title VI Demonstration Program.

(b) Providing loss mitigation techniques.

(c) Providing related activities (public improvements, economic development, public services, and administrative costs) that directly support the housing activities listed in the Title VI Demonstration Program. The provision of these activities may not constitute more than twenty-five percent (25%) of the recipient's budget in the aggregate, and must clearly support and serve the Native American community served by the housing activities. Such activities include, but are not limited to:

(i) Construction of publicly- or privately-owned utilities needed to serve the housing site(s) for which the Title VI demonstration project was funded;

(ii) Provision of supportive housing services that are directly supportive of the housing activities proposed in the Title VI demonstration project, including but not limited to, legal assistance, housing counseling, classes on purchasing a home, home maintenance and repair training, tenant services;

(iii) Tribal/TDHE costs of administering the funding and carrying out of activities related to the Title VI demonstration project (which are not specifically permitted by NAHASDA), but at a rate not to exceed 10% of the Title VI funds provided; and

(iv) Provision of financial or technical assistance related to the Title VI loan to start or expand businesses, for the purposes of creating jobs or providing goods or services for tribal residents living in the Indian area.

(2) In undertaking activities under this NOFA, applicants should design construction, rehabilitation or

modifications to buildings and facilities to be accessible and visitable for persons with disabilities and others who may also benefit, such as mothers with strollers or persons delivering appliances. In providing technical assistance, educational opportunities, and loans, training and informational materials related to program activities should be made available in appropriate video, audio, or braille formats, if approved by HUD. If job opportunities are provided through this program, reasonable efforts should be made to employ Native Americans with disabilities in a variety of jobs. Employers should make reasonable accommodations for employees with disabilities.

II. Program Requirements

(A) *Compliance with Civil Rights Laws.* Indian tribes and TDHEs must comply with the nondiscrimination requirements of 24 CFR 1000.12. All other applicants must comply with the nondiscrimination requirements set forth in 24 CFR 5.105(a).

(B) *Economic Opportunities for Low and Very Low-Income Persons (Section 3).* Recipients of HUD assistance must comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low-Income Persons), and the HUD regulations at 24 CFR part 135, including the reporting requirements in subpart E. Section 3 provides that recipients shall ensure that training, employment and other economic opportunities, to the greatest extent feasible, be directed to: (1) low and very low income persons, particularly those who are recipients of government assistance for housing; and (2) business concerns which provide economic opportunities to low and very low income persons.

(C) *Relocation.* Any person (including individuals, partnerships, corporations or associations) who moves from real property or moves personal property from real property as a direct result of a written notice to acquire or the acquisition of the real property, in whole or in part, for a HUD-assisted activity is covered by acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and the implementing governmentwide regulation at 49 CFR part 24. Any person who moves permanently from real property or moves personal property from real property as a direct result of rehabilitation or demolition for an activity undertaken with HUD

assistance is covered by the relocation requirements of the URA and the governmentwide regulation. (Note that coverage under the URA does not include displacement funded by any Federal loan guarantees.)

(D) *OMB Circulars.* The policies, guidances, and requirements of OMB Circular No. A-122 (Cost Principles for Nonprofit Organizations) and 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations) apply to the award, acceptance and use of assistance under this NOFA, and to the remedies for noncompliance, except when inconsistent with the provisions of the FY 1998 HUD Appropriations Act, other Federal statutes or the provisions of this NOFA. Copies of the OMB Circular may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 10503, telephone (202) 395-7332 (this is not a toll free number).

(E) *Program Award Period.* Grant Agreements shall be for a period of up to 24 months. HUD, however, reserves the right to:

- (1) Terminate grant awards in accordance with the provisions of 24 CFR part 84 anytime after 12 months.
- (2) Extend the performance period of individual awardees up to a total of 12 additional months.

(F) *Delivery of Services System.* Technical assistance providers shall be required to:

- (1) Provide technical assistance to Indian tribes and/or TDHEs.
- (2) Obtain approval from the National Office of Native American Programs (NONAP) of its administrative and operating plans.
- (3) Where necessary, cooperate and coordinate with other technical assistance providers to ensure clients are provided with the full range of technical services.

(G) *Technical Assistance Plan (TAP).* After selection, but prior to funding the award, technical assistance providers shall develop a Technical Assistance Plan (TAP) to be submitted to the NONAP for review and approval. A TAP shall be developed for each Indian tribe/TDHE receiving technical assistance (TA), and shall be prepared in consultation with the Indian tribe/TDHE and HUD. HUD will complete an environmental review where required in accordance with 24 CFR part 50 prior to approving the TAP. The TAP shall describe the following elements:

- (1) Management strategy;
- (2) Work plans;
- (3) Establishment of priorities;

- (4) Location of activities;
- (5) Anticipated improved performance;
- (6) Methods for measuring programmatic success;
- (7) Tasks and sub-tasks for each program;
- (8) Implementation schedule;
- (9) Budgetary needs to accomplish tasks;
- (10) Staffing plan; and
- (11) Administrative budget.

(H) *Negotiations.* Technical service providers shall participate in negotiations with grant applicants and Title VI demonstration program participants.

(I) *Financial Management and Audit Information.* A grant recipient under this NOFA must provide a certification by an independent public accountant stating that the financial management system employed by the applicant meets the standards for fund control and accountability required by 24 CFR part 84, as applicable. The certification must provide the name, telephone number, and address of the independent public accountant.

(J) *Training Sessions.* Recipients may provide training sessions for Indian tribes/TDHEs where appropriate.

(K) *Pass-Through Grants.* Recipients must establish written criteria regarding pass-through procedures. HUD must approve this written criteria.

(L) *Environmental Review.* HUD's notification of award to a selected applicant will constitute a preliminary approval by HUD subject to approval of the Technical Assistance Plan and a HUD environmental review, where required. Selection for participation (preliminary approval) does not constitute approval of proposed sites for activities. Each preliminarily-selected applicant must assist HUD in complying with environmental review procedures, conducted by HUD where required in accordance with 24 CFR part 50. An applicant may not acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to these activities, until written approval is received from HUD. The results of the environmental review may require that proposed activities be modified or proposed sites rejected.

(M) *Flood Insurance.* In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128), HUD will not approve applications for grants providing financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

- (1) The community in which the area is situated is participating in the

National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of approval of the application.

(N) *Coastal Barrier Resources Act.* In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), HUD will not approve grant applications for properties in the Coastal Barrier Resources System.

III. Application Selection Process

(A) *Rating and Ranking.* (1) *General.* All applicants for funding under this NOFA will be evaluated against the criteria described below. The rating of the applicant or the applicant's organization and staff for technical merit or threshold compliance, unless otherwise specified, will include any sub-contractors, consultants and sub-recipients. If no applicants address the selection criteria described below, HUD will issue a revised NOFA requesting new applications for Title VI Demonstration Program capacity building grants.

(2) *Threshold.* If an applicant (a) has been charged with a violation of the Fair Housing Act by the Secretary; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice; (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act or Section 504 of the Rehabilitation Act; or (d) has been debarred, the applicant is not eligible to apply for funding under this NOFA until the applicant resolves such charge, lawsuit, letter of findings, or debarment to the satisfaction of the Department.

(3) After a determination of completion, the applications will be reviewed, rated and ranked, and notification of award of grant funds sent to the applicant. HUD will then fund the highest rated application from within the jurisdiction of each Area Office of Native American Programs in rank order. If any funds remain, HUD will then fund all of the remaining applications in rank order, regardless of which Area ONAP they are from. HUD reserves the right not to make awards under this NOFA.

(4) *Adjustment of Grant Awards.* If HUD determines that an application rated, ranked and fundable could be funded at a lesser grant amount than requested, consistent with the feasibility of the funded project or activities and the purposes of this NOFA, HUD reserves the right to reduce the amount of the grant award.

(B) *Factors for award.* (1) Each rating factor and the maximum number of points is reflected below. The maximum number of points to be awarded is 100. Once scores are assigned, all applications will be ranked in order of points assigned, with the applications receiving more points ranking above those receiving fewer points.

(2) A rating plan shall establish a value to each criteria below.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience and Staff (40 points). This factor addresses the applicant's organizational and prior experience with Indian tribes, TDHEs, or other entities facing similar economic and social conditions in (a) administering similar types of funding; (b) the demonstrated capacity to carry out the proposed activities; and (c) previous experience in administering and/or overseeing loan or obligation programs by HUD or other Federal agencies, or the private sector. The rating of the applicant or the applicant's organization and staff for technical merit will include any faculty, subcontractors, consultants, subrecipients, and members of consortia which are firmly committed (i.e., has a written agreement or a signed letter of understanding with the applicant agreeing in principle to its participation and role in the project). HUD will also consider past performance in carrying out HUD-funded or other projects similar in size and scope to the project proposed.

Rating Factor 2: Soundness of Approach (40 points). This factor addresses the appropriateness and effectiveness of the proposed activities in substantially addressing eligible activities within the content of the objectives of this NOFA and the Title VI Demonstration Program notice, including any pass-through funds. The factor also addresses the workplan, management strategy, budget, and staffing proposed to conduct the work. In evaluating this factor, HUD will consider:

- (a) The relationship of the proposed activities (including proposed pass-through funding activities) in developing or implementing affordable housing projects in the Indian areas;
- (b) The extent to which the applicant can demonstrate that the technical assistance will improve the ability of the Indian tribe or TDHE to complete the project on a timely basis;
- (c) The extent to which the proposed activities bring additional financial or other resources to Indian areas;
- (d) The extent to which the proposed activities increase economic

opportunities, as defined in this NOFA, to residents of Indian areas;

(e) The extent to which the proposed activities provide increased housing and economic opportunities for persons with disabilities;

(f) The applicant's workplan for conducting the proposed activities;

(g) The applicant's management strategy for conducting the proposed activities;

(h) The applicant's budget for conducting the proposed activities; and

(i) The applicant's staffing for conducting the proposed activities.

Rating Factor 3: Promoting Partnerships (10 points). This factor addresses the extent to which the applicant can demonstrate past experience in financing housing and economic development projects that include partnership arrangements. In evaluating this factor, HUD will award a greater number of rating points to those applicants that conducted projects in areas with similar economic, social, and physical conditions as those that exist in Indian areas. The applicant's past experience will be evaluated based on the following criteria:

(a) The number of partners for each project;

(b) The financial layering;

(c) The total dollar value of each project; and

(d) The number of completed housing and economic development projects that involved partnership arrangements.

Rating Factor 4: Coordination (10 Points). This factor addresses the extent to which the applicant proposes to coordinate the delivery of services with other entities providing assistance in Indian areas. In evaluating this factor, HUD will consider the extent to which the applicant will:

(a) Coordinate its proposed activities with other entities working in the Indian areas being served by the applicant;

(2) Take specific steps to share information with other entities serving Indian areas on the successful implementation of Title VI projects; and

(3) Take specific steps to develop linkages with other activities, programs, or projects (on-going or proposed) in Indian areas through meetings, information networks, planning processes, or other mechanisms to coordinate its activities so solutions are holistic and comprehensive.

IV. Application Submission Requirements

The application must include an original and one copy of the items listed below, and must be signed by an authorized official:

(A) Form SF-424, Application for Federal Assistance.

(B) Transmittal letter which identifies the amount of funds requested and the applicant and partners (if any).

(C) Table of Contents (please number pages of the submission and list them accordingly in the Table of Contents).

(D) Narrative statement and supporting documentation addressing the Factors for Award described in Section III of this NOFA. The narrative response should be numbered in accordance with each factor for award. This narrative statement will be the basis for evaluating the application. The suggested approach described in the responses to Rating Factor 2 will be the starting point for negotiating the grant agreement and the individual TAP required for each Indian tribe/TDHE receiving assistance.

(E) A statement as to whether the applicant proposes to use pass-through funds for activities under the proposed program, and, if so, the amount and proposed uses of such funds.

(F) Budget identifying costs for implementing the plan of suggested TA activities by cost category (in accordance with the following):

(1) Direct Labor by position or individual, indicating the estimated hours per position, the rate per hour, estimated cost per staff position and the total estimated direct labor costs;

(2) Fringe Benefits by staff position identifying the rate, the salary base the rate was computed on, estimated cost per position, and the total estimated fringe benefit cost;

(3) Material Costs Indicating the item, quantity, unit cost per item, estimated cost per item, and the total estimated material costs;

(4) Transportation Costs, as applicable.

(5) Equipment charges, if any. Equipment charges should identify the type of equipment, quantity, unit costs and total estimated equipment costs;

(6) Consultant Costs, if applicable. Indicate the type, estimated number of consultant days, rate per day, total estimated consultant costs per consultant and total estimated costs for all consultants;

(7) Subcontract Costs, if applicable. Indicate each individual subcontract and amount;

(8) Other Direct Costs listed by item, quantity, unit cost, total for each item listed, and total other direct costs for the award;

(9) Indirect Costs should identify the type, approved indirect cost rate, base to which the rate applies and total indirect costs.

These line items should total the amount requested for the TA program. The grand total of all TA program funds requested should reflect the grand total of all funds for which application is made.

(G) Certifications of Compliance with the following:

- (1) Section 3 of the Housing and Urban Development Act of 1968;
- (2) 24 CFR part 87 (New Restrictions on Lobbying). Applicants must file the certification regarding appropriated funds, and if nonappropriated funds have been spent on lobbying, the SF-LLL;
- (3) Applicant/Recipient Disclosure/Update Report (this is form 2880).
- (4) Fair Housing Act, Title VI of the Civil Rights Act of 1964 or the Indian Civil Rights Act as applicable, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

V. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies. Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. Examples of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 7 calendar days of the date of receipt of the HUD notification. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

VI. Findings and Certifications

(A) *Paperwork Reduction Act Statement.* The information collection requirements contained in this NOFA have been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The OMB approval number, once assigned, will be published in the Federal Register. An agency may not conduct or sponsor, and a person is not required to respond to,

a collection of information unless the collection displays a valid control number.

(B) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

(C) *Federalism, Executive Order 12612.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of HUD, the States, and local governments.

(D) *Prohibition Against Lobbying Activities.* Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104-65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF-LLL disclosing such payments must be submitted.

Housing entities established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded

from coverage of the Byrd Amendment, but housing entities established under State law are not excluded from the statute's coverage.

(E) *Section 102 of the HUD Reform Act; Documentation and Public Access Requirements.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its Federal Register notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(F) *Section 103—HUD Reform Act.* HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of

applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708-3815. (This is not a toll-free number.)

Dated: July 20, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 98-19676 Filed 7-20-98; 2:24 pm]

BILLING CODE 4210-33-P

Title VI Loan Guarantee
Capacity-Building Grants NOFA
(*transferring of skills and knowledge*)

Published 7/23/98

FY 98 appropriations act provided \$25 million to test comprehensive approaches for developing jobs through economic development, developing affordable housing, and increasing the investment capital in rural and tribal areas.

\$4 million of the \$25 million was made available to support Title VI activities. The amount was later reduced to \$3 million. The \$1 million was added to funds set-aside for the Oglala Sioux Tribe at Pine Ridge reservation for the purpose of establishing a non-profit organization that will help Indian families living in South Dakota prepare for homeownership.

The remaining \$3 million of the CAP-Grant is provided to attain IHP goals and objectives listed below:

- 1) strengthen economic feasibility
- 2) directly enhance the security of guaranteed loans
- 3) finance affordable housing activities
- 4) demonstrate economic benefits (job creation)

Technical Assistance Provider:

- 1) pass-through agent
- 2) technical service provider (coordinator of services)
- 3) distribute grant funds for eligible costs directly related to the Title VI.

Examples of eligible costs:

creative financing
letters of credit
credit enhancement
payment of interest due
underwriting costs
note servicing

Eligible activities:

- a) Provide Technical Assistance: Such as planning, training for larger-scale and model projects; self-sufficiency (skill-building) fiscal management; coordination of resources

b) Loss mitigation techniques where problems or repayment concerns arise that IfiA management (or an experienced consultant) will work with the borrower and lender to prevent or cure the potential default.

c) Related activities - Amount of funds to support this activity are limited to 25% of budget for the tribe must support affordable housing activities:

Examples:

Utilities

Housing services

Administration costs (10%)

Provide \$ or T/A to start or expand businesses

Requirements:

Civil Rights

Section 3 (24 CFR part 135) Relocation

OMB Circulars (A-122 and 24 CFR Part 84)

Negotiate with consultants and participants

IPA certification that financial system meets fund control and accountability requirements of Part 84.

Training:

Written criteria regarding pass-through procedures Environmental issues

Term:

24 months with ability to extend another 12 months **Technical Assistance Plan:**

A TAP shall be developed for each tribe. The plan shall focus on the unique concerns and needs of each tribe and describe the technical assistance to be provided by/through IHA Management Systems. Based on the amount of training required, a budget estimate **shall** be prepared and funds obligated on behalf of the tribe to accomplish the skill building goals and objectives.

Title VI Loan Guarantee Demonstration Program

Purpose: Develop models of affordable housing in Indian areas, while increasing access to private capital, economic growth, and encourage new participation of financial institutions.

Timing: May be submitted to HUD at any time on a first come, first-serve basis.

Eligible Activities:

Housing Assistance
Development activities
Model activities (HUD approved)

Eligible Borrowers:

Must be a Federally-recognized tribe or TDHE approved to receive IHBG funds on behalf of a tribe.

Must have experience with complex financial transactions

Must have been unable to obtain financing without the guarantee

Must have tribal counsel or government approval to issue or undertake financial obligations

Must have the financial capacity to repay obligations.

Must be eligible to pledge IHBG Grant and additional security to satisfy HUD requirements.

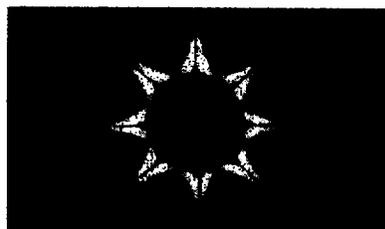
Examples of additional security:

Funding reserves
Letter of Credit

IHP Submission Requirements:

Any time
Contain info in 24 CFR 1000.424
Contains certifications in Subpart A
Environmental review, where applicable

OGLALA SIOUX
TRIBAL ENVIRONMENTAL REVIEW CODE



OGLALA SIOUX TRIBAL ENVIRONMENTAL REVIEW CODE

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**Oglala Sioux Tribal
Environmental Review Code**

ORDINANCE OF THE OGLALA SIOUX TRIBAL COUNCIL
OF THE OGLALA SIOUX TRIBE
(An Unincorporated Tribe)

ORDINANCE OF THE OGLALA SIOUX TRIBE ESTABLISHING A POLICY FOR THE PROTECTION AND PRESERVATION OF THE ENVIRONMENT AND THE HEALTH AND SAFETY OF THE OGLALA SIOUX PEOPLE OF THE PINE RIDGE INDIAN RESERVATION BY THE ADOPTION OF THE "OGLALA SIOUX TRIBAL ENVIRONMENTAL REVIEW CODE."

WHEREAS, the Oglala Sioux Tribal Council is empowered pursuant to Article IV (m) & (n) of the Oglala Sioux Tribal Constitution to protect and preserve the Oglala Sioux people's health and welfare and their air, land, water, and historical, cultural and natural resources, within the boundaries of the 1851 Treaty, and

WHEREAS, there is a historical, cultural and spiritual relationship between the Oglala Sioux people and the natural environment, and

WHEREAS, unmonitored growth and development is occurring, and will continue to occur, within the Tribe's jurisdiction that is harming, or has the potential to harm, the Oglala Sioux people's health and welfare and their air, land, water, and other historical, cultural and natural resources, and

WHEREAS, unmonitored growth and development threatens or interferes with and has a direct effect on the ability of the tribal government to carry out its responsibilities under its Constitution, ordinances, codes, resolutions, customs and traditions, and

WHEREAS, unmonitored growth and development threatens or interferes with economic activity within the Tribe's jurisdiction because it increases the cost of doing business within the Tribe and burdens tribal services, and

WHEREAS, as a result of the adverse effects from unmonitored development and interference there is a critical and continuing need to monitor growth and development within the Oglala Sioux Tribe's jurisdiction, and

WHEREAS, it is necessary to collect and analyze information and data on development activity and its effect within the Tribe's jurisdiction to prevent damage or harm to the Oglala Sioux people

and the Pine Ridge Indian Reservation environment and to manage, develop, and protect the Oglala Sioux people's historical, cultural and natural resources in an environmentally and economically sound manner, now

THEREFORE BE IT ORDAINED, that it is the policy of the Oglala Sioux Tribe in order to protect and preserve the Pine Ridge Indian Reservation environment and to provide a safe and habitable homeland for the Oglala Sioux people's present and future generations by establishing minimum procedures to monitor growth and development within the Tribe's jurisdiction which will protect the reservation's environment and promote the Oglala Sioux people's stability and security, and

BE IT FURTHER ORDAINED, that the Oglala Sioux Tribal Council does hereby adopt the "Oglala Sioux Tribal Environmental Review Code" (attached hereto and incorporated herein by this reference) which shall become effective thirty days after adoption by the Oglala Sioux Tribal Council.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, as undersigned Secretary of the Oglala Sioux Tribal Council, hereby certify that this Ordinance was adopted by a vote of: 15 for; 0 against; 0 abstain; 0 not voting, during a REGULAR SESSION, held on the 28th day of APRIL, 1998.

Theresa B. Two Bulls
THERESA B. TWO BULLS
Secretary
Oglala Sioux Tribe

A-T-T-E-S-T:

John W. Steele
JOHN W. STEELE
President
Oglala Sioux Tribe



OGLALA SIOUX TRIBAL ENVIRONMENTAL REVIEW CODE

§100 Tribal Council Findings

The Oglala Sioux Tribal Council finds:

- (1) that the Oglala Sioux Tribal Constitution, Article IV, sections (m) and (n), empowers the Oglala Sioux Tribal Council to protect and preserve the Oglala Sioux peoples' health and welfare and their air, land, water and historical, cultural and natural resources;
- (2) that the Tribal Council does carry out those responsibilities through its ordinances and resolutions;
- (3) that there is a historical, cultural and spiritual relationship between the Oglala Sioux people and the natural environment;
- (4) that unmonitored growth and development is occurring, and will continue to occur, within the Tribe's jurisdiction that is harming, or has the potential to harm, the Oglala Sioux peoples' health and welfare and their air, land, water and other historical, cultural and natural resources.
- (5) that unmonitored growth and development threatens or interferes with and has a direct effect on the tribal government carrying out its responsibilities under its constitution, ordinances, resolutions, customs and traditions.
- (6) that unmonitored growth and development threatens or interferes with economic activity within the Tribe's jurisdiction because it increases the cost of doing business within the Tribe and burdens tribal services.
- (7) that due to the adverse effects from unmonitored development and interference there is a critical and continuing need to monitor growth and development through an environmental review permit process.
- (8) that it is necessary to collect and analyze information and data on development activity and its effect within the Tribe's jurisdiction to prevent damage or harm to the Oglala Sioux people and the Pine Ridge Indian Reservation environment and to manage, develop, and protect the Oglala Sioux people's historical, cultural and natural resources in an environmentally and economically sound manner.

§101 Declaration of Policy

The Oglala Sioux Tribal Council declares that it is the Tribe's policy to protect and preserve the Pine Ridge Indian Reservation environment and to provide a safe and habitable homeland for the Oglala Sioux people's present and future generations by establishing minimum procedures to monitor

growth and development within the Tribe's jurisdiction which will protect the reservation's environment and promote the Oglala Sioux people's stability and security.

§ 102 Definitions

- (1) "Appeals Committee" means the Coordinators of the Committees of the Tribal Council and one representative of the Grey Eagle Society.
- (2) "Commercial" means a private or public corporation or entity occupied with business and commerce or activity of general social interest to the Tribe.
- (3) "Developer" means any person or entity, tribal or non-tribal, private or governmental, who performs, or plans to perform, development activities within the Tribe's jurisdiction.
- (4) "Development" means any activity which results in a significant change in a structure's use or appearance, or a significant change in a land site's use or appearance.
- (5) "Environmental Health Technical Team" means those Oglala Sioux Tribal Program Directors and/or Department heads, or their representatives, designated in OST RESOLUTION NO. 97-74, as amended by OST Resolution 98-04XB, including Solid Waste Management, Water and Sewer Program, Rural Water Supply System, Land Office, Environmental Protection Program, Water Resource Department, Community Health Representative Program, Housing Authority, Badlands Bombing Range Project, Health and Human Services Committee Coordinator, Revenue Office, Transportation Office and Tribal Employment Rights Office, and those other representatives as the Tribal Council may from time to time add by Resolution duly adopted, and all of whose activities are regularly reported to the Tribal Council's Health and Human Services and Land Committees.
- (6) "Environmental Review Permit" or "permit" means a document issued by the Environmental Health Technical Team which indicates that any proposed development within the Tribe's jurisdiction has been reviewed for compliance with this code.
- (7) "Environmental Review Permit Screening Committee" means representatives from three Environmental Health Technical Team member departments who shall be selected on a rotating basis and who shall serve a three calendar month term for each rotation in which the department is on the Environmental Review Permit Screening Committee.
- (8) "Land" means any ground, soil, or earth whatsoever, including fields, meadows, pastures, woods, waters, marshes, wetlands, and rock.
- (9) "Low Impact Development" mean(s) an activity which has no significant change on a structure's use or appearance or no significant change on a land site's use or appearance.
- (10) "Significant" means the change is:

- (a) highly controversial;
- (b) otherwise minor but might have a cumulatively significant effect;
- (c) creates secondary effects;
- (d) unsuitable for the nature of the setting where the proposed action would be taken or;
- (e) may have probable beneficial environmental effects, but on balance the Environmental Health Technical Team believes that although the effect will be beneficial, the action may still have a significant effect on the environment.

(11) "Structure" means that which is built or constructed whether installed on, above, or below the surface of land.

(12) "Working days" means those days when tribal offices are regularly open for business and does not include weekend days, holidays when tribal offices are regularly closed, or those days officially closed by the Tribe.

§103 Permit Requirements for Development; Other Tribal and Federal Law Still Apply

(1) The Tribe prohibits development within its jurisdiction unless the Environmental Health Technical Team issues an Environmental Review Permit for the development; provided that for an Oglala Sioux tribal member a permit shall not be required for any traditional religious activity of the Oglala Sioux people.

(2) Although the Environmental Health Technical Team issues a Tribal Environmental Review Permit the developer must comply with all other Tribal or Federal law that applies to the development and to activities which may affect the Oglala Sioux people or Tribal resources.

§104 Power to Conduct Review and Issue an Environmental Review Permit; Conditions Upon Determination to Withhold A Permit

(1) The Environmental Health Technical Team shall review an Environmental Review Permit application and:

- (a) issue the permit when it determines that the development is low impact, subject to conditions that it or the designated tribal departments may impose under tribal or federal law;
- (b) issue the permit where all designated tribal departments sign-off, subject to conditions that it or the designated tribal departments may impose under tribal or federal law; or
- (c) deny the permit where a designated tribal department withholds sign-off, subject to § 104(2).

(2) When the Environmental Health Technical Team determines that development does not comply with federal or tribal law so that an Environmental Review Permit can not issue it must provide the applicant with a written explanation that:

- (a) identifies the particular tribal department(s) that withheld sign-off;
- (b) explains the reason why sign-off was withheld; and
- (c) explains the conditions the applicant must meet to obtain sign-off.

The applicant is then responsible for obtaining, within 90 days from the date of the filing of the application , the tribal department's sign-off before the Environmental Health Technical Team issues or denies the Environmental Review Permit. The Environmental Health Technical Team may for good cause extend by up to 30 days the 90 day time period.

§105 Permit Application Requirements

(1) The Land Office will make available to a developer an Environmental Review Permit application to file with the Land Office . The application shall include, at a minimum:

- (a) The applicant's name;
- (b) The applicant's job title if the applicant is submitting the application for the applicant's employer;
- (c) A brief description of the proposed activity;
- (d) The land's legal description or location for the proposed site and a copy of the necessary permits, leases, easements or other possessory interests that allow the applicant to conduct the proposed activity on the described land.
- (e) a certification that the applicant has all permits, licenses, bonds or other clearances, including archeological, historical, and cultural clearances, required by tribal law or regulation to conduct the proposed activity; and
- (f) any information or documentation to support a request for a low-impact activity determination.

(2) An application for commercial development shall be accompanied by a \$100.00 application fee.

§106 Permit Application Procedure

- (1) The applicant shall file the application in the Land Office. The Land Office shall:
 - (a) provide the applicant with a receipt for the application stamped with the date and time the application was filed and, where required, a receipt for the application fee;
 - (b) make seven copies of the original application, and
 - (i) place the original application in the Environmental Review Permit permanent file;
 - (ii) keep one copy on file in the Land Office to be available for public inspection
 - (c) provide four copies to the Environmental Review Permit Screening Committee who shall review the application and make a determination that:
 - (i) the proposed activity is low impact and does not require review by designated tribal departments and recommend to the Environmental Health Technical Team that the permit issue. The Environmental Health Technical Team may impose minimal conditions on the permit; or
 - (ii) the proposed activity requires full review by designated tribal departments and that the appropriate routing slip shall be attached to the four application copies for circulation to the following designated tribal departments for review and sign-off:

Copy I to the Tribal Land Office; the Tribal Environmental Specialist; the Water Resources Department; and Solid Waste Management.

Copy II to the Badlands Bombing Range Project; the Pesticides Enforcement Program; the Groundwater Protection Program; and the Natural Resources Regulatory Agency.

Copy III to the Rural Water Supply System; the Water and Sewer Program; and the Health and Human Services Committee Coordinator.

Copy IV to the Revenue Office; the Tribal Employment Rights Office; and the Housing Authority.
 - (d) provide the Tribal District Office, and Tribal Council representative(s) from the Tribal District, where the proposed site is located with a copy of the application within five days from when the application was filed.
- (2) Each designated tribal department must complete its review within three (3) working days from when it receives the application and sign-off or withhold sign-off on the application. A department that withholds sign-off must state the specific reason(s) for withholding its sign-off and describe the conditions the applicant needs to meet to obtain department sign-off. A department's failure to complete its review within three (3) working days shall mean it signs-off.

(3) The Environmental Health Technical Team shall take no more than fifteen (15) working days from the date the application is filed to issue or deny the permit, subject to § 104(2). The applicant may consider the permit denied and seek any remedies available under § 107 when the Environmental Health Technical Team fails to complete the application review process within fifteen (15) working days.

§107 Appeals and Judicial Review

- (1)
 - (a) Any person aggrieved by an Environmental Review Permit being issued or denied shall seek administrative review within ten (10) working days from that decision by filing a Notice of Appeal with the Secretary of the Land Committee on behalf of the Appeals Committee.
 - (b) The Secretary of the Land Committee shall upon receipt of the Notice of Appeal provide a copy to the Environmental Health Technical Team and, if the appeal is for the issuance of a permit, a copy to the permittee. The Environmental Health Technical Team shall, within ten (10) working days from receipt of the Notice of Appeal, forward to the Secretary of the Land Committee a copy of all records and documents in the files regarding the permit application and review.
 - (c) The Appeals Committee shall, within 30 working days from receiving the records and documents, decide the appeal based on the record and any written submissions from interested parties. Written submissions must be filed with the Secretary of the Land Committee within twenty (20) working days from the filing of the Notice of Appeal. The decision of the Appeals Committee shall be final for the Tribal Administration.
 - (d) The burden of proof is with the party bringing the appeal.
 - (e) Where the appeal challenges the Environmental Health Technical Team issuing a permit, the permit shall be held in abeyance pending the Appeals Committee's decision.
- (2) Any person who was a party to the appeal before the Appeals Committee and receives an adverse decision shall file an appeal for relief other than money damages in the Oglala Sioux Tribal Court against the Environmental Health Technical Team within 30 calendar days from the date of the adverse decision. Tribal Court review is limited to:
 - (a) whether the decision is supported by substantial evidence;
 - (b) whether the permit is issued or denied in compliance with the Environmental Review Code; or

- (c) whether the action of the Environmental Health Technical Team is contrary to tribal law or is arbitrary and capricious.

§ 108 Authority to Seek Enforcement

The Tribal Environmental Specialist is authorized, with the Tribal Attorney's assistance, to issue a Cease and Desist Order, Compliance Order or other similar order as the Environmental Protection Program shall deem necessary to enforce this Code including seeking in the Oglala Sioux Tribal Court any remedy otherwise available under Tribal law, including, but not limited to, an order that the unpermitted activity be stopped, an order for any unpermitted development to be removed, and/or an order for money damages in an amount necessary to remedy any adverse effects caused by the unpermitted activity.

§ 109 Severability.

In the event that any one or more of the provisions contained in this Code shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, that invalidity, illegality or unenforceability shall not affect any other provision of this Code, and this Code shall be construed as if that invalid, illegal or unenforceable provision had never been contained in this Code.

APPLICANT INITIATES APPLICATION BY FILING APPLICATION AT TRIBAL LAND OFFICE
LAND OFFICE ISSUES RECEIPT

LAND OFFICE
*FILES ORIGINAL IN ERP PERMANENT FILE
*MAKES SEVEN COPIES, RETAINS ONE FOR PUBLIC REVIEW
*DELIVERS FOUR COPIES TO ERPC
*SENDS ONE TO DISTRICT OFFICE
*SENDS ONE TO DISTRICT REP

ENVIRONMENTAL REVIEW PERMIT
SCREENING COMMITTEE DETERMINES THAT PERMIT APPLICATION IS FOR DEVELOPMENT WHICH

IS EXEMPT FROM DEPARTMENT REVIEW BECAUSE IT HAS LOW-IMPACT

REQUIRES FULL REVIEW BY AGENCIES; ERPC ATTACHES ROUTING SLIP AND FORWARDS APPLICATION FOR REVIEW BY DESIGNATED TRIBAL DEPARTMENTS

DESIGNATED TRIBAL DEPARTMENTS CONDUCT REVIEW OF PERMIT APPLICATION

ALL DEPARTMENTS SIGN-OFF

ONE OR MORE DEPARTMENTS WITHHOLD SIGN-OFF AND PROVIDE REASONS AND EXPLANATION FOR HOW TO COMPLY [IF COMPLIANCE IS POSSIBLE]

EHTT REVIEWS COMPLETED PERMIT APPLICATION AND DEPARTMENT REVIEW CONFIRMS AGENCY SIGN-OFF OR THAT DEPARTMENT REVIEW WAS NOT NECESSARY

DEPARTMENTS SIGN-OFF ACHIEVED

APPLICANT RETURNS TO EACH DEPARTMENT WHICH WITHHELD SIGN-OFF TO PROVIDE NECESSARY CONDITIONS TO OBTAIN AGENCY SIGN-OFF

PERMIT ISSUES WITH OR WITHOUT CONDITIONS

DEPARTMENTS SIGN-OFF NOT ACHIEVED

PERMIT DOES NOT ISSUE

**USE THE FOLLOWING
WHEN PERMIT DENIED**

Dear Applicant:

I am writing to inform you that the Oglala Sioux Tribal Environmental Health Technical Team has reviewed your Environmental Review Permit Application, along with information, written or verbal, if any, and now denies your application since the following tribal department(s) withheld sign-off:

for the following reasons:

Under Oglala Sioux Tribal Environmental Review Code, § 107, you have the right to appeal this decision to:

Appeals Committee
c/o Secretary of the Oglala Sioux Tribal Council
Land Committee
P.O. Box H
Pine Ridge, South Dakota 57770

Your appeal must be in writing by filing a Notice of Appeal (attached) and must be received no later than ten (10) working days from the date of this letter. This appeal must be accompanied by a copy of your application and this decision letter.

To expedite the appellate process and to ensure full consideration of your appeal, you may submit a statement of the reasons why you believe this decision is in error. This statement of reasons must be filed with the Secretary of the Oglala Sioux Tribal Council Land Committee within twenty (20) working days from the filing of the Notice of Appeal.

Under Oglala Sioux Tribal Environmental Review Code, § 107(1)(e), if an appeal is taken your permit shall be held in abeyance pending the Appeals Committee's decision.

Dated:

Environmental Health Technical Team

**USE THE FOLLOWING
WHEN PERMIT ISSUES**

Dear Applicant:

I am writing to inform you that the Oglala Sioux Tribal Environmental Health Technical Team has reviewed Environmental Review Permit Application No. _____, submitted by you, along with information, written or verbal, if any, and now issues Oglala Sioux Tribe Permit Environmental Review No. _____ for the proposed activity described in your application.

Under Oglala Sioux Tribal Environmental Review Code, § 107, you have the right to appeal this decision to:

Appeals Committee
c/o Secretary of the Oglala Sioux Tribal Council
Land Committee
P.O. Box H
Pine Ridge, South Dakota 57770

Your appeal must be in writing by filing a Notice of Appeal (attached) and must be received no later than ten (10) working days from the date of this letter. This appeal must be accompanied by a copy of your application and this decision letter.

To expedite the appellate process and to ensure full consideration of your appeal, you may submit a statement of the reasons why you believe this decision is in error. This statement of reasons must be filed with the Secretary of the Oglala Sioux Tribal Council Land Committee within twenty (20) working days from the filing of the Notice of Appeal.

Under Oglala Sioux Tribal Environmental Review Code, § 107(1)(e), if an appeal is taken your permit shall be held in abeyance pending the Appeals Committee's decision.

Dated:

Environmental Health Technical Team

**TO SEND TO TRIBAL COUNCIL REPRESENTATIVE
AND DISTRICT REPRESENTATIVE**

Dear

I am sending you an Environmental Review Permit Application, No. _____,
as required under the Oglala Sioux Tribal Environmental Review Code, § 106(1)(d). This
application is sent to you for informational purposes only.

Dated: _____

TO BE USED WHEN APPLICANT IS GIVEN 90 DAYS

TO OBTAIN SIGN-OFF

Dear Applicant:

I am writing to inform you that the Oglala Sioux Tribal Environmental Health Technical Team has reviewed your Environmental Review Permit Application, along with information, written or verbal, if any, and cannot complete the review of your application since the following tribal department(s) withheld sign-off:

for the following reasons:

The following conditions must be met, within 90 days from the date of the filing of the application, to obtain sign-off.

Dated:

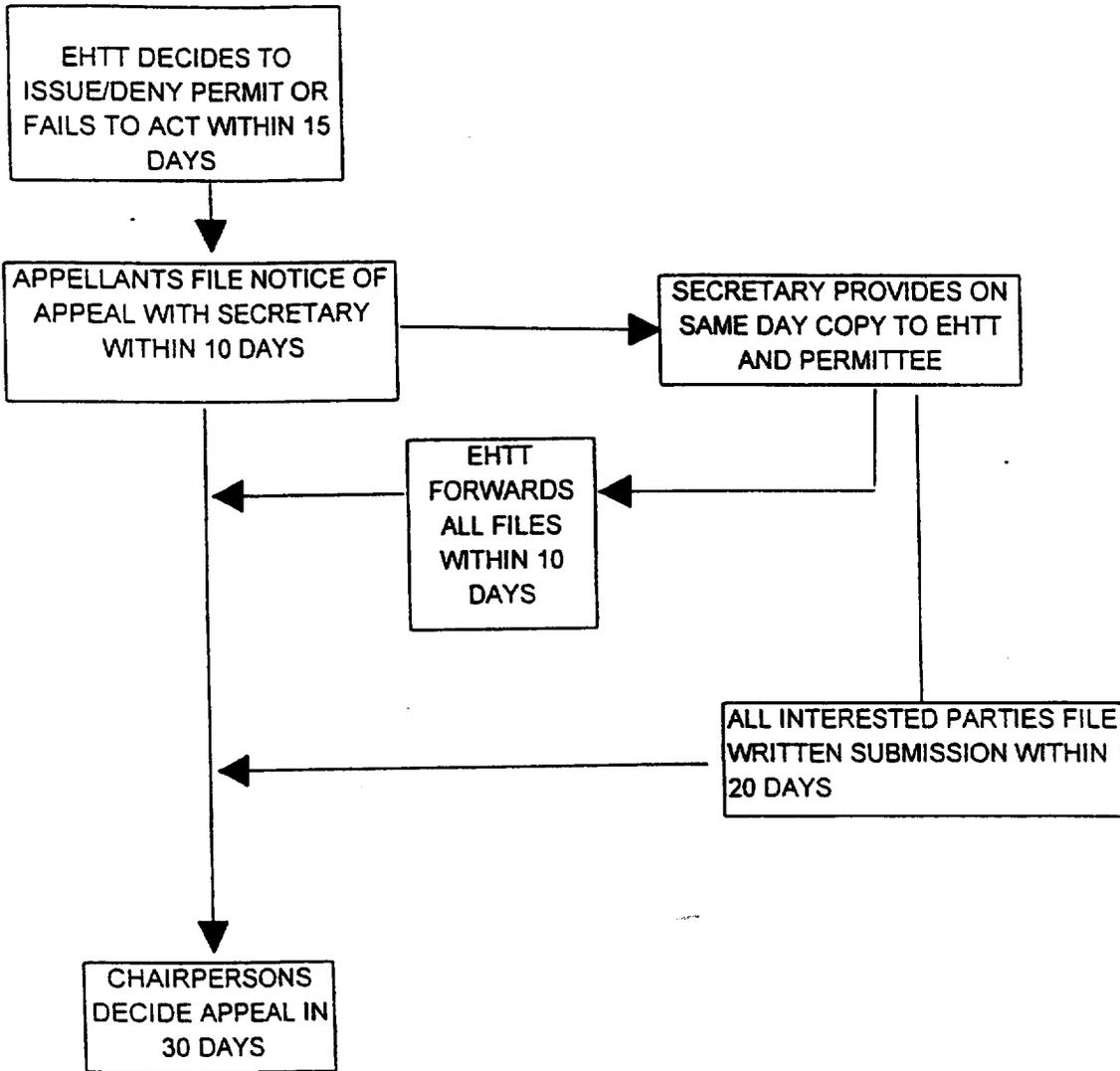
Environmental Health Technical Team

ENVIRONMENTAL REVIEW PERMIT SCREENING COMMITTEE

The Environmental Review Permit Screening Committee (Screening Committee) is defined in §102(7) of the Oglala Sioux Tribal Environmental Review Code (ERC). Pursuant to §106(1)(c) of the ERC, the Screening Committee has responsibility to provide an initial screening to all Environmental Review Permit Applications to determine whether the proposed development is low impact or requires the full review of the Environmental Health Technical Team (EHTT). The Screening Committee is made up of representatives from three EHTT member departments. These representatives are selected on a rotating basis and serve a three calendar month term for each rotation in which the department is on the Screening Committee. In order to establish the initial rotation and the following rotations the EHTT adopted the following schedule to begin on June 1, 1998:

<u>Date 1998</u>	<u>Department</u>	<u>Representative</u>	<u>Alternate</u>
June	Water Resources	Joe Amiotte	Delinda Simmons
June-July	Tero	Don Twiss	N/A
June/July/ August	Housing Authority	Earl Neumeyer	N/A
July/August/ September	Water and Sewer Program	Pat Brewer	Rilda Hill
August/Sept- ember/October	Solid Waste Program	[?] <i>John Her Many Horses</i>	Bobby Sullivan
September/Oct- ober/November	Environmental Specialist	Kim Clausen	Jody Plenty Wounds
October/Nov- ember/December	Badlands Bombing Range Project	Emma Featherman Sams	Keena Clausen
November/Decem- ber/January '99	Revenue Office	Davey Pourier	Carol Weston
December/Janu- ary/February '99	Health and Human Services Committee Coordinator	Stacey Ecoffey	Fawn Conroy
<u>1999</u>			
January/Feb- ruary/March	Rural Water Supply System	Calvin Ghost Bear	Reno Red Cloud
February March/April	Land Office	Robin White	Ila Twiss
March/Aril/ May	Community Health Representative	Jim Waters	N/A
April/May/ June	Transportation	Diane Zephier	N/A

APPEAL PROCESS



*SECRETARY OF LAND ON BEHALF OF LAND, HEALTH AND HUMAN SERVICES, AND ECONOMIC DEVELOPMENT COMMITTEES

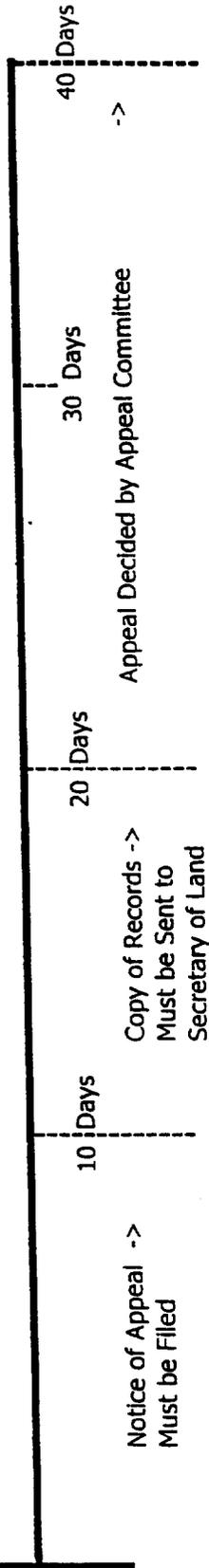
Timelines for Taking an Appeal of a Decision of the Environmental Health Technical Team on the Issuance of an Environmental Review Permit.

10 days within which to file
Notice of Appeal →

10 days from Notice of Appeal for EHTT
to Transmit Copy of Records to
Secretary of Land Committee →

20 days from Notice of Appeal for any interested
party to file a written submission to the Appeal Board

30 days from the time the records are transmitted
by the EHTT to consider and decide the appeal



Decision by
the EHTT ->

*Indicates that the time could begin to run anytime during this period.

**APPEAL COMMITTEE FOR OGLALA SIOUX TRIBAL
ENVIRONMENTAL HEALTH TECHNICAL TEAM**

_____,)
)
Appellant,)
)
v.)
)
OGLALA SIOUX TRIBAL)
ENVIRONMENTAL HEALTH)
TECHNICAL TEAM,)
)
Appellee.)
_____)

NOTICE OF APPEAL

Notice is hereby given that _____, (check one) _____ applicant, _____ interested party, hereby appeals to the Appeals Committee the Environmental Health Technical Team's decision, or failure to act in a timely manner, to (check one) ___ issue, ___ deny the permit pursuant to Environmental Review Permit Application Number _____ to _____ on _____, 19__.

Dated: _____

Signature

Name

Address/phone and fax number

**APPEAL COMMITTEE FOR OGLALA SIOUX TRIBAL
ENVIRONMENTAL HEALTH TECHNICAL TEAM**

_____,)
)
 Appellant,)
)
 v.)
)
 OGLALA SIOUX TRIBAL)
 ENVIRONMENTAL HEALTH)
 TECHNICAL TEAM,)
)
 Appellee.)
_____)

**NOTICE TO ENVIRONMENTAL
HEALTH TECHNICAL TEAM**

I am notifying you that the appellant is appealing to the Appeal Committee, your failure to act in a timely manner, or your decision to issue/deny the permit pursuant to Environment Review Permit Application Number _____ to _____ on _____, 19__.

You shall submit to me a copy of all records and documents in your files regarding the permit application and review within ten (10) days from your receipt of this Notice.

You shall submit to me any additional written material, if any, to uphold your decision within twenty (20) working days from your receipt of this Notice.

Secretary, Tribal Council
Land Committee

Dated: _____

**APPEAL COMMITTEE FOR OGLALA SIOUX TRIBAL
ENVIRONMENTAL HEALTH TECHNICAL TEAM**

_____,)
)
 Appellant,)
)
 v.)
)
 OGLALA SIOUX TRIBAL)
 ENVIRONMENTAL HEALTH)
 TECHNICAL TEAM,)
)
 Appellee.)
_____)

NOTICE TO PERMITTEE

I am notifying you that the appellant is appealing to the Appeal Committee, the Oglala Sioux Tribe's Environmental Health Technical Team's decision to issue you Permit No. _____.

You shall submit to me any written material to uphold the Oglala Sioux Tribal Environmental Health Technical Team's decision to issue you Permit No. ____ within twenty (20) working days from your receipt of this Notice.

The Appeal Committee stays the Oglala Sioux Tribal Environmental Health Technical Team's decision to issue you Permit No. ____ until it decides the appeal or the Tribal Court decides an appeal taken to it from the Appeal Committee.

Dated: _____

Secretary, Tribal Council
Land Committee

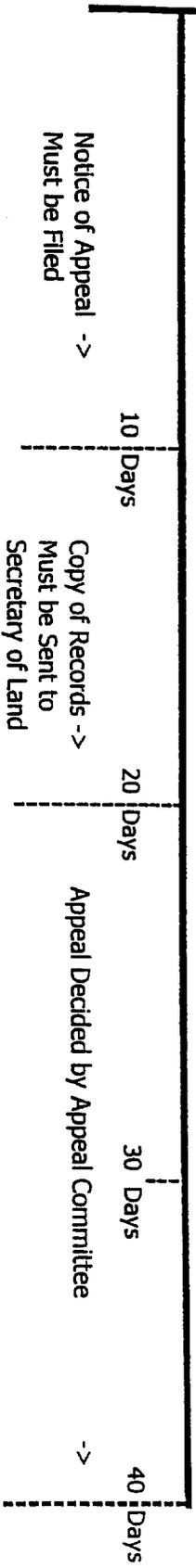
Timelines for Taking an Appeal of a Decision of the Environmental Health Technical Team on the Issuance of an Environmental Review Permit.

10 days within which to file
Notice of Appeal →

10 days from Notice of Appeal for EHTT
to Transmit Copy of Records to
Secretary of Land Committee
***** →

20 days from Notice of Appeal for any Interested
party to file a written submission to the Appeal Board
***** →

30 days from the time the records are transmitted
by the EHTT to consider and decide the appeal
***** →



*Indicates that the time could begin to run anytime during this period.

Decision by
the EHTT ->

**THE NEED FOR AND BENEFITS OF
AN ENVIRONMENTAL REVIEW CODE
FOR THE PROTECTION OF
THE OGLALA SIOUX PEOPLE**

The people of the Oglala Sioux Tribe live on a portion of their ancestral lands reserved by their predecessors as a permanent homeland. It is the responsibility of the Oglala Sioux Tribe to care for and protect the Oglala Sioux people, the lands set aside by their ancestors, and the resources and the environment of the Reservation for the benefit of the Oglala Sioux people both in the present and for future generations. There are significantly increased risks in the modern world from the use of toxic substances which appear in water supplies, in underground water, in the air we breathe, and in the environment around us. There is, as well, the need to assure that the children, the elderly and those at risk live in a safe environment, free of toxic and hazardous materials, and that all the people of the reservation have access to safe drinking water and clean air.

The Oglala Sioux people have always had traditional unwritten laws and practices that by their nature provided for the responsible use and protection of the resources and welfare of the Reservation and its people. But over time there has been a loss of the awareness by some of the people of the importance of following these unwritten traditions. It is, therefore, necessary for the Tribe to translate into written laws some of these traditional protections for members of the tribe from activities which may damage their rights.

These responsibilities mean that it is essential that the Oglala Sioux people have the information which is vital to making informed decisions about the present and future uses of reservation lands, water, air and other natural, cultural and historical resources. They must also understand the impacts of proposed and existing development activities on the air, land, water and human resources of the Reservation. The Oglala Sioux people must also assure that the use of the reservations resources are protected from significant deterioration, depletion or pollution as a result of un-managed development within the Oglala Sioux Tribe's jurisdiction.

The federal government has, moreover, adopted a range of environmental laws which impose significant responsibilities on the government and people of the Oglala Sioux Tribe. Failure to comply with or meet the minimum requirements of these laws and regulations could result in substantial fines or penalties, or the loss of significant opportunities to receive federal support for the protection of the Reservation environment. Such fines or mandatory expenditures imposed on the Oglala Sioux people for violations of federal environmental laws or mandatory compliance with such laws could result in significant funds being diverted away from other tribal priorities. Finally, there are significant opportunities for the Oglala Sioux people to benefit from the management of federal environmental laws through delegation of such programs from the United States Environmental Protection Agency.

As a result of the importance of providing protection for the Oglala Sioux people and the natural and cultural resources of the Reservation, the Tribal government created by Tribal Resolution 97-74 the Environmental Health Technical Team (EHTT or Tech Team). The Tech Team is made up of representatives from tribal departments involved with management of programs affecting the health of the Oglala Sioux people and the reservation environment. After many months of working together on the range of issues before them the Tech Team determined that the environmental laws of the Reservation were inadequate to provide the level of protection needed by the Oglala Sioux people or even required by federal law. To begin the process of bringing the Tribe's laws and policies current with the needs of the people and the requirements of the law it was decided that it was necessary to get a much better handle on the actual state of the environment and the development that was taking place on the Reservation.

One of the most effective tools for bringing the Tribe's laws and policies current was determined to be the adoption and implementation of a Tribal Environmental Review Code. This code would serve a number of important purposes. First, it would provide the important data gathering function that gives the Oglala Sioux people and the Tribal departments information on essential environmental information, such as: how many septic fields are being constructed and where they are; how many hook-ups there are to public water systems and whether they are using dangerous materials such as lead; where businesses are being sited and whether they handling or storing hazardous or toxic materials; whether proposed developments are being sited near drinking water wellheads, or public water ways, or on soil types that will not accommodate leach fields; and an array of additional important information.

Besides being an essential source of information about development and its affects on the health and environment the Environmental Review Code would provide the various Tribal departments with notice that developments are being proposed which may involve the mission of that particular department. This notice would allow that department to determine if the tribal regulations which that department is charged with implementing are being met by the developer and his/her contractors. It would also allow the Tribe to assure that related requirements for Tribal Employment (TERO) and financial (Revenue Office) responsibilities to the Tribe are current. In addition, the Environmental Review Code would provide important development information to the Oglala Sioux Tribe through their District Councils and their Tribal Council Representatives.

The Environmental Review Code will also provide the basis for the Tribe to provide enhanced protection for the Reservation's populace and resources through Tribal departments, further enhancing the exercise of tribal sovereignty, rather than having that function fall to the State or Federal agencies which would otherwise claim the need and, therefore, the right to step in. Finally, it provides the information necessary for the Tribe to determine whether the needs of the Oglala Sioux people in environmental protection are being met in the areas of safe drinking water, minimum water quality standards, pesticide control, air pollution, and all related areas. The Environmental review Code is an important tool to allow the Tribe to meet its responsibilities to protect and plan for the future of the Oglala Sioux people and the Reservation environment.

OGLALA SIOUX TRIBE
PROPOSED ENVIRONMENTAL
REVIEW CODE
LEGISLATIVE REPORT AND ANALYSIS

PREPARED FOR THE
OGLALA SIOUX TRIBAL COUNCIL
BY THE NATIVE AMERICAN
RIGHTS FUND
JANUARY 29-30, 1998
RAPID CITY, SOUTH DAKOTA

SECTION BY SECTION LEGISLATIVE REPORT FOR THE PROPOSED OGLALA SIOUX TRIBAL ENVIRONMENTAL REVIEW CODE

THE FOLLOWING IS A SECTION BY SECTION ANALYSIS OF THE MEANING AND PURPOSE OF THE PROPOSED ENVIRONMENTAL REVIEW CODE FOR THE OGLALA SIOUX PEOPLE.

PROPOSED OGLALA SIOUX TRIBAL ENVIRONMENTAL REVIEW CODE

§100 Tribal Council Findings

Sections 101 (1) through (8) set forth the findings which support the need for the proposed Environmental Review Code, including the following:

- (1) that the Oglala Sioux Tribe's Constitution provides that the tribal government is empowered to protect and preserve the health and welfare of the Oglala Sioux people and their land and natural resources;
- (2) that the Tribe carries out its constitutional responsibilities through the adoption of tribal ordinances and regulations;
- (3) that there is a historic, cultural and spiritual relationship between the Oglala Sioux people and the natural environment;
- (4) that there is unmonitored growth and development on the Reservation which has the potential to harm the land and natural resources, and other historical and cultural resources, or threaten the health or welfare of the Oglala Sioux people;
- (5) that unmonitored growth and development on the Reservation will continue to occur threatening to interfere with the ability of the Tribal government to carry out its lawful responsibilities;
- (6) that unmonitored growth and development impacts the economic viability on the Oglala Sioux people and makes it necessary to gather as much information as possible on those activities and their impacts to inform the Tribal Government concerning those impacts;
- (7) that the monitoring and analysis by the Tribe through its agencies of the growth and development is necessary to gauge the impacts of those activities on the health and welfare of the Oglala Sioux people and resources and environment of the Reservation in order to prevent harm to the citizens and resources of the Oglala Sioux Tribe; and
- (8) that monitoring growth will permit the Tribe to collect and analyze information and data on development activity within the Reservation in order to better protect the Reservation's people and resources.

§101 Declaration of Policy

This section sets forth the policy of the Tribe to protect and preserve the Pine Ridge Indian Reservation environment and to provide a safe and habitable homeland for the Oglala Sioux people's present and future generations. This policy is implemented by establishing minimum procedures to monitor growth and development within the Tribe's jurisdiction, and adopting minimum procedures which will help to protect the reservation's environment and to promote the Oglala Sioux people's stability and security.

§ 102 Definitions

This section sets out the meaning of particular words as used in the proposed Environmental Review Code. This is done to assure people understand the meaning of these words as they are used in the draft code.

§103 Permit Requirements for Development; Other Tribal and Federal Laws Still Apply

Subsection (1) provides that development within the Tribe's jurisdiction is prohibited unless the developer has obtained an Environmental Review Permit from the Tribe. The exception to this requirement is if the development is by a tribal member for a traditional religious activity of the Oglala Sioux people.

Subsection (2) makes it clear that obtaining an Environmental Review Permit is not a substitute for compliance with other tribal or federal laws that apply to the person or activity involved.

§104 Power to Conduct Review and Issue an Environmental Review Permit; Conditions Upon Determination to Withhold A Permit

Subsection (1) places the responsibility for the review of the Environmental Review Permit application on the Tribal Environmental Health Technical Team (hereinafter "Tech Team"). It also delegates the authority to the Tech Team to determine that the permit:

- (a) should issue because the proposed activity will have a low impact on the environment,
- (b) should issue because after review, all of the tribal departments reviewing the permit have signed off on environmental review, or
- (c) deny the permit because one of the tribal departments reviewing the application withholds sign-off.

Subsection (2) requires that when an application is denied because it does not comply with tribal or federal law, then the Tech Team must:

- (a) identify the particular tribal department(s) that withheld sign-off;
- (b) explain the reason why sign-off was withheld; and
- (c) explain the conditions the applicant must meet to obtain sign-off.

This information is required so that the applicant will know exactly why the permit was denied and what must be done to get the permit issued.

If the applicant still wants the permit, it is his/her responsibility to meet whatever requirements have been listed to obtain sign-off by the tribal department(s) which withheld sign-off. This must, however, be done within 90 days from the time the permit was filed. The Environmental Health Technical Team may, for good cause, extend the 90 day time period for up to an additional 30 days. The judgment as to what is "good cause" is left up to the Tech Team.

§105 Permit Application Requirements

Subsection (1) provides that the Land Office will provide an application form to a developer. The form must have the details of the information required, including the name of the applicant and whether the applicant is a person, a business, religious organization or other entity. If the applicant is not an individual person the applicant must also list his/her job title when filing the application on behalf of a business or other entity. There must be a description of what the developer intends to do along with a description of the land on which the development is to take place. This will allow the reviewers of the permit application to determine whether the developer has an appropriate legal right or title to do the proposed development on the land, and whether he/she has all of the necessary permits, licenses, bonds or other clearances, including archeological, historical, and cultural clearances, required by Tribal law or regulation to conduct the proposed activity.

If the developer believes that the proposed development is low impact and does not require review by all of the tribal departments listed as reviewers, the applicant can list the reasons the proposed development should be considered low impact and request that a permit issue without full review. An example of the type of development that would be included here is fencing.

Subsection (2) provides for a one-hundred dollar (\$100.00) fee to be paid by applicants for a commercial development. This fee is to help defray the costs of review which are typically higher for a commercial development, which usually have more impacts than private development.

§106 Permit Application Procedure

Subsection (1) requires that the application be filed in the Tribal Land Office. The Land Office will then do the following:

- (a) Provide the applicant with a receipt for the application stamped with the date and time the application was filed and, where required, a receipt for the application fee.

- (b) Make seven (7) copies of the original application, and
- (i) place the original application in the Environmental Review Permit permanent file; and
 - (ii) keep one copy on file in the Land Office to be available for public inspection.
- (c) Provide four copies to the Environmental Review Permit Screening Committee. The Screening Committee must then review the application and make a determination whether:
- (i) the proposed activity is low impact and does not require review by designated tribal departments. If it doesn't, the Screening Committee will recommend to the Tech Team that the permit be issued. If the Tech Team agrees it must issue the permit BUT may place minimal conditions on it; or
 - (ii) the proposed activity requires full review by designated tribal departments. If so, the Screening Committee will attach the appropriate routing slip to four of the application copies for circulation to the following designated tribal departments for review and potential sign-off:
 - Copy I to the Tribal Land Office; the Environmental Protection Program; the Water Resources Department; and Solid Waste Management.
 - Copy II to the Badlands Bombing Range Project; the Pesticides Enforcement Program; the Groundwater Protection Program; and the Natural Resources Regulatory Agency.
 - Copy III to the Rural Water Supply System; the Water and Sewer Program; and the Health and Human Services Committee Coordinator.
 - Copy IV to the Revenue Office; the Tribal Employment Rights Office; and the Housing Authority.
- (d) Provide a copy to the Tribal District Office, and Tribal Council representative(s) from the Tribal District where the proposed site is located. This must be done within five (5) days from when the application was filed. This is done to make sure that the local people and their representatives are aware of proposed developments in their communities and allow local people the opportunity for any appropriate input.

Subsection (2) sets out the procedure for the review of the application once the Screening Committee determines that full review is required. Each tribal department designated in Section 106(1)(c)(ii) is required to review the permit application. Each designated department must complete its review within three (3) working days from when it receives the application and either sign-off or withhold sign-off on the application. The three (3) day requirement is to assure that the application moves through the review process as quickly as possible consistent with competent review. Any department that withholds sign-off must state the specific reason(s) for withholding its sign-off and describe the conditions the applicant must fulfill to obtain department sign-off. A tribal department

may only withhold sign-off if the proposed activity as described in the permit fails to comply with some requirement of tribal or applicable federal law.

If a tribal department fails to complete its review within three (3) working days then the application is treated as though that department has signed off. The reasoning behind this is that it is important that the application receive timely review and doesn't get bottled up on some department's desk.

Subsection (3) sets out the time frame for completion of the review of a permit application. The entire review process available to the tribal departments listed in Section 106(1)(c)(ii) must be completed within fifteen (15) working days from the date the permit application is filed. The fifteen day deadline includes the decision by the Tech Team whether to issue the permit, subject to any conditions attached pursuant to §106(2) [which requires that any department which withholds sign-off must list the reasons why and what must be done to obtain sign-off]. If the Tech Team fails to act on an application within fifteen (15) working days the applicant can treat that failure as a denial of the permit for the purpose of taking an appeal under §107 (Appeals and Judicial Review).

Failure of the Tech Team to complete review and decision within fifteen (15) working days gives the applicant the option of either seeking appeal immediately, or waiting to see why the permit application has been delayed. If the delay is because a tribal department has withheld sign-off, the applicant can work with that department to remedy whatever deficiency the department has identified as the reason for withholding sign-off. This must, however, be completed within ninety (90) days from the filing of the permit as provided in §104. The applicant may either work with the tribal department and the Tech Team or take an appeal to the Appeals Committee at any time they feel they have been wrongfully denied sign-off. Once the Tech Team does act on the permit and denies it pursuant to §104(1)(c) then the applicant has only ten (10) working days in which to file an appeal.

§107 Appeals and Judicial Review

This section describes the rights of any person who feels their rights have been violated. The person may appeal the action (or inaction after 15 days) of the Tech Team in reviewing and issuing or denying a permit application. Subsection (1) describes the process for taking an appeal to the Appeals Committee, which is made up of the Coordinators of the Committees of the Tribal Council and one representative of the Grey Eagle Society.

Subparagraph (a) provides that any person aggrieved by either an Environmental Review Permit being issued or denied must file their appeal for administrative review within ten (10) working days from that decision. They do this by filing a Notice of Appeal with the Secretary of the Land Committee. The Secretary accepts the filing on behalf of the Appeals Committee. When the Secretary gets a notice of Appeal there are several things that must be done and deadlines for each one. First, on the same date as the Appeal is filed the Secretary must provide a copy of the Notice of Appeal to the Tech Team. This is because it is the action (or inaction within 15 days) of the Tech Team that is being appealed, and because the Tech Team has the records containing the application and all of the review documents from the various tribal departments. If the appeal is because the

Tech Team issued a permit someone believes should, for some legal reason, not have been issued, then the Secretary must also provide a copy to the permittee because the permit is held in abeyance until the appeal is decided.

Once the Tech Team gets the Notice of Appeal it has ten (10) working days within which to forward to the Secretary of the Land Committee a copy of all of the records which it has on the application and the decision (or failure to decide). There is also a time of twenty (20) working days from the filing of the Notice of Appeal in which the Tech Team, the permittee, the person appealing, or any other interested person, may file with the Appeals Committee any information, evidence or other documents relevant to the appeal. The Appeals Committee must then decide the appeal based on the information submitted to it within thirty (30) working days from the time that it receives the records from the Tech Team. The Appeals Committee must uphold the action of the Tech Team unless there is an adequate showing that the Tech Team violated tribal or applicable federal law in some way. The burden of proof is on the party bringing the appeal. If the appeal is on the basis that a permit was improperly issued, the permit is suspended pending the outcome of the appeal.

Subparagraph (c) provides that the decision of the Appeals Committee shall be final for the Tribal Administration. This is the basis for taking an appeal to Tribal Court.

Subsection (2) provides for an appeal to the Oglala Sioux Tribal Court from the decision of the Appeals Committee by any person who was a party to the Appeal before the Appeals Committee. A party receiving a final decision by the Appeals Committee may file an appeal in the Oglala Sioux Tribal Court against the Tech Team within 30 calendar days from the date of the decision of the Appeals Committee. The Tech Team is identified in order to make it clear who should be identified in the appeal. The right to appeal to tribal court is for the sole and limited purposes of reviewing the decision of the Environmental Health Technical Team and/or the decision of the Appeals Committee. The Tribal Court review is strictly limited in subparagraphs (a) through (c) to: (a) whether the decision is supported by substantial evidence; (b) whether the permit is issued or denied in compliance with the Environmental Review Code; or (c) whether the action of the Environmental Health Technical Team is contrary to tribal law or is arbitrary and capricious. Relief is limited to other than money damages.

§ 108 Authority to Seek Enforcement

This section makes the entire code enforceable. Without it the code may mean nothing. It allows the Tribal Environmental Specialist, with the Tribal Attorney's assistance, to issue a Cease and Desist Order against unpermitted development. The Environmental Specialist may, on his/her own, issue an order to a developer to stop what they are doing. But the developer may simply ignore them. So the Environmental Specialist may also go to the Oglala Sioux Tribal Court and ask for any remedy otherwise available under Tribal law, including, but not limited to, an order for unpermitted activity to be stopped, an order for any unpermitted development to be removed, and/or an order for money damages in an amount necessary to remedy any impacts occasioned by the unpermitted activity. This will give the Tribe the ability to make the Environmental Review Code meaningful.

§ 109 Severability

This section provides that should any portion of the Environmental Review Code be held to be invalid, illegal or unenforceable for any reason, the rest of the Code shall not be effected.

