

INDIAN HOUSING IN THE U.S.:
A HISTORY

Prepared by
The Housing Assistance Council
1025 Vermont, Ave., N.W.
Suite 606
Washington, D.C. 20005

(202) 842-8600

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EXECUTIVE SUMMARY

The history concentrates on the contribution of the Department of Housing and Urban Development (HUD) to Indian housing, but includes information on other efforts, such as those of the Bureau of Indian Affairs' (BIA) Housing Improvement Program (HIP), and the sanitation facilities provided by the Indian Health Service (IHS).

The housing chronology begins with administrative determinations in 1961 and 1962 by the Public Housing Administration (PHA) that Indians on reservations and in certain other areas were eligible under the U.S. Housing Act of 1937 to participate in the PHA low-rent program and, that PHA could establish, under certain specified conditions, Indian housing authorities (IHAs), and a mutual-help homeownership opportunity program.

There is a discussion of the role of the BIA as general trustee and the special nature and status of Indian lands. This unique situation requires coordination for housing development among the tribe, BIA, IHA, IHS, and HUD. An early PHA-BIA cooperative agreement was executed in 1963. In 1965, the Housing and Home Finance Administration (HHFA), PHA, and the Federal Housing Administration (FHA) were consolidated into HUD. That year the BIA HIP was also created.

By the end of the 1960s, the low-rent and mutual-help programs had been established and the continuing need to coordinate among HUD, BIA and IHS was again recognized through validation of tri-partite agreements among the three agencies. The on-going and increasing need to provide new and substantially rehabilitated housing in Indian areas prompted a commitment to produce a total of 40,000 units from FY'70 through FY'74. Although these goals were not realized, production figures during

those years were the highest in the history of the programs. Since production exceeded concurrent management development, problems were becoming evident which would continue to the present.

GAO reports in 1971 and 1978, and Congressional hearings and reports in 1975, 1976 and 1979 highlighted the need for an accelerated development program combined with a comprehensive national Indian housing policy.

HUD responded during the latter half of the 1970s by establishing special Indian field offices to concentrate specifically on Indian housing, and began implementing training and technical assistance initiatives for IHAs. Comprehensive Indian housing regulations were promulgated in 1976 and refined in 1979. The tri-partite Interdepartmental Agreement was updated in 1976, and the position of Special Assistant to the Secretary of HUD for Indian and Alaska Native Programs legislatively created in 1977. An Annual Report to Congress on the conditions of Indian housing was also mandated. By 1978, HUD had established a permanent Office of Indian Housing in Washington, D.C., and the office began concentrating its activities on establishing centralized operations, providing training and technical assistance to the Offices of Indian Programs, streamlining the development process, and reducing the management problems which had arisen during the formative stages of the program.

The history then highlights HUD's efforts to reduce and contain escalating development costs, speed the new construction pipeline, and address design and construction deficiencies. Through the Comprehensive Improvement Assistance Program (CIAP) funds were made available to IHAs to repair existing units. HUD has allocated significant amounts of those monies for rehabil-

itation of substandard housing. Numerous instances of financially troubled IHAs surfaced over time and HUD central and field offices focused their efforts on addressing those problems. An Indian preference policy was created to implement self-determination, to correspond with the President's Indian Policy Statement and to fulfill the wishes of the Indian constituency.

An Interagency Task Force on Indian Housing, established in 1981, examined options for a revised national housing policy. As the HUD cost containment and management improvement strategies were put into effect, per unit costs were reduced, pipeline development times were decreased, and the financial conditions of many IHAs improved. An industrialized housing special initiative provided additional options for improving housing conditions while lowering costs.

From FY'81 to FY'86, HUD reduced development costs by an average of \$24,000 per unit at reservation stage, established a recapture policy to recover units stagnated in the development pipeline, and implemented an administrative capability assessment to uniformly evaluate IHA performance and thereby objectively award new units based on standardized criteria. Further program refinements seek to enhance development while reducing costs through use of a computerized management tracking program and an automated cash management system. A technical assistance program for financially troubled IHAs is also in operation.

Also reviewed are significant legislative proposals, successful and unsuccessful, which arose during the history of the program. Major administrative efforts are discussed, as are policy shifts which accompany new administrations. Statistical compilations of program accomplishments are included, and a list of sources, including major policy documents, is provided.

Indian Housing in the U.S.: A History

CHRONOLOGY

- 1937: U.S. Housing Act established federal policy that decent and affordable shelter is a basic necessity.
- 1949: National Housing Act affirmed goal of providing affordable, safe, sanitary and decent housing for all Americans.
- 1961: Department of Interior Task Force on Indian Affairs examined status of Indian housing in the U.S. Task Force recommended establishing housing branch in BIA and that Public Housing Administration implement a self-help homeownership opportunity program on reservations.
- 1961: PHA General Counsel Joseph Burstein approved an opinion finding Indians eligible for the PHA low-rent program. It also allowed for establishment of Indian housing authorities (IHAs) under certain specified conditions.
- 1961: First low-rent project application received from Pine Ridge.
- 1962: First Annual Contributions Contracts signed.
- 1962: BIA requested that PHA Commissioner Marie McGuire decide whether PHA could initiate a mutual- or self-help homeownership program on reservations.

- 1962: PHA General Counsel Burstein found that sufficient legislative authority existed in U.S. Housing Act of 1937 to administratively engage in mutual-help housing programs on reservations.
- 1963: First mutual-help applications received by PHA.
- 1963: PHA/BIA mutual-help coordination agreement signed.
- 1964: First mutual-help project begun at San Carlos Apache Reservation.
- 1965: PHA/BIA low-rent coordination agreement signed.
- 1965: Department of Housing and Urban Development Act created HUD by combining functions of Public Housing Administration, Urban Renewal Administration, Community Facilities Administration, Federal Housing Administration, and Housing and Home Finance Administration into one agency.
- 1965: BIA established Division of Housing Assistance, of which the Housing Improvement Program (HIP) is a part.
- 1966: BIA again surveyed Indian housing needs and produced a more comprehensive report than the 1961 study.
- 1968: OEO transitional housing demonstration project completed at Rosebud Sioux Reservation.
- 1968: HUD Act of 1968 contained first formal reference to HUD's obligation to serve low-income families in Indian areas.
- 1969: First Tri-Partite Agreement among HUD, BIA and IHS signed. It contained goals of 8,000 new or rehabilitated units of

Indian housing each year from FY'70 through FY'74.
Congress extended goal of 8,000 units per year for FY'75
and FY'76.

- 1969: Second Tri-Partite Agreement by HUD, BIA and IHS, which more specifically addressed problems of coordination and the responsibilities of each agency.
- 1970: Revised BIA HIP housing standards issued.
- 1970: President Nixon issued special Indian Policy Statement.
- 1971: HUD convened forum of IHAs to help resolve Indian housing problems.
- 1971: GAO report, "Slow Progress in Eliminating Substandard Indian Housing", issued.
- 1973: HUD and BIA began jointly funding the Resident Training and Counseling Program.
- 1974: Housing and Community Development (HCD) Act of 1974 sets aside \$15 million in each of FY'75 and FY'76 for new construction. Marks first specific set-aside of funds for Indian housing in federal housing legislation. Mutual-Help program is identified as separate and distinct from rental housing program.
- 1974: HCD Act of 1974 legislatively permits Farmers Home Administration (FmHA) to accept a 50-year leasehold interest in Indian trust lands as a valid security interest for FmHA loans.
- 1974: HUD and BIA agreed to develop 500 units of new construction in remote Alaska Native villages as a demonstration/test project.

- 1974: National Indian Housing Conference in Scottsdale, AZ. HUD Secretary Lynn attended.
- 1975: Senate Indian Affairs Subcommittee held field hearings in Oklahoma on Indian housing.
- 1975: Special HUD Offices of Indian Programs established in Denver (Region VIII) and San Francisco (Region IX).
- 1976: HUD Secretary Carla Hills created new Office of Indian Policy and Programs, under the Assistant Secretary for Consumer Affairs and Regulatory Functions.
- 1976: First comprehensive HUD Indian housing regulations and HUD Interim Indian Housing Handbook #7440.1 issued.
- 1976: "Old" mutual-help ends and "new" mutual-help begins under new regulations.
- 1976: Revised Tri-Partite Interdepartmental Agreement on Indian Housing finalized.
- 1976: Special report, "The Indian Housing Effort in the United States", completed for American Indian Policy Review Commission.
- 1976: HUD Division of Housing Management authorized the Management Incentives for Indian Housing (MIFIH) program, beginning in FY'77.
- 1977: Housing and Community Development Act of 1977 established position of Special Assistant to the Secretary for Indian and Alaska Native Programs, and requirement of an annual

report to Congress from HUD on Indian housing. The Special Indian Community Development Block Grant program was also authorized.

- 1977: Joseph Burstein, Counselor to HUD Secretary Patricia Harris, completed two memos on problems of Alaska Native and American Indian housing.
- 1978: GAO report, "Substandard Indian Housing Increases Despite Federal Efforts - A Change is Needed", issued.
- 1978: HUD Indian Housing Conference in Washington, D.C.; Counselor Burstein's memos were discussed.
- 1978: Separate Office of Indian Housing within HUD created with Thomas Sherman as Acting Director.
- 1979: HUD finalized Indian housing regulations.
- 1979: U.S. Senate Select Committee on Indian Affairs filed "Report on Indian Housing," which cited problems in the Indian housing delivery system.
- 1980: HUD reorganization established six Indian Program Field Offices in HUD regions.
- 1981: President's Commission on Housing established to develop options for a new national housing policy. Interagency Indian Housing Task Force appointed.
- 1981: Housing and Community Development amendments changed "Brooke Amendment" from 25% to 30% of adjusted gross income for rental program, and implemented the "95/5" income-mix occupancy ratio rule for low-income projects.

- 1981: HUD memo on design and construction deficiencies in Indian housing projects prompted set-aside of \$1.2 million in Comprehensive Improvement Assistance Program (CIAP) funds to remedy problems.
- 1981: HUD memo, "Troubled Indian Housing Authorities", pointed out escalating problems with rent collections and management controls. Later memo on "Policies for Indian Housing Authorities" imposed stronger sanctions for failure to improve management operations.
- 1981: Congress directed HUD to use HUD funds to provide off-site water and sewer facilities to Indian housing projects beginning in FY'82.
- 1982: Interagency Indian Housing Task Force produced options paper on new directions for Indian housing delivery systems.
- 1982: Legislation proposed to create new Indian housing program in BIA and eliminate HUD program. Died in 1982, but reintroduced in 1983 and again failed to gain passage.
- 1982: HUD implemented cost containment efforts which reduced average per-unit costs by \$10,000/unit.
- 1983: President Reagan's Indian Policy Statement issued.
- 1983: HUD Industrialized Special Housing Initiative begun.
- 1983: By end of FY'83, average Indian housing unit cost dropped to \$57,000 from FY'81 average of \$74,000.
- 1983: HUD established Secretary's Advisory Committee on American Indian and Alaska Native Housing.

- 1983: Housing and Urban-Rural Recovery Act allowed for FHA insured mortgages on Indian trust lands.
- 1983: HUD continued cost reductions and development pipeline time was reduced from up to 4 years to an average of 1 1/2 to 2 1/2 years.
- 1984: First permanent director of the HUD Office of Indian Housing appointed.
- 1984: Office of Indian Housing developed new procedures for allocation of development funds based on uniform criteria.
- 1985: Office of Indian Housing began using microcomputer system to standardize data exchanges between central and field offices.
- 1985: HUD memo, "Indian Housing Project Action Deadlines", established a recapture procedure for new units stalled in the preconstruction development pipeline.
- 1986: HUD Indian preference regulations finalized.
- 1986: HUD Office of Indian Housing released memo, "Administrative Capabilities Assessment", which established objective criteria for evaluating IHA performance.
- 1986: Implementation of an automated, cash management plan, the Rapid Indian Housing Payments System (RIHPS), to provide development payments on timely and reliable basis.
- 1987: Installation of a computer tracking system, the Management Information Retrieval System (MIRS), to provide nationally accessible Indian housing management and development data for remote monitoring of Indian housing operations.

1987: Implementation of Amerind, a third party claims administrator to provide a self-funded insurance pool for required insurance coverage to IHAs.

Indian Housing in the U.S.: A History

I. INTRODUCTION

This paper describes the evolution of federal housing programs for American Indians and Alaska Natives at the U.S. Department of Housing and Urban Development (HUD). Its purpose is to inform the reader, in an essentially chronological fashion, about how and why Indian housing activities began, what the programs do, and the ways in which the federal entities involved coordinate their efforts to improve the delivery mechanisms that are fundamental to successful projects.

Finally, an attempt will be made to describe the current programs, and to explain HUD's role in improving and streamlining the delivery system while increasing decision-making at the local level.

II. Evolution of Federal Indian Housing Assistance: The Early Years (1961-1968)

A. Overview

The provision of adequate housing for Indian tribal members received little attention well into the middle of the twentieth century. Even as major federal housing assistance programs developed in the 1930's and 1940's, Indian needs were ignored. The U.S. Department of the Interior (DOI), through the Bureau of Indian Affairs (BIA), was delegated the responsibility of overseeing and implementing the promises made by the United States to Indian nations.

Since this relationship excluded a role for state governments, complications arose. Although the primary

objectives of the U.S. Housing Act of 1937(1) and the National Housing Act of 1949(2) were the provision of decent, safe, and sanitary shelter for all Americans, Indians were simply overlooked. States often provided a bifurcated approach to Indians: they considered Indians to be under state jurisdiction when they exercised their police powers, but not under state control in terms of the responsibility to provide services for which all state citizens are eligible.

Despite the lack of state assistance, it was not until 1961 that the federal government first established a special program to address the housing needs of Indians living on reservations or trust lands. Today, nearly 64,000 Indian homeownership and rental housing units have been constructed or rehabilitated under HUD programs. Some 10,500 additional homes are in the planning, development or construction stages.(3)

Despite 25 years of significant federal subsidy, Indian housing needs continue to escalate as the number of Indian families residing on reservations and in Alaska Native villages increases. The challenge of the 1980's is devising ways to serve more Indian people with fewer federal dollars.

B. Historical Background of Early Indian Housing Activities

It was not until 1961 that federal funds were made available for Indian housing development. Certain events provided the impetus to begin serving Indians on reservations.

First, tribes and tribal governments were trying to recover from an effort by the federal government, begun in the late 1940s, to sever the federal-tribal relationship. Termination

policies sought to extinguish the long-standing special political relationship between the federal government and tribal governments by transferring jurisdiction over Indians to states, and by encouraging tribal members to leave the reservation and relocate in urban areas. State governments declined to offer housing programs for reservation Indians residing within state boundaries. Most tribes were at that time neither fiscally nor administratively capable of financing or producing housing units for their members without federal assistance.

Secondly, Department of the Interior Secretary Stewart Udall established a task force to examine the current condition of federal-Indian affairs.(4) In the task force report, dated July 10, 1961, the magnitude of the Indian housing problem was recognized. The report suggested that once certain "problems" were resolved, the utilization of existing federal loan programs, such as Veterans Administration (VA), Federal Housing Administration (FHA), and Farmers Home Administration (FmHA) would fill the housing gap for reservation Indians. The problems cited, alienability of Indian lands, high unemployment rates, and a lack of creditworthiness, still exist 25 years later.

The task force also recommended the establishment of a housing division within the BIA, and advocated that the Public Housing Administration (PHA) increase the Indian low-rent public housing program (which had just begun) and implement a self-help homeownership opportunity program on reservations.(5)

It was becoming clear that a comprehensive housing program of some sort was necessary to adequately serve Indian housing needs. Although the 1961 Udall task force recommended establishing a housing division within the BIA, and this was eventually done in 1965, it was the Public Housing Administration which was given the primary responsibility for developing Indian housing programs.

C. Genesis of Federal Housing Programs For Indians

1. The First Programs: Low-Rent and Mutual-Help

Although the U.S. Housing Act of 1937, as amended, provided for public housing rental programs, it was not until 1961 that PHA General Counsel Burstein signed an opinion, authored by staff attorneys Arnold Coplan and William Grossman, finding that PHA low-rent housing programs were authorized in Indian country. The Burstein/Coplan/Grossman opinion had reexamined previous analyses and found Indian tribes, under certain conditions, eligible for the low-rent program. Provided that the oversight entity, a tribal government, exercised the requisite legislative, governmental and police powers, it was eligible to establish, under tribal law, a local housing authority, now more commonly referred to as an Indian housing authority (IHA).

If the tribal government failed to exercise its governmental powers to an "acceptable degree," if there was a question regarding the tribal land base, or if its status as a federally recognized tribe was at issue, an IHA could still be established under state law. This provision allowed non-reservation based federally recognized tribes such as those in some parts of Oklahoma, village-based federally recognized Alaska Natives, certain state-recognized tribes, or those otherwise insufficiently "organized" according to PHA standards, to participate in the program under the state law option if the state legislature passed a bill allowing for creation of an IHA.

After creation of an IHA, the tribe, through the IHA, could begin to receive federal housing assistance under the low-rent program just as public housing authorities could. Later determinations of eligibility for the new mutual-help program would also flow through the tribally-established IHA to eligible Indian families.

Although it is difficult to trace with certainty the evolution of the initial suggestion to establish federal public housing programs in Indian country, early discussions between BIA personnel with Federal Housing Administration (FHA) staff on obtaining mortgage insurance under the FHA program on trust or restricted lands may have provided the impetus to explore the idea. Those discussions had an effect on the Udall task force, and ultimately played a part in the movement to establish IHAs, the low-rent Indian housing program, and then in 1962, the decision to create a new and innovative mutual- or self-help program for Indians.

On August 24, 1962 the BIA formally requested an opinion from PHA Commissioner Marie C. McGuire as to whether PHA could engage in a new program of mutual- or self-help housing on Indian reservations. The written request further stated that if the answer to the question was "no", the BIA immediately intended to request a grant under the "207 demonstration program", and to "eventually request legislation to authorize such a housing program".(6)

That legislative request was not necessary. PHA General Counsel Joseph Burstein's reply, coauthored by Arnold Coplan and Ralph Reeser, dated November 30, 1962, found that sufficient legal authority already existed under the U.S. Housing Act of 1937, as amended, to engage in such a program.(7) PHA Circular 12-5-62 announced the new program and advised all regional directors of the necessity for sample projects, the need for BIA-PHA coordination, and the requirement of central office review and approval for all projects.

The Burstein memo discussed the rationale for a home ownership as opposed to a rental program, and concluded that mutual-help would instill a pride of participation and enhanced owner involvement through the contribution of either land, materials, or actual labor by the potential homeowner.(8) This

"sweat equity" concept was an integral feature of the program as originally envisioned, and a modified version of such a contribution still exists. Presently, the family or the tribe makes the contribution in the form of a leasehold interest in the land, or a contribution of materials or another acceptable form of participation.

Burstein also believed that this contribution would provide a maintenance incentive which did not exist in a grant program such as the subsequently authorized BIA Housing Improvement Program (HIP). Very detailed in its analysis of subsidy and aggregate costs, Burstein concluded that the program would in fact serve a greater number of people at a lower cost than the low-rent program, and at the same time allow greater participation by lower-income families. His analysis pointed out that an Indian family which was unable to afford the then fixed-amount monthly payment of the low-rent program could participate in the mutual-help program because of its lower contribution requirement.(9) The essential contractual agreement would be a lease with an option to buy between the program participant and the IHA.

Throughout the memo Burstein emphasized that a mutual-help program with a tribal or individual Indian contribution of land, materials, or "sweat equity" could reach a larger percentage of on-reservation Indian families and result in home ownership at a lower aggregate subsidy cost than the financing and operational charges of the low-rent program:

"A basic feature of the plan is the use of the land, labor and materials supplied by the participants to reduce the Federal subsidy that would otherwise be required to provide such low-rent housing. It also makes use of the same participant's contribution as a guarantee that the participant will maintain his dwelling under penalty that if he does not, and the

local housing authority is required to do so for him, his acquisition of ownership will be deferred to the extent of the maintenance cost required to be incurred by the local housing authority."

"The plan accomplishes these objectives by using the participant's contribution in the following manner. A portion of his contribution is applied to establish a reasonable operation and maintenance reserve which, if not used for such purposes, will be applied to payment for the dwelling. The remainder of the participant's contribution, although not applied immediately to the operation and maintenance reserve, will also be available for operation and maintenance expenses if needed, and if not used for those purposes, for ultimate payment for the dwellings. The result of this arrangement is that if the family maintains its own dwelling, the value of the amount that it has contributed as mutual-help is applied to enable it to acquire ownership that much sooner. On the other hand, if the family does not maintain its property, that same contribution by it enables the local housing authority to continue to provide that family with decent housing at no additional subsidy cost to the Government until that source of funds is exhausted. This combination of Federal aid and participant's incentives--the participant's desire to conserve maintenance reserves and any excess mutual help credit to enable him to obtain ownership that much sooner--makes maximum use of individual self-help incentives and Federal subsidy to achieve the best value for every dollar of Federal subsidy in providing decent housing for low-income families."

"As will be explained more fully below not only does this proposal enable the PHA subsidy to reach a much lower income group than would otherwise be possible but it does so at a fraction of the subsidy required to house low-income families under the conventional rental type of project."(10)

Burstein's conclusion was based on the fact that during the early 1960's, public housing agencies had fixed rents for their units. Since the Brooke Amendment had not yet been enacted, these fixed rents often exceeded 25%-30% of a tenant's income. Such rents were, in most cases, far too high for an Indian family to pay. A second significant factor was that utility costs during this period were very low.

The mutual-help idea would also satisfy the strong cultural preference of reservation Indians for single-family home ownership, in contrast to the PHA low-rent program's focus on urban, multi-family projects. An economic drawback to the program which was considered but never resolved was the rural, remote nature of Indian reservations. The escalation of utility costs was also unanticipated. The emphasis on single-family scattered site housing would present problems of cost-effective development which still exist some 25 years later.

By the end of 1962, the administrative barriers had begun to lift, allowing Indians residing on trust or restricted lands to participate, under certain specified conditions, in either the PHA low-rent program, or the new mutual-help program.

2. Implementation Strategy

Once the decision had been made to declare Indians eligible for PHA programs, a plan had to be developed to guide the provision of these services to reservation residents. Participant eligibility criteria, interagency coordination, housing

development standards and requirements, and overall project operations and administration had to be considered and implementation strategies designed in rapid succession.

When PHA staff was assigned the task of providing a delivery system for reservation housing development and management, they relied upon prior experience and expertise for the provision of housing assistance in urban settings. Rather than devise a new formula, the PHA attempted to modify the urban, multi-family model and apply it on reservations. Problems arose on many fronts, including the resistance to multi-family projects by the Indian community.

As these issues were surfacing, program start-up activities moved ahead. The first low-rent project application was received in August, 1961 from Pine Ridge.(11) Considered a pilot demonstration project, the 129 units constructed had rental charges averaging \$45 per unit per month. Using the Pine Ridge example, PHA General Counsel Burstein in his November 30, 1962 memo authorizing the mutual-help program estimated that the low-rent program as it was presently structured could "meet no more than 15% of the need for decent housing on the Reservations because 85% (or approximately 60,000) of the Indian families have incomes of \$2,000 per annum or less".(12)

In 1962 the first Annual Contributions Contract (ACC) was signed. That year there were 299 program reservations and 51 construction starts.(13) In 1963, two mutual-help applications were received by PHA, and in 1964 the first mutual-help project was begun on the San Carlos Apache Reservation.(14)

As the first units neared completion, it is doubtful that either the IHA staff or PHA officials could have fully anticipated the many factors that affect the production and management of decent, safe, affordable and sanitary Indian housing. The list below enumerates those factors.

- o Cultural considerations
- o Tribal politics
- o Logistical problems of remote, rural areas
- o HUD's decentralized delivery system
- o Funding problems at the federal level
- o Slow development of comprehensive regulations and policies
- o Environmental factors planning
- o Indian preference
- o Low incomes of participants
- o Slow construction
- o Negligible cooperation from VA, FHA, FmHA and other federal entities
- o Land tenure issues
- o In-migration of Indians and on-reservation population increases
- o Poor siting of projects/units
- o Poor repairs
- o Provision of water and sewers
- o Utilities and related infrastructure
- o Construction and design defects
- o Provision of access roads
- o Construction inappropriate/culturally unacceptable
- o Extreme weather conditions and short building seasons
- o Creditworthiness of participants
- o Reluctance of lenders to reservation lending
- o High total development costs
- o Housekeeping and maintenance of units
- o Accounts receivable problems of IHAs
- o Lack of training and technical assistance for IHA staff
- o Delays in site selection process

- o Disparity of occupant responsibilities from unit to unit based on type of program under which project was developed
- o Interagency coordination

No single element is the root cause of the "problems" with Indian housing. However, coordinated development, effective management and efficient program administration greatly enhance the potential for success. The difficulties that exist can then be addressed and corrected.

D. The Concept of and Need for Coordinated Development

1. Indian Lands

Development of an Indian housing project requires the use of Indian land. Although severely reduced by various federal policies, Indian land holdings are still extensive. The United States Government, through the BIA, has trust responsibilities for approximately 53 million acres of reservation land in more than 20 states, most of which is located west of the Mississippi River.

Once project units have been allocated to an Indian housing authority, the developer may be required to obtain tribal permission to build on land within the exterior boundaries of the reservation. If the land is tribally owned trust land then the Indian housing authority must acquire a leasehold interest for a 50-year period and assign the lease to the Indian family who will be living on the land. Delays by tribal governments in approving leasehold interests sometimes occur. Tribes may also own restricted fee land where alienation is sometimes possible. This land is also eligible for assignment to an IHA for development.

When individual Indian persons own land within a reservation they have usually obtained title to it either directly or indirectly through the allotment process. In 1887, Congress passed the Dawes, or General Allotment Act, (15) which authorized the dissolution of tribal trust lands by dividing "surplus" tribal lands among individual tribal members. Trust patents were then issued to these members. The trust patent would expire after 25 years (although in some cases it could be extended), at which time the individual would own the land in fee simple and be able to sell it. The idea behind the allotment process was to allow Indians to assimilate into the majority society; the actual result of the allotment process was the break-up of the reservation land base. Many of those who received allotments never understood the concept and were swindled out of their land by dishonest non-Indians and other Indians. Once the land was sold or the trust patent expired, the surrounding non-Indian jurisdictions often put the land on the tax rolls. Indians lost more land through foreclosures and distress sales to pay taxes and other obligations. It is estimated that Indians lost nearly two-thirds of their treaty lands before the General Allotment Act was stopped by the Indian Reorganization Act of 1934. (16) Alloted lands can subsequently be sold to anyone once the initial devise to an individual Indian has taken place.

Two major problems for Indian housing development arose from this process. First, the heirship status of some Indian lands is so fractionated that, for example, a single 20 acre parcel may be owned by more than 100 people. Thus, sale or lease of the land would require the approval of all parties. A second and oftentimes more serious dilemma is the checkerboard status of many reservations. In some areas where the allotment process was vigorously applied, well in excess of 50% of the reservation land base is "checkerboarded" with parcels of tribal, individual Indian and non-Indian owned land scattered throughout the reservation. Sometimes non-Indian, individual Indian, and tribal

trust lands are located contiguous to each other. Within these categories are further subclassifications such as restricted fee or trust allotments, which further complicate the land status situation. The practical effect is to render these lands useless for housing development, as well as for many other purposes.

2. Early Coordination Efforts

Once HUD funds and Indian lands have been committed for a housing project, it is still necessary to coordinate with at least two other entities for development of the units: The Bureau of Indian Affairs (BIA), and the Indian Health Service (IHS). Although their roles have shifted slightly over time, the BIA, HUD, and IHS are the essential federal entities through which coordinated housing development occurs on Indian reservations. In its role as trustee, the BIA plays a major part in all activities which occur on Indian reservations. In an Indian housing project, the BIA is responsible for providing access roads to the project, and must approve most real property leases. IHS, a division of the U.S. Department of Health and Human Services (HHS), builds water and sewer facilities for Indian housing projects.(17)

Throughout the development process, a successful project requires the coordination of the three federal agencies (and oftentimes others) and the two tribal elements (the IHA and the tribal government). Once a tribal government agrees to participate, it creates an Indian housing authority and appoints a Board of Commissioners. The IHA must coordinate the activities of all the parties. To varying degrees, tribal governments continue to monitor projects in their governmental capacity. Construction companies, whether tribal, Indian, or non-Indian, must comply with tribal laws and regulations while doing business on the reservation. Difficulties arise when the priorities of all these entities do not mesh.

In the early years of housing development, the BIA provided housing services on reservations. Using the local Indian labor force and a construction superintendent, the BIA, as force account builder, developed a standardized house which it then constructed at sites provided by either the tribe or individual Indians. Called the "Littleton Plan", after the BIA design and construction office located in Littleton, CO, the houses constructed were three bedroom, 960 square feet floor plans. Only the construction materials and minor details varied according to climate and siting.

The first formal attempt to address the problems of coordination within the mutual-help program occurred in 1963. An agreement, drafted by Ralph Reeser, was completed on May 29, 1963 between Phileo Nash, BIA Commissioner, and Marie C. McGuire, PHA Commissioner.(18) The letter signed by McGuire and Nash spelled out each agency's particular responsibilities in the development of mutual-help housing. Among other items, it directed the BIA to provide a construction superintendent for each mutual-help project. This requirement became increasingly difficult because of BIA budget constraints and was cited by the BIA Division of Housing Assistance as one of the reasons, along with high overhead costs and slow production schedules, for a shift to a modified mutual-help program and an emphasis on the Turnkey III program in 1968.

A second agreement covering Indian rental projects was signed by Commissioners Nash and McGuire on February 12, 1965. In "Indian Housing; 1961-1971, A Decade of Continuing Crisis", 48 N.D. L.Rev. 549, 600 (1972), authors Sternberg and Bishop provide a brief explanation of each agency's responsibilities under the early agreements:

"The agreements... required HUD to 1) aid the tribal governments in qualifying for assistance, 2) assist the Local Housing Authority (LHA) with all the procedures

necessary for obtaining funding - including assistance with site selection, preliminary loan contracts, Annual Contributions Contracts (ACC) formulations and funding, etc., 3) provide training in development and management procedures for LHA and BIA staff, 4) provide on site construction inspections, and to approve each project from the standpoint of minimum health, safety and occupancy standards. Some of the responsibilities of the BIA were to assist LHA's in meeting the requirements established by HUD - including site selection, sample surveys, data on financial feasibility, soil investigation, title evidence, etc. For mutual-help the BIA was to designate a project overseer and provide adequate construction services including inspections, cost control, and training programs for the participants. In addition, the BIA was responsible for encouraging, within the limits of economy and feasibility, the use of locally developed materials. The BIA also assumed some management and administrative responsibilities for public housing units, if the LHA was incapable of the responsibility."

These agreements established the BIA as the lead oversight agency responsible for actual development activities, a role which would later prompt complaints of an additional and unnecessary layer of bureaucracy being imposed on the process. The agreements underscored the limited role of the HUD predecessor agencies. BIA was the primary provider during these early years with HUD's role limited to that of facilitator and technical assistance provider. Commentators also cite the lack of clearly defined areas of responsibility for each agency as a primary cause of the ultimate failure of the early agreements.

Subsequent to the Nash-McGuire agreements, a series of circulars and memoranda were produced which were aimed at clarifying housing program operations and procedures on reserv-

ations. However, no formal compilation of these directives occurred until March 9, 1976, with the publication of the first HUD Interim Indian Housing Handbook.

By 1964, federal policymakers had begun to realize that the BIA could not be solely responsible for supporting the social and economic development of on-reservation Indians. For example, in 1964, Indian tribes were first awarded funds under the HUD 701 Comprehensive Planning Grant Assistance Program. Funds could be used for a variety of planning purposes including management, technical assistance, demographic studies, programming, and social service planning.

In 1965, two significant events occurred. The Department of Housing and Urban Development Act, (19) which created HUD, became law. Section 5(a) of the Act vested the new department with the combined functions, powers and duties of the Housing and Home Finance Agency, the Federal Housing Administration, the Public Housing Administration, the Community Facilities Administration, the Urban Renewal Administration, and the Federal National Mortgage Administration. The impact on Indian programs was positive, since the consolidation of these agencies into one department would lead to enhanced coordination as the programs were developed.

Earlier that same year, the Bureau of Indian Affairs established a Division of Housing Assistance. The new division was comprised of the Housing Development Program, and a management and tenant training function. Housing Development Program monies pay for BIA housing staff salaries. The primary activity of the division is the Housing Improvement Program (HIP), which rehabilitates units and provides limited new construction for members of federally recognized Indian tribes residing on reservations who cannot find assistance from any other sources.

Statutory authorization for the program is found in the Snyder Act of 1921.(20) HIP regulations may be found in 25 CFR Part 256. HIP is a grant program, rather than a loan program, and is a last resort source of home repairs for reservation Indians. The program began in the HUD Denver region in 1965 and soon spread to all BIA area offices.

The Division of Housing Assistance also aided tribes in securing access to other federal housing programs, particularly the HUD programs. The initial Fiscal Year 1965 HIP appropriation was \$500,000.(21) Today, HIP funds may be used for substantial rehabilitation, minor emergency repairs, down payments and new construction. The most common program activities are substantial repairs to bring units to standard condition, and emergency repairs to units which will remain substandard. Annual funding has been approximately \$20 million.

In 1966, the BIA did a second study of Indian housing problems.(22) This examination was more comprehensive than the previous one, prepared in 1961. Many of the same problems uncovered in the 1961 report surfaced again five years later. A survey of tribes had been conducted over a three-year period which clarified the unmet need for adequate on-reservation housing. The BIA estimated that nearly 65 percent of existing units were grossly substandard, 30 percent were completely unfit for human habitation, and not more than five percent of existing housing was able to meet FHA low-income standards.(23) While BIA admitted that imprecise definitions and subjective appraisals rendered these figures merely estimates, the report is significant in that it was the first major effort to quantify Indian housing needs. It became clear that a housing problem of major proportions had been uncovered and remedial activities were required to resolve the problem.

The 1966 BIA report and a subsequent 1968 study(24) led to the development of a formal yearly needs assessment survey, which has since become the annual BIA Consolidated Housing Inventory.(25) It is the only comprehensive compilation of Indian housing needs in the United States, and is utilized as a primary data source by HUD, BIA, and IHS.

Sternberg and Bishop reviewed some of the findings of the 1966 report:

"The potential of the loan programs was again recognized, as was the major obstacle for Indians, which was the requirement of "credit-worthy" recipients. Also the importance of public housing as a solution to the Indian housing problem was stressed. But the difficulties involved in the public housing program were also enumerated. They included (1) the high cost for low rent housing; (2) the extremely long construction time for mutual self-help; (3) the failure of many small groups to qualify for the establishment of housing authorities; (4) the absence or shortage of Indian managerial ability; (5) the resistance of the Indians to clusterhousing; (6) the desire of HUD, HAA to maintain high standards; and (7) the high wages paid to construction workers.(26)

III. The Continuing Development of Federal Indian Housing: The Programs Mature and the HUD Involvement Increases (1968-1979)

By the late 1960s, it was clear that the Indian population would neither assimilate into the majority society, nor vanish. The reservation would always be home, regardless of federal inducements to leave, hardships such as lack of employment opportunities, or scarcity of decent shelter. The philosophy of extinguishing the unique federal-Indian political relationship began to change, and in 1970, President Nixon officially repudiated the termination policies of prior administrations in his July 8, 1970 special Message to Congress on American Indians.(27)

Financial support and technical assistance to tribes began to increase, as tribes were once again looked upon as legitimate governments. The termination era had ended by 1968 and a period of Indian "self-determination" was about to commence.

The credit for this reascendancy of Indians goes to Indians themselves. Indian activism in the 1960s was aided by the civil rights movement and the establishment of the Office of Economic Opportunity, which in turn helped to start Indian Community Action Programs in local areas. Indians gathering together to address problems showed other Indians that there were competent people available to do many of the things that tribes relied on the BIA to do. Local, and then regional and national Indian organizations were formed. Indians began to find a voice in local and national political arenas and, ironically, some of the most active members in these Indian communities were relocated Indians who had emigrated to the urban Indian ghettos of Minneapolis, Los Angeles and other cities under BIA relocation program initiatives.

A. Responses to the Need and Recognition of Problems: 1968-1976

Although Indian self-determination was increasing, housing conditions at the reservation level were not showing signs of improvement. The BIA cited an unmet housing need for 68,304 Indian families in 1968.(28)

In an attempt to both set an example and partially alleviate the need, HUD and the Office of Economic Opportunity funded a transitional demonstration project, completed in July, 1968, on the Rosebud Sioux Reservation. There were 375 houses of 675 square feet constructed; each had two bedrooms, a bath, kitchen, and a living-dining area. These units were built below HUD Minimum Property Standards (See 24 CFR Part 200, Subpart S). There is no record of other similar projects begun as a result of the demonstration.

At HUD, there was an awareness that projects were developing too slowly, particularly the mutual-help projects. Tribes and IHAs were also skeptical of the BIA-HUD agreements for project development, and viewed the BIA's involvement as an additional and unnecessary bureaucratic layer in the process. IHAs blamed this extra management requirement for slowing down production. While the process may not have actually caused delays, the arrangement was perceived as an impediment to overall efficiency. HUD assumed the lead management role in 1967 and has maintained that posture to this day.

All of the early mutual-help units were produced by the force account method. The actual "sweat equity" work contribution was the most difficult element of mutual-help to administer. Despite the inherent problems of monitoring each family's mutual-help work contribution, scheduling for and around

the family's participation, and the related logistical considerations, it became clear that the initial mutual-help program was innovative, effective and worth the effort involved. In 1968, the Turnkey III Homeownership Program gained favor in public housing. Sales of IHA owned units by lease-purchase under turnkey regulations began. Building time had averaged 19 months in the early mutual-help programs. As program modifications and the Turnkey III Program went into effect, IHAs began to request more units and larger projects, and HUD began to approve the requests.

Several other events unfolded in 1968 which enhanced Indian housing production efforts. The first was purely financial: the number of program reservations for Fiscal 1968 (1,515) was nearly double that of Fiscal 1967 (811).(29) The HUD Modernization Program (now CIAP) began, providing a potential source of future funding for major repairs and rehabilitation of rental units. At its inception, the modernization program was of very little value to Indians since they were not found eligible to participate until 1979, but it would later prove a valuable source of repair and rehabilitation funds for HUD-produced units.

Legislatively, although the Demonstration Cities and Metropolitan Development Act of 1966 (Pub.L. No. 89-754) authorized an appropriation of \$10 million for loans and grants to assist Alaska residents, including Alaska Natives, it was not until passage of the Housing and Urban Development Act of 1968 (30) that the Public Housing Program was "officially" made available to some Indians by permitting HUD to serve Indian families living on or adjacent to their farmlands. Section 701 Planning Grants also nominated Indian tribes as eligible entities under the Act. A specific set-aside for Indian housing did not appear however, until the Housing and Community Development Act of 1974 (Pub.L. No. 93-383).

These activities signaled a shift in the federal approach to Indian housing; reservation housing problems and the unmet need were becoming visible at the federal level, and federal policies were being formulated to address those problems.

1. Codification of the Need to Coordinate

In the spring of 1969, a resolution of many of these problems was attempted. On April 15, 1969 the first Tri-Partite Memorandum of Understanding (MOU) was signed by William H. Stewart, Acting Assistant Secretary for Health Scientific Affairs, Department of Health, Education and Welfare; Lawrence Cox, Assistant Secretary for Renewal and Housing Assistance, HUD; and Harrison Loesch, Assistant Secretary, Public Land Management, Department of the Interior.(31) A major element of the MOU was to define the division of responsibilities for provision of sanitation facilities between IHS and HUD. Its primary purpose, however, was to establish housing production goals of 8,000 units per year from FY'70 through FY'74. These goals were designed to eliminate substandard Indian housing during the 1970's and were broken down as follows:

HUD - 6,000 units of new housing each year;
BIA - 1,000 units of new or improved housing each year;
Tribal groups - 1,000 units of new housing each year.

Thus, a total of 40,000 units of Indian housing was to be built or substantially renovated by the end of FY'74.(32) These goals were not achieved. There were several reasons for this.

Since the targets were "goals", there was no way to compel the production of these units. Nonetheless, the agreement had significant value as a policy statement which indicated the intent of the agencies involved to increase the production of units in Indian country. Congress later extended the federal goal of 6,000 units per year through FY'75 and FY'76.

A second MOU was completed later that same month. This second MOU specifically addressed the difficulties associated with coordinating the efforts of the three federal agencies to build each project and attempted to solve them by identifying the functional responsibilities of each agency and the points of coordination among them.

The MOUs applied to both the low-rent and the mutual-help programs. Not since the Nash-McGuire agreements in the mid-sixties had the agencies been able to agree among themselves on clear and permanent coordination and the division of responsibilities for Indian housing production activities. When the BIA-PHA coordination effort deteriorated in 1966, no formal arrangement had taken its place. There was a reimbursement agreement for construction superintendent costs in 1968 and 1969. The BIA was to reimburse PHA so that staffing increases to assist IHAs could be accomplished. Funds reimbursed were used for the urban programs instead. As a result, BIA refused to continue funding and allowed the agreement to expire.

The latter MOU clarified these and other interagency coordination issues permanently. It was 1976 before this MOU was totally superceded by a new agreement.(33) A fundamental underlying issue not addressed in the MOU was the problem of production without the concurrent management development and enhancement skills that are so necessary for an effectively functioning IHA. The joint legacy of production without controls and lack of capacity building would appear later.

In 1970, the BIA Consolidated Housing Inventory identified 63,000 Indian families living in substandard housing in the United States. Efforts to address this escalating problem were beginning, as evidenced by the 40,000 unit goal in the first MOU, but the number of HUD program reservations (5,679), construction starts (3,763) and completions (1,206) totalled less than 11,000 units in FY'70.(34) The current demand would never be satisfied

at that rate, especially since estimates of population increases in Indian areas would expand the housing gap by some 15,000 units per year.

Partially in response to a statement by the BIA that it planned to eliminate substandard Indian housing problems by the end of the 1970s, the General Accounting Office (GAO) issued an October 12, 1971 Report to the Congress entitled "Slow Progress in Eliminating Substandard Indian Housing".(35) The document was accurate, comprehensive and incisive; its findings, conclusions, and recommendations touched on all aspects of the Indian housing problem. The roles of the three agencies were reviewed, problems related to coordination were examined, and construction, production, management, and needs assessment activities were critiqued. It pointed out numerous defects in the actions of the agencies, the IHAs, and other parties involved. A major conclusion was that substandard housing in Indian country would not be eliminated unless "the program is accelerated substantially".(36)

In anticipation of the public release of the GAO Report, the BIA HIP issued new housing standard guidelines in 1970 that differed from HUD standards in several respects, including the adoption of minimum standards significantly below those of HUD.(37) The Bureau attempted to improve its needs assessment surveys and incorporated data from the other agencies. HUD promulgated a number of circulars aimed at correcting design and construction deficiencies, and for the first time began to allocate new Indian housing units on a regional basis.(38)

The report suggested the formulation of a national housing policy as the solution to the problem. What the agencies failed to do was coordinate their efforts to respond to the deficiencies uncovered in the 1971 GAO report.

2. Housing Production Activities and Problems Increase

Throughout the first half of the 1970s, Indian housing appropriations and production increased. In an effort to meet the housing needs, HUD was gearing up to produce large numbers of units. HUD Indian housing production figures from inception of the programs through 1974 are illustrative:

<u>FY</u>	<u>Program Reservations</u>	<u>Construction Starts</u>	<u>Completions</u>
62-69	10,469	5,035	3,915
70-74	22,929	17,161	13,542(39)

By 1973, HUD was administering three Indian housing programs: low-rent, and the mutual-help and Turnkey III home ownership opportunity programs. As of June 30, 1973, there were 15,473 homes in management, with 3,162 under construction. However, by the end of FY'74 there was a shortfall of some 9,000 units to be built for HUD to reach its 30,000 unit quota for the five year period as agreed under the MOU.

Efforts were also being made during this time to include Indians in the consultation process for program and policy development. On July 28-30, 1971, HUD convened a forum of Indian housing authority personnel at HUD headquarters in Washington, D.C. Their input and expertise was requested to help address and resolve the ongoing problems of the Indian housing programs. The forum members formulated a resolution consisting of sixteen recommendations, which was presented to HUD Secretary George Romney.(40) Over time, some of these recommendations were adopted.

One of the recommendations adopted by both HUD and BIA HIP was the training of program participants. A portion of item 2 of the resolution reads:

"We request that grant funds be made available to provide for personnel, equipment, and materials needed to acquaint participants with their obligations and to teach participants to make the best possible use of their new homes and equipment."(41)

Since FY'73, HUD and BIA HIP have jointly funded the Resident Training and Counseling Program (RTCP), an effort designed to meet the needs identified in the resolution. Subsequent attempts to provide some funds for counseling and training of program participants included the Management Initiatives for Indian Housing (MIFIH) program, authorized in FY'77 but discontinued after 1980. Funding for the MIFIH program came from a one-time set-aside of operating subsidy funds. The objective of MIFIH was mainly to assist IHAs in establishing improved bookkeeping and management procedures.

During this period administrators at the highest levels of HUD continued to take an active role in responding to Indian housing concerns. James T. Lynn, HUD Secretary, appeared at the National Indian Housing Conference in Arizona in November, 1974. He reacted positively to questions raised on improving the delivery system, the quality of housing produced under the HUD programs, improving the management of Indian housing through training and counseling, and the need for Indian input in the upcoming comprehensive Indian housing regulations.

There was also a discussion of the HUD commitment of 6,000 units per year during FY'75 and FY'76. With passage of the Housing and Community Development Act of 1974, another 6,000 units per year for FY'75 and FY'76 were authorized. For the

first time, that authorization was contained in a special "set-aside" specifically for Indian housing. This is especially significant because it set the stage for a separate category of Indian housing funding which would later prove vitally important as public housing new construction activities were sharply reduced. Although the specific set-aside was discontinued after 1977, Indian housing levels of 6,000 units per year were directed by Congress in report language, and a separate "line item" existed for the program in HUD appropriations acts. The specific authorization for those years was for the Secretary to enter into Annual Contributions Contracts (ACCs) of \$15 million for each of the two years. These funds translated into 6,000 units per year.(42)

The Housing and Community Development Act of 1974(43) also made possible for the first time the use of a 50-year leasehold in Indian trust lands as a valid security interest to obtain a Farmers Home Administration (FmHA) loan. Participation in FmHA loan programs by Indians was (and is) virtually non-existent; Indians living on individual trust lands are extremely reluctant to participate when they face even the remotest possibility of losing their lands. When the land is tribal trust land, FmHA loans are viewed with suspicion by the tribe because a foreclosure could mean that non-Indians might be in possession of the property for the remainder of the lease term. Other factors which inhibit use of the FmHA programs are the regular employment requirements to qualify for a loan and the general unaffordability of the programs, even with an interest subsidy, for a large segment of the Indian population.

In 1974, another effort took place which deserves comment. Alaska Native housing needs had received little attention within the Indian housing program. Although eligible for services to the same degree as tribes, there were few units built in Alaska. The Alaska Native Claims Settlement Act (ANCSA)(44) clarified the

eligibility status of Alaska Natives for federal services, but it did not specifically mandate that HUD or BIA housing programs be provided to them. The 30,000 unit commitment during FY'70-'74 did have a 1,200 unit Alaska Native component. However, only 405 units were ever placed under ACC. The reasons recited for the failure to achieve the agreed-upon commitment foreshadow the problems which were later identified as barriers to serving the Alaska Native population.

Some of the reasons listed were: slow selection of participating villages and families; problems with site selection; coordination of water and sewer construction with IHS; transportation problems to remote areas; high development costs; and, the financial feasibility of funding operating and prototype costs for the new projects.

General administrative coordination was also a factor in the delays. Initially, the Alaska Federation of Natives (AFN) assisted in the oversight and selection of program participants. Later, regional Native housing authorities were established with AFN's assistance to aid development. These processes took additional time to implement.

A "Special Alaska 500" program was initiated during 1974 to provide information and experience in especially remote and difficult areas of the state. With very low incomes, and very high development and operating costs (particularly utilities), the challenge was formidable. The project was a joint IHS, BIA and HUD effort. Coordination was to occur through the HUD central office. It was a mutual-help program, and the BIA HIP, 672 square feet house plans were far below HUD Minimum Property Standards. Although HUD estimated total development costs at between \$25,000 and \$30,000 per unit, final figures were closer to \$50,000.(45) An important lesson learned from the experience was the very high cost of construction in Alaska.

By 1975, the major problems seen today in management capacity, in housing production, and in project development were becoming evident within the program. The Senate Indian Affairs Subcommittee held a series of Oklahoma field hearings on Indian housing in Muskogee and Anadarko on August 6th and 7th, 1975, and in Oklahoma City on February 12, 1976.(46) Testimony was presented by personnel from the IHAs, BIA, IHS, HUD, Indian organizations and tribal representatives.

Major concerns were voiced about the lack of definitive, published regulations and guidelines on the mutual-help program, rental and homeownership payments, evictions, maintenance, and resident counseling. Federal agency representatives noted problems with obtaining security interests on trust lands, and the reluctance of other federal agencies and private lenders to participate in on-reservation housing programs because of land status problems. Interagency coordination for site selection and environmental impacts was also mentioned, as was the Davis-Bacon wage rate problem. Generally, these issues consistently arose whenever the Indian housing "problem" was discussed.

3. HUD Develops An Administrative Structure to Enhance Production and Housing Development Activities

In an effort to combat these chronic and escalating deficiencies, HUD began to put in place an administrative structure to enhance the development and management of Indian housing. Indian program activities occurred to some degree in most HUD regional offices. Problems of priorities regarding these programs surfaced within each office. The personnel

assigned to handle Indian issues were rarely solely detailed to Indian housing duties. Often, these personnel were shifted from one task to another, as priorities changed. There was a need for Indian program personnel to work only on Indian housing issues.

In September, 1975 a first step was taken to fill that gap. An Office of Indian Programs (OIP) was established in the HUD Region IX (San Francisco) office. Staff members were outstationed to the Albuquerque and Phoenix field offices. This was especially appropriate because Region IX had the largest Indian program activity of all the HUD regions, as almost half of the Indian and Alaska Native service population live in this region. As of June 1980, there were over 40 IHAs under the jurisdiction of Region IX. More than 148 tribes and bands were represented. Alaska Natives were served through the Seattle Regional office.

An Office of Indian Programs was also set up in the Denver (Region VIII) region. The Chicago regional office also gained a coordinator for the newly established Indian programs. Further program refinements were being implemented at the central office as well.

In March of 1976, HUD Secretary Carla Hills announced the creation of a new Office of Indian Policy and Programs, under the direction of the Assistant Secretary for Consumer Affairs and Regulatory Functions. Previously, Indian policy decisions had been delegated to a coordinator of Indian programs within the HUD Office of Equal Opportunity. Critics noted that the new offices were public relations, not substantive offices, and no policy decisions would occur there. Reaction to this announcement was mixed. While some Indian leaders approved of the transfer from what was essentially an office of minority affairs, others disapproved of its placement in a consumer affairs office.

However, there was overall agreement that no matter where it was located, the creation of a separate and distinct Indian program office at HUD headquarters was a step in the right direction.(47)

In many respects, 1976 was a significant year for Indian housing and Indian affairs in general. During this time, legislation that encouraged Indian self-determination would be implemented,(48) and Indian-specific programs or liaisons were established at virtually all federal agencies.

Contemporaneously, Congress authorized the creation of a joint congressional commission with the task of examining every aspect of the federal-Indian relationship for the first time since 1928.(49) The American Indian Policy Review Commission (AIPRC) was a two-year effort which produced 11 task force studies and a final report in May, 1977. The AIPRC presented findings, conclusions and recommendations on the major issues in Indian affairs. Bob Leatherman, a HUD employee and special consultant to Task Forces 6 and 7, produced a report for the commission on August 2, 1976. Entitled "The Indian Housing Effort in the United States", it reviewed national Indian housing efforts to date, critiqued the effectiveness of the relevant federal programs, and offered a set of policy recommendations regarding the reorganization of HUD:

"We have recommended reorganization of HUD because we feel it is the most practical and expedient way to solve the Indian housing dilemma in the short run...we feel that it can best fulfill the six essential characteristics of any successful housing program:

1. Simplicity of Implementation and Operation
2. Minimal Cross-Agency Involvement
3. Variety of Programs with Various Financial Arrangements Geared to Meeting the Needs of Different Income Groups

4. Flexibility of Design for Regional Variation in Climate, Culture, and Land use Patterns
5. Tribal Control
6. Combination Grant and Loan Approach(50)

A series of activities occurred at HUD that year which produced significant changes in the management of its Indian housing programs. The original Indian Housing regulations mark the first of these events. Published for notice and comment in the Federal Register on September 19, 1975, the first comprehensive HUD regulations pertaining exclusively to Indian housing became final on March 19, 1976 (41 Fed. Reg. 10,152). To accompany the new regulations, HUD also issued its Interim Indian Housing Handbook #7440.1 on March 9, 1976, which contained those regulations and corresponding guidelines and procedures. These activities coincided with a move toward increasing the general regulatory oversight process in public and other assisted housing programs.

Among other things, the new regulations acknowledged the growing problem of an increase in rent delinquencies. Although the issue was covered in HUD development handbooks, placing the problem into the regulations gave it added significance. The issue was addressed in Sec. 805.207(a) "Determination of Administrative Capability". The intention of the provision was to measure management capability in terms of effective program implementation.

The mutual-help program was also changed in the new regulations. This alteration marked the end of the "old" mutual-help program and the beginning of "new" mutual-help on reservations. In general, the thrust of new mutual-help was to tighten up program requirements, clarify each entity's role, set

home prices, establish a fixed number of years on amortization schedules, and clear up a number of on-going problems in the old program. In retrospect, it did so effectively.

In early 1976, another significant event occurred. A new Interdepartmental Memorandum of Agreement (MOA) on coordination of Indian housing production was signed. Entitled "Interdepartmental Agreement on Indian Housing", the document was finalized on March 2, 1976 and signed by Thomas S. Kleppe, Secretary, Department of the Interior, David Mathews, Secretary, Department of Health, Education and Welfare, and Carla A. Hills, Secretary, Department of Housing and Urban Development. Building upon the experience gained from the MOU of 1969, the agreement clearly delineated the specific functions of each agency in detail. Although the respective responsibilities of each did not change substantially from the previous MOU, some two years was required to work out the final language of the agreement.

The problems of interagency budgetary coordination were acknowledged and an attempt was made to increase flexibility for the differing budget cycles. The lengthy development period of Indian housing projects was also addressed and attempts at increased interagency communication were included.

At the end of the MOA, as an exhibit to the Interdepartmental Agreement, information was included on the BIA Homebuyer Training Program. Cited in the enclosure as the "HUD-Approved BIA Homebuyer Training Program (HTP)", it described the HTP as a training program for mutual-help participants. The information further stated:

"HUD will be responsible for including in the development cost of a project the funds for the HTP."(51)

Further specifics were included on monitoring the program and its content. Both the BIA and HUD were becoming concerned with the training of program participants in all aspects of their responsibilities. It was not the only focus on training that occurred during this time. Authorized by the HUD Division of Housing Management in FY'77, the Management Initiatives for Indian Housing (MIFIH) program allocated over \$2.5 million to train IHA personnel to better respond to growing administrative problems and their increasing responsibilities at the program level. A major thrust of MIFIH was to upgrade the bookkeeping and related management capabilities at the IHA level.

MIFIH funds could be used for direct training and technical assistance at the IHA, or IHA staff could attend HUD-sponsored or other locally offered training approved by HUD. The first orientation sessions for the MIFIH program were held in early 1977. The sessions dealt with the roles of HUD, the IHA Board of Commissioners, the IHA executive director, and interagency relationships. A major problem uncovered in those early sessions was the misunderstanding of each party's role and responsibilities in relationship to the HUD Indian housing program. The program continued through 1980.(52)

B. The Refinement Process Continues: 1977-1980

The MIFIH program and other training initiatives responded to the growing awareness that the program was demanding too much from IHA managers and staff, as well as from OIP personnel. Several factors contributed to this dilemma. First, the Indian housing program was a relatively recent effort. By 1976, the program had been in effect some 14 years, and had only begun to generate a significant number of units in the 1970s. Once Congress had been made aware of the need for new units, it had responded with escalating project allocations that were difficult

for the developing program and the IHAs to effectively administer. Yet increased production was seen as necessary to alleviate the need. Thus, a new Indian housing program that relied on complex interagency coordination had been created quickly, with the task of delivering large numbers of housing units to areas where virtually no federal housing programs had existed before. No administrative infrastructure existed at the local level for these activities, and insufficient attention was paid to development of the necessary management expertise and program support for successful projects.

And it was Indians who became ultimately responsible for managing these programs. If the tribal government wanted this new housing, it was required to pass a tribal ordinance creating an IHA, and to appoint a Board of Commissioners for the IHA. Otherwise, there would be no new units built on that reservation. The tribal government had to prepare for added bureaucratic burdens on its already overloaded governmental functions, including setting up a tribal court mechanism to handle the new housing issues. It had to contend with contractors and builders coming onto the reservation, and it had to choose how active it would become in regulating their activities. There were inevitably political problems at the reservation level, often-times creating additional difficulties for tribal officials. If at one time the tribe had dealt mainly with the BIA, it would now be expected to interact with HUD, IHS, EPA and sometimes other federal entities. These were additional responsibilities for a tribal government without any added budgetary resources.

New and uncharted areas for regulation often presented themselves quickly and demanded attention. For example, BIA funding for tribal courts was, and is, very limited. If the IHA had to evict, an eviction ordinance or similar process, with recourse to court proceedings affording the respondents due

process, should be provided. Yet neither the BIA nor HUD either anticipated or funded a program for tribal court support to address these matters.

Staffing the IHA was also difficult. By the mid 1970s, an IHA usually administered the low-rent, new mutual-help, old mutual-help and Turnkey III programs. Indians who were experienced or qualified for this work were often already employed elsewhere within the tribal or BIA bureaucracy. Many other Indians either chose, or were encouraged to leave their reservations.

It was incumbent upon HUD, as the lead agency, to make an effort to train its managers, representatives, and the IHA staffs. HUD was also responsible for managing the production and delivery of housing units at the local, regional, and national levels. Production quotas without capacity building set the stage for later problems that are only now being resolved.

HUD recognized the need for capacity building in its other public housing activities. Management training had long been a feature of those programs. But the relationships were different; the individual states and local governments were more experienced and better equipped to provide support for their public housing programs.

Attempts were made to apply to IHAs the lessons learned from successful public housing management initiatives. HUD used operating subsidy program funds to provide MIFIH and other training. Workshops, seminars, and training and technical assistance programs were conducted.(53) While these efforts helped, they did not produce the anticipated results within the necessary timeframes.

During 1977, several events which produced lasting beneficial results did take place. The Housing and Community Development Act of 1977(54) was signed into law. The Act legislatively established the position of Special Assistant to the Secretary of HUD for Indian and Alaska Native Programs.(55)

Also included in the Act was the requirement of an annual report to Congress on the condition of Indian housing and community development. This report was to include:

- o a description of the Secretary's or the Special Assistant to the Secretary's current year activities, and projections for activities during succeeding years;
- o a cost estimate of succeeding fiscal years' projected activities;
- o a statistical report on the conditions of Indian and Alaska Native housing; and,
- o recommendations for legislative, administrative, or other appropriate actions.(56)

The Act also contained an authorization for funding Indian tribes as a separate set-aside under the Secretary of HUD's Discretionary Fund for Indian Community Development. Called the "Special Indian Community Development Block Grant Program", funds were allocated to regional offices based on population and past CDBG funding.(57) Funds became available beginning in FY'78.(58)

In late 1977, Joseph Burstein, Counselor to HUD Secretary Patricia Harris, drafted two significant memoranda. The first, dated November 7, 1977,(59) discussed in depth the problems of Alaska Native housing. The second memo, dated November 22, 1977,(60) responded to an early draft of a GAO report entitled

"Substandard Indian Housing Increases Despite Federal Efforts - A Change is Needed".(62) The GAO report was released to the public on March 31, 1978. The Burstein memo, extensive and thorough in its response to the report, proved highly controversial. It was reviewed at the HUD Indian Housing Conference in Washington, D.C. in July, 1978. Tribal reactions were highly negative, and the memo was later rescinded.

The release of the 1978 GAO report caused a flurry of activity at HUD and BIA. The report accurately assessed the problems encountered in Indian housing and recommended a series of actions to remedy the problems. In 1971, the GAO had cited the slow progress in eliminating substandard housing in Indian country.(62) At that time, GAO maintained that unless the programs were accelerated, conditions would worsen. In June, 1970, 63,000 Indian families lived in substandard housing, as compared to 86,500 in June, 1976. The number of housing starts each year had dropped from about 5,000 in 1970 to approximately 3,500 in 1976. Numerous issues were cited in the GAO report as being responsible for the slow progress. Among the report's recommendations was the call for a consolidated national Indian housing policy with centralized functions.

As part of an overall reorganization, in November of 1978 Morton Baruch, General Deputy Assistant for Housing, and Lawrence B. Simons, Assistant Secretary for Housing, Federal Housing Commissioner, created a separate entity, the Office of Indian Housing, within HUD. Thomas Sherman was appointed as the Acting Director of the office. Sherman, who had specifically recommended creating the new office, reported directly to the Deputy Assistant Secretary for Public Housing and Indian Programs. This office was responsible for formulating policy and procedures for the development and management of Indian housing, coordinating with other federal agencies, and training and monitoring the actions of the Indian field offices. A separate staff was also established by the Assistant Secretary for

Community Planning and Development to handle Indian CDBG. By 1980, Indian field offices were officially created, at Sherman's suggestion, in Regions V, VIII, IX, and X, with special divisions in Anchorage, Alaska and Oklahoma. Note that Indian offices already existed in Regions VIII and IX.

In 1979, HUD promulgated final regulations on Indian housing, effective November 6, 1979.(63) The regulations improved upon the earlier version released in 1976, and are still in effect today, pending final approval of a new consolidated set of Indian housing regulations.

Also released in 1979 was the "Report on Indian Housing", of the U.S. Senate Select Committee on Indian Affairs.(64) It cited a number of major flaws in the HUD Indian housing delivery system, concentrating on problems in prototype cost limits, Davis-Bacon wage rates, and the problems of financing Indian housing on trust lands. It also commented on the IHA and HUD administrative structures, and the problems of interagency coordination.

The problems identified in the GAO and Indian Affairs Committee reports came as no surprise to HUD officials, who had long been struggling with the legacy of production without controls. At the close of FY'78, there had been a grand total of 59,935 program reservations, 36,419 construction starts, and 24,910 completions in Indian housing programs.(65) Of these 121,264 separate activities, all but 19,419 had occurred since 1970. The system was clearly being stretched beyond its capacity. IHAs had also increased dramatically. In the mid-1960s there were fewer than 20 IHAs; by 1981, there were close to 170.(66) The lack of concurrent professional development at all levels was exacerbated by steeply escalating inflation, a rapidly increasing (but slow moving) pipeline, increases in unit sizes, amenities, and per unit costs, and mounting problems with tenant accounts receivable (TARs).

Financial controls at the IHA level were also less than perfect. Overcharges, "shadow projects", shifting of funds between projects, and misuse of funds occurred. Management initiatives found successful in the public housing program, with its urban, multi-family focus, did not translate to the Indian housing situation. Simple answers to these difficult questions did not present themselves. As the programs matured, problems began to arise with greater frequency. But essentially, Indian housing was no more troublesome than other developing rural public housing programs.

IV. Indian Housing: The Transition to the Present (1980-1987)

A. Exploring New Delivery Systems

As the Indian housing program matured, the Office of Indian Housing and its regional components began to explore creative methods of improving production and delivery. There were a number of innovative approaches being explored within the program. For example, a variation of the construction superintendent idea was authorized by the HUD Denver regional office. Broader in scope than the traditional duties of a construction superintendent, this experiment sought to reduce the development process time by streamlining the coordination functions of project development.(67)

The Rosebud Sioux Tribe received program reservations to build 150 single-family mutual-help homes at 17 different locations within the reservation. The Rosebud IHA hired a project management company to oversee development of the projects. In the agreement, the company contracted with the tribe to have the units built by a specified date at an agreed upon cost per unit. The contract further stated that if construction was completed ahead of schedule, the manager was due a bonus. If construction lagged and exceeded the completion date, a penalty was imposed. The manager assisted the tribe in all phases of project development, beginning with initial site selection, soil testing, interagency coordination, and project design. The manager aided in budget preparation and submission and was responsible for progress of the projects during all phases of actual construction. In this experiment the manager also offered resident counseling and training. The project was completed ahead of schedule and quality control throughout was excellent. Both the tribe and the Denver office were pleased with the results.(68)

If the chronic problems of interagency coordination, predevelopment, and pipeline development delays are to be solved, innovative approaches are necessary. By 1981, mutual-help housing projects constituted approximately 61% of all the assisted housing in Indian areas.(69) Scattered site mutual-help housing is particularly susceptible to coordination delays. Yet gaining approval for experimental or non-traditional activities takes staff time and staff advocacy. The personnel levels at the field, regional and HUD headquarters offices have never reached a point where innovation can be easily considered. Central office HUD Indian housing staff currently numbers 13, and for most of the life of the program it has not exceeded 10.(70)

Without sufficient staff, new methods for solving old problems cannot be explored or implemented. As unit costs kept pace with the inflationary spiral of the late 1970s, the HUD Indian program staff was kept busy with the day-to-day monitoring activities of the program.

By the end of 1980, the reorganization of HUD Indian housing programs into six regional Offices of Indian Programs (OIPs) was almost complete. It was expected that the new offices would begin to develop innovative ideas, such as new delivery systems. In its FY'80 Annual Report to Congress, HUD cited these reasons for creation of the OIPs:

- o necessity of office and staff with experience in administering Indian-specific programs and with expertise in the trust relationship;
- o the competition for staff time for non-Indian housing duties in a regular office;
- o need for more direct, on-going training and technical assistance to IHAs throughout the life of the projects;

- o special experience necessary to deal with the multiple entities involved in development of Indian housing and need for familiarity with the Tri-Partite Agreement.(71)

The OIPs would also be responsible for addressing the major issues which arose during the period. In its 1980 Annual Report on Indian and Alaska Native Housing, HUD identified the most difficult housing production problems as those of rising development costs, which were virtually tracking inflation and the rise in the Consumer Price Index; large Indian family sizes, requiring larger homes; the expenses of acquiring a skilled labor force to construct the projects; the lack of existing infrastructure, which often resulted in 30-40% of total development costs (TDC) being spent in this category; and the rapidly diminishing stock of economically feasible development sites on numerous reservations.(72)

At the same time, cost containment measures were being attempted. A TDC cost cap limit similar to that of the Section 8 program was considered in 1980 and imposed during 1982.

Several factors provided the impetus for an exploration of alternative delivery mechanisms. A primary reason was the gradual reduction in development funds. In March of 1981 the administration proposed an appropriation of 5,000 units of HUD assisted new construction for FY'81. Congress rejected the proposal and appropriated funds for 2,400 units. These actions slowed production activities. As a result, program reservations for FY'81 were reduced by 64% from the previous year.(73) Each year since, Congress has funded new construction at a level which averages 2,300 units per year.

The President's Commission on Housing was established in 1981 to provide options for the development of a revised national housing policy and the role of the federal government in future

housing activities. Created to advise the President and HUD Secretary Samuel Pierce on a new direction in housing, its purpose was to explore the Office of Management and Budget's (OMB) decision to remove the federal government as a provider of housing. OMB's perspective is that the private sector will fill the gap once the federal presence is removed from the housing market. Indian housing was not specifically addressed in the President's Commission on Housing.

Instead, OMB appointed an Interagency Task Force, headed by then-Assistant Secretary for Indian Affairs Kenneth Smith, to review the status of housing activities on Indian reservations and produce options to improve housing delivery mechanisms and induce private capital onto reservations for housing development. The task force consisted of HUD, Health and Human Services (HHS), and Department of Agriculture (USDA) officials. Informal input from some congressional staff members occurred, and a number of national Indian organizations provided their views on the subject.

The President's Commission issued draft recommendations on September 15, 1981; included was the transformation of public housing programs to a privately held mechanism which operated through a voucher system. Vouchers do not work in Indian areas because they assume the availability of private market rental units for which vouchers can be used. There is virtually no private market rental housing on reservations.

The Interagency Indian Task Force produced an options paper in January, 1982.(74) The thrust of the paper was that privatization and meeting the needs were major priorities. Of the eight options considered, the model which included a combination of the BIA HIP and a mutual-help program was favored by Assistant Secretary Smith. A feature which would allow for the attachment of trust lands upon default under certain specified conditions was vigorously opposed by the tribes. HUD General Deputy

Assistant Secretary for Housing Philip Abrams proposed a version providing for a grant writedown with an FHA mortgage and an operating subsidy. Congressional staff suggested a version which included components of both the Smith and Abrams proposals. Tribes complained of a lack of consultation before preparing the report.

In 1982, legislation was proposed(75) which would have eliminated the HUD program and created a new block grant-based Indian housing program in the BIA. The bill was never brought before the Congress for a vote, yet the relevant House and Senate committees favorably reported the measures. Although some tribes supported H.R. 5988 (and the companion measure, S.2847), the bill never had consensus approval in Indian country. It was reintroduced in 1983 as H.R. 1928, but again failed to gain passage.

In 1981, Congress did pass the Housing and Community Development amendments as Title III, Subtitle A of the Omnibus Budget Reconciliation Act.(76) A fundamental change which was incorporated in the amendments raised the amount of income a tenant family must pay for its unit from 25% to 30% of adjusted gross family income. The original 25% rule was established earlier by the Brooke Amendment.(77) However, the 25% rule did not apply to mutual-help housing because of the Stevens amendment. Prior to the 1981 legislation, IHAs operated rental projects without strict income rules and could, with Secretarial approval, set their own income limits. This exception was justified by the great unmet housing need in Indian country.

Also part of the legislative package was the "95/5" rule, which stated that:

"no more than 5% of the assisted housing after the effective date of the Act shall be available for lease by families whose incomes are betwen 50 and 80 percent of the median."(78)

This limitation precluded many lower income (as opposed to low-income) families from taking advantage of the already limited housing available on reservations, because 95% of the units within an Indian housing project had to be occupied by those with adjusted family incomes below that of 50% of the population within each IHA's jurisdiction.(79) The Secretary of HUD could administratively raise the mix upward at his discretion. Based on the unmet need the Office of Indian Housing used this mechanism to mitigate the problem.

The drive to increase the number of Indian housing units and the concurrent effort to speed up the development pipeline caused problems which were often uncovered long after projects were completed and units occupied. Faulty designs, shoddy construction, and the consequential problems associated with rapid development without contemporaneous capacity building began to surface. The Office of Indian Housing made many attempts to resolve these problems.

The issue of these design and construction deficiencies was addressed in a July 21, 1981 memorandum from Philip D. Winn, Assistant Secretary for Housing-Federal Housing Commissioner, to all HUD Indian field offices.(80) Assistant Secretary Winn described the conditions under which CIAP funds could be used to correct design and construction deficiencies discovered by IHAs. Provided pursuant to the Housing and Community Development Act of 1980,(81) CIAP funds are used primarily for rehabilitation of low-rent housing. Under certain specified circumstances, they could now be used for mutual-help units.

The Winn memo discussed procedures and reporting requirements, and provided for a management inspection at date of final acceptance as a way to correct this problem. It did not, however, provide information how these deficiencies became so prevalent in Indian housing projects. Failure to adequately monitor construction, lack of periodic inspections, and untrained IHA

staff were not discussed. Subsequent to issuance of the memorandum, a three year set-aside of Comprehensive Improvement Assistance Program (CIAP) funds for substantial rehabilitation of deteriorating units was provided to remedy the problems.(82)

In 1981, the Office of Management and Budget expressed concern with the dual issues of cost containment and agency responsibility for sanitation facilities. During the year there were attempts made to resolve these problems. On September 1, 1981, a HUD Office of General Counsel opinion(83) by Associate General Counsel Robert S. Kenison responded to an inquiry from Thomas Sherman, then Acting Deputy Assistant Secretary, Office of Public Housing and Indian Programs, regarding HUD's assumption of responsibility for off-site water and sewer services for Indian housing. The opinion stated that the 1981 Housing and Community Development amendments had resulted in no change in the respective obligations of HUD, IHS, and BIA toward development of infrastructure in connection with Indian housing project development. As stated in the opinion:

"There appears to be no jurisdictional or other legal restrictions on the use of HUD funds for off-site water and sewer services. As in the past, however, the use of all funds available under the USH Act must be reasonably related to the statutory purposes, i.e., the development and/or operation of lower income housing."(84)

Through FY'81, essential water and sewer facilities for housing projects for American Indians and Alaska Natives were provided by the IHS in accordance with the 1976 Interdepartmental Agreement on Indian Housing. The IHS had the engineering, procurement, construction and logistical support staff available at the local level to efficiently perform water and sewer construction.(85)

Under the tri-agency agreement, IHS coordinated with HUD, BIA and the IHAs to ensure that the sanitation facilities would be available when the housing units were ready for occupancy. If the facilities were not ready when the housing was otherwise ready for occupancy, the home had to remain vacant. This, in turn, created severe problems for the tribes and the federal government, such as vandalism, loss of rent, premature deterioration, and adverse publicity for the entities involved. Most importantly, Indian families were denied the benefits of improved housing.(86) While by no means a major issue, this coordination problem received a large amount of publicity.

OMB considered HUD as the primary purveyor of sanitation facilities to HUD projects. This perspective differs from that of the Congress, which cites IHS as the entity to deliver those services to Indian projects. A consensus agreement was reached whereby HUD would use its contract amendment funds for water and sewer facilities to HUD projects, but IHAs could contract with IHS to actually perform the services requested, using HUD funds.

Since FY'82, the administration and OMB have proposed no new funds for the IHS Sanitation Facilities program. Congress has continued funding IHS to do the work, but required that HUD provide HUD funds for sanitation facilities for HUD homes. HUD and IHS developed a Memorandum of Agreement (MOA) which allowed HUD to transfer funds to IHS for construction of off-site facilities for HUD homes, if the Indian housing authority chose to use IHS. IHAs may contract with another provider to perform the work, and some have done so. In FY'82 and FY'83, HUD allowed the housing authorities to amend their Annual Contributions Contracts to include the money needed for off-site water and sanitation facilities without increasing the cost to the participants or adding it to the development cost allowed within the cost cap limit already established.(87) The consensus

agreement is currently in effect, and IHAs use their development funds to contract these services, which are estimated at approximately \$7,500 per unit.

B. The Problems of Production without Capacity Building

The legacy of production without controls was again acknowledged on July 16, 1981 through a HUD memo from the Office of the Assistant Secretary for Housing-Federal Housing Commissioner, to all Indian program field office staff. In the memo, entitled "Troubled Indian Housing Authorities,"(88) Assistant Secretary Winn reported that many IHAs were unable to meet current and short-term financial obligations. Over 30% (40%, according to the HUD 1981 Annual Report to Congress) of all IHAs fell into this category. HUD attributed the causes for such instability to these factors:

- a. failure to collect tenant accounts receivable;
- b. exceeding approved budgeted expenses;
- c. inadequate adjustment of mutual-help administration charges;
- d. inadequate cooperation between the IHA and the parent entity (tribal council, regional corporation, state);
- e. lack of adequate management services and resources;
- f. general economic factors in the community;
- g. instability and/or frequent turnover of tribal leadership.(89)

The memo also acknowledged that federal reductions in operating subsidies, development problems, and the requirement to keep cash resources in large reserves all played a part. Field offices were directed to evaluate each IHA within their jurisdiction against "financially troubled IHA criteria" to uncover problems. The field office would then be required to provide technical assistance to the IHA in developing a Management Improvement Plan (MIP) to resolve the IHA's financial and/or programmatic deficiencies. Close follow-up assistance was also required to be provided to the IHA.

Then, on November 13, 1981, a subsequent memorandum on "Policies for Indian Housing Authorities"(90) was promulgated by Assistant Secretary Winn. Indian program field office directors were instructed to implement certain remedial measures to aid IHAs in curing deficiencies in their operations. IHA financial statements, program reports, and fiscal audits were to be evaluated for defects. IHAs were directed to comply with explicit policies regarding:

- o tenant accounts receivable;
- o delinquent debt collection;
- o development costs;
- o reports;
- o fiscal audits and program reviews.(91)

Sanctions for non-compliance included suspension or termination of current development programs, withholding of new units, and denial of CIAP funds.

High development costs and associated problems were causing serious concerns by this time. OIPs held seminars and workshops for tribal and IHA personnel on rent collections. IHA financial insolvencies, diversion of funds within IHAs, and escalating tenant accounts receivable were reaching alarming proportions.

HUD responded by preparing regulatory revisions on total development cost (TDC) limitations, in addition to the already existing prototype limits, and suggesting numerous other cost-saving measures in addition to those in the July and November memos.

During 1980 and 1981, IHA staff, OIPs and regional program personnel were trained, using a combination of the new 1979 Indian housing regulations and a draft HUD handbook. However, the draft handbook never received final clearance. The Office of Indian Housing then began work on designing new and innovative delivery systems aimed at reducing development costs, minimizing design and construction deficiencies, and helping troubled IHAs.

Congress, also concerned with escalating development costs, ordered that cost reductions be implemented in 1982. The Senate Appropriations Committee had included language in the FY'82 HUD-Independent Agencies Appropriations Committee Report directing HUD to prepare a report on cost containment and cost reduction strategies to improve the delivery of more economical Indian housing units.

By the end of 1982, the combined problems of cost containment and cost reduction were being emphasized strongly at the HUD central and field office levels. Efforts at speeding up the development pipeline by decreasing the length of new construction time and reducing development costs to maximize the number of units that could be built with available development funds were also high priorities for the Department.

HUD submitted its congressionally mandated Indian Housing Cost Report on May 27, 1982. At the end of the year, the HUD Annual Report to Congress for 1982(92) focused on cost

containments and reductions which had been implemented that year.
The report cited:

1. An overall reduction of approximately \$10,000 per dwelling unit in the average total development cost (TDC) reserved for each unit.
2. Department guidelines issued to all field offices which (1) withdrew field office authority to approve projects with dwelling construction and equipment prototype costs in excess of 100 percent of such prototype cost limits required by the United States Housing Act of 1937, (2) stated that the TDC for each project should generally be below an amount equal to 160 percent of the applicable prototype cost for detached, semi-detached, row or walk-up projects, and 145 percent for high-rise elevator projects, and (3) restricted the inclusion of certain amenities in public and Indian housing (balconies, garages, carports, basements, and excess management and/or community space) if the costs for these amenities are to be borne by HUD.
3. A directive which required, to the extent feasible, the reuse of plans and specifications. This reuse results in reductions in development costs.
4. OIPs encouraged IHAs to ensure that project designs will accommodate modular and pre-cut as well as stick-built construction.
5. A reduction in HUD preconstruction processing times by IHAs having as much front-end work done on their projects as possible; and the employment of project administrators to expedite front-end work.

6. All HUD OIPs are assisting IHAs in their negotiations with architectural and engineering firms to get the lowest reasonable architectural and engineering fees possible. The San Francisco OIP reports that fee negotiations resulted in over \$1 million in savings. The Seattle OIP reports close to \$120,000 anticipated savings on architect's fees compared to fees calculated on the percentage of Total Development Costs (TDC).(93)

The report also mentioned a HUD-authorized management improvement analysis and study at the Crow Tribal Housing Authority, to be performed under contract to Deloitte, Haskins and Sells. The analysis took place over a one-year period and was performed on-site.

During this time there was a growing emphasis on the industrially produced housing initiative as a way to reduce development costs. These cost reductions were clearly needed; total development costs had risen precipitously. Since 1963, HUD had provided approximately 70% of all housing that was built in Indian country. Cost containment and reduction was mandatory to the survival of the Indian housing program.

After the cost containment report was submitted, HUD field and regional staff continued to discuss cost containment measures with the Office of Indian Housing. HUD staff made field visits to develop plans unique to each regional office. With the assistance of the Office of Manufactured and Modular Housing, an Indian demonstration program was implemented. Over several years some 200-300 extra units were produced through a combination of the cost containment and industrialized housing initiatives.

HUD was also expending funds for infrastructure in an unprecedented fashion. Because of lowered IHS appropriation

levels during the early 1980s, HUD authorized \$18 million in loan authority from HUD Amendment funds for off-site water and sewer work by IHS.(94)

By the end of FY'83, administrative and management changes by HUD had significantly reduced Indian housing costs:

- o From FY'82 to FY'83, Indian units averaged 11% less per unit.
- o From FY'81 to FY'83, the average Indian housing unit cost dropped from \$74,000 to \$57,000 per unit.(95)

This was accomplished primarily by applying public housing development cost caps and amenities guidelines; reducing architectural and engineering fees; directing adherence to a cost containment memo from Assistant Secretary Philip Abrams dated November 30, 1982(96) with specific directives for IHAs; and implementing the industrially produced housing initiative discussed above.

In 1982, and again in 1983, the administration's budget provided no funds for new construction in the HUD Indian housing program. After the appropriations process was completed, Congress funded 3,160 units for FY'82 and 2,000 units for FY'83. Gross unit reservations were 3,016 units for FY'82 and 2,325 units for FY'83.(97) There were 325 extra units reserved above the number appropriated for FY'83 due to a new HUD Office of Indian Housing policy which allowed savings from project construction funds to be retained by the IHA and applied toward building additional units.

In an effort to improve communications between the Department and the Indian community, in 1983 HUD established the Secretary's Advisory Committee on American Indian and Alaska Native Housing.(98) The Committee has one tribal and one IHA

representative from each of the areas covered by the HUD Indian field offices (Chicago, Oklahoma City, Denver, Phoenix, Seattle and Anchorage), and representatives from four major national Indian organizations: the National American Indian Housing Council, National Tribal Chairman's Association, National Congress of American Indians, and the National Urban Indian Council.(99)

This forum provides an important link in the consultative process between Indian country and HUD. Many of the ideas for HUD initiatives stem directly from recommendations made by the Committee, although all such initiatives are not endorsed by the Committee in their final form.

The Committee met for the first time in November, 1983 at HUD headquarters in Washington, D.C. and made several recommendations on improving the current program. The representatives' consensus at that initial meeting was that they wished to see the continuance of the existing HUD Indian housing program. One of its first actions as a group was to vote down a proposal to change the method of funding new construction through block grants. (See the discussion on H.R. 5988 and S. 2847 above).

In the 1983 HUD Annual Report to Congress, the accomplishments highlighted by the Department included significant reductions in per unit costs, as well as a number of other administrative alterations and program refinements. Cost savings were bolstered through a reduction in pipeline development time from up to 4 years to an average of 1 1/2 to 2 1/2 years. As previously mentioned, IHAs were authorized to use money saved from development costs to build more units. As a result, 325 extra units over the 2,000 allocated for that year were produced.

A special, two-phase HUD industrially produced housing initiative of 400 units was begun with FY'83 funds. Target date for completion of the units was 1984.(100) The purpose of the

demonstration was to familiarize IHAs with this type of housing and to encourage more widespread use throughout Indian country.

Cost reduction strategies were again emphasized. The HUD Annual Report referred to a number of these factors for the high cost of Indian housing development. These cost elements have been cited repeatedly throughout the life of the program:

- o the crucial need for energy efficiency;
- o the necessity of large units to house large families;
- o the high cost of infrastructure;
- o the isolation of most building sites;
- o a lack of available skilled labor.(101)

During the early part of 1983, a HUD Joint Headquarters Cost Reduction Team visited the six Indian program offices to consult with them on cost containment strategies.(102) HUD also funded a basic prototype cost plan which was developed by outside consultants during this period.(103)

Improved management of IHAs as a continuing priority was producing significant results. The annual report cited an 11% reduction of financially troubled IHAs during the year, as well as accelerated debt collection activities. Mention was made of the idea of converting rental units to the mutual-help program, a later focus of the Office of Indian Housing.

Overall, there were clear indications that increased financial controls were working, and improved management at both the HUD and IHA levels was beginning to produce positive results.

Then, in 1983, Congress passed the Housing and Urban-Rural Recovery Act.(104) The Act contained a provision which attempted to improve the housing conditions of the slowly rising number of lower middle class Indian families residing on reservations. It provided for FHA mortgage insurance on Indian trust lands under

certain circumstances. As more gainfully employed Indian people begin to appear on the reservations, their housing needs cannot be fulfilled because private market lenders refuse to grant mortgages for structures located on Indian trust lands. Lenders cite an inability to recover against the security and a list of other factors as excuses. These Indian people can afford private market housing and are willing to pay for it. The legislation was intended to induce lenders to provide mortgage money for these people. Draft regulations implementing the new law were issued shortly thereafter,(105) but a proposed provision requiring the pledging of income from tribal trust assets and several other sections caused problems. That provision was dropped from the final rules, which were published June 16, 1986, and became effective August 1, 1986.(106)

C. A New Focus

On January 24, 1983, President Reagan issued an official Indian Policy Statement,(107) which declared that strong, effectively functioning tribal governments were needed to improve the social and economic conditions of reservation Indians. A government-to-government relationship between tribes and the administration was stressed, and a commitment made

"...to encourage and strengthen tribal governments as called for by President Nixon in 1970 and by Congress in the Indian Self-Determination and Education Assistance Act of 1975."(108)

Several specific policy objectives were also mentioned, including the suggestion that less federal involvement in the delivery of services to tribal members would enhance self-sufficiency. The philosophy expressed in the policy statement is that of self-determination, a reduced federal presence throughout the delivery process, and local Indian control of the decision-making processes.

As IHAs proliferated, the lack of capacity building at the grass roots level became more evident. In public housing, project manager certification programs, the development of relevant university level curricula, planning activities, and related events increased professionalism at both the delivery and oversight points. In Indian housing, issues such as cost containment and meeting the need by speeding the development pipeline relegated capacity building to a lower priority. As the legacy of production without controls presented itself more forcefully, added attention began to be paid to this important ingredient.

Congress, HUD, and the administration share the desire to find new, more cost efficient ways to provide housing for Indians. Although there has been no consensus on the content and operation of such a program, there eventually was agreement among some of the parties that the present HUD Indian housing program should continue, but with added emphasis on streamlining the delivery system. Administration budget submissions often provide no funds for construction of new Indian housing units, yet on average some 2,3000 units are eventually appropriated.(109) As IHAs and HUD improve the administration of their programs, unit costs are being reduced, and program effectiveness increases. A permanent and separate oversight entity within the HUD structure could help accomplish these objectives.

In September of 1983, the status of the Office of Indian Housing was organizationally clarified through publication of HUD Handbook #1100.3, Rev.4, Ch.8, which contained the table of organization for the newly created position of Assistant Secretary for Public and Indian Housing, and the Office of Indian Programs. The lack of statutory authorization for a permanent Office of Indian Housing has made it susceptible to a succession of removals, realignments, and organizational shifts throughout its history. Since 1978, it has been stabilized within the Office of Public Housing. As the Indian housing program matured

the gradual drift to a separate office of Indian housing became inevitable. Differences between the urban, multi-family focus of public housing and the rural, single-family development of Indian housing highlight the need for a distinct program office.

Following a reorganization of the Office of Public Housing, a permanent Office of Indian Housing was created, reporting to the Assistant Secretary for Public and Indian Housing. On September 10, 1984, the first permanent Director of the Office of Indian Housing was appointed. The mission of the office is to improve the housing conditions of American Indians and Alaska Natives. As stated in 1985 HUD Annual Report to Congress, its primary objectives are:

- o To develop and maintain decent, safe, sanitary, economical, durable, energy efficient and modest Indian housing;
- o To design, implement, and institutionalize training programs to improve the capacity of tribal and IHA officials to administer HUD's Indian housing program and to improve the capacity of HUD Indian field staff to provide technical assistance and training to tribal and IHA officials;
- o To work with tribal governments to improve the management of the Indian housing program, particularly in improving rent/homebuyer collections through a working judicial system;
- o Wherever feasible, to modify HUD's development and management processing procedures for all IHAs to provide greater local flexibility and to minimize unnecessary federal involvement;

- o To expedite the Indian housing pipeline in an appropriate manner;
- o To assure that limited Indian housing funds are properly utilized;
- o To experiment with less federal involvement in Indian housing development in cases where IHAs have demonstrated the capacity to do so; and
- o To coordinate Indian economic development and housing activities in a manner consistent with the President's Indian Policy Statement.(110)

The organizational philosophy of the office is to improve the Indian housing delivery system by streamlining management and building capacity not only for IHAs, but concurrently at the field office level. This includes an increasing reliance on state-of-the-art microcomputers at the central and field offices, and remote monitoring and standardization of functions to the highest degree possible among the different locations. Effective utilization of limited resources during a time of increased attention to federal deficit reduction demands improved capacity building and IHA management improvement. If the methodology of improvement is comprehensive management, coordination of efforts at all levels is mandatory. Additional objectives are to speed the development pipeline, develop a separate consolidated set of Indian housing regulations, and work toward the separation of the Office of Indian Housing as a distinct entity within HUD.

From its inception, the new office was faced with numerous problems. Tenant accounts receivable (TARs) had increased to the point where they averaged 16% in FY'84, a system for uniform allocation of development funding did not exist, and the recently implemented industrially produced housing initiative had not been well received within Indian country.

Through the use of a number of special initiatives, the Office of Indian Housing has managed to reduce per unit costs while accelerating the development pipeline. Major efforts from FY'85 to the present have focused on accomplishments in the following areas:

Development and Management:

- o New construction pipeline - FY'85 starts totalled 3,419 units; 619 (22%) more than anticipated. Completions numbered 2,471. In addition, 2,002 new units were allocated to IHAs during the year.
- o Recapture policy - A March 18, 1985 memorandum(111) required that units stagnated in the pipeline be recaptured. The directive sped up development timeframes and eliminated backlogs of those units without reasonable prospects for completion.
- o Allocation of new development funds - A standardized formula for award of new units to the field offices was implemented. Sixty percent of available funds were awarded according to need, with the remaining 40 percent distributed on the basis of prior performance. An Administrative Capabilities Assessment (ACA) was developed to evaluate not only how well IHAs were performing, but to uncover problems which the central and field offices could then assist the IHAs to resolve. The ACA is discussed in more detail below.
- o Development cost reductions - A total development cost reduction of nearly 44% (when cost of living adjustments are included) from FY'81 to FY'86 was accomplished. Restricting amenities, careful selection of materials and equipment, more effective use of architect and engineering plans and services,

and close monitoring of the site selection process all contributed to reducing costs. The average total development costs have been reduced by 24 percent (exclusive of water and sewer costs), from a high of almost \$75,000 per unit in FY'81, to \$56,000 in FY'86. A further incentive to reduce costs was implemented by allowing IHAs to fund additional units with the savings accrued during the development process.

- o Debt recovery - During FY'85, a total of \$17,890,382 was returned to the U.S. Treasury through recaptures and the collection of excess funds held by IHAs.
- o Tenant accounts receivable - the percentage of TARs decreased in FY'85 from 16 percent to 10 percent, and during FY'86 the percentage declined further in some regions and stabilized in others.

Capacity Building and Special Projects

- o Indian Preference - An Indian Preference Policy Statement, issued in September, 1984, and publication of final regulations, effective March 15, 1987, on Indian preference in contracting exemplified the commitment of the Department and the Office of Indian Housing to the employment and training of Indians in all phases of project development. Indian contractors building HUD projects earned a total of \$160,245,669 during FY'85.
- o Training, technical assistance and capacity building - HUD programs have included training for IHA officials and tribal judiciary, basic financial management training for IHAs, training on the new Indian preference regulations for the field offices, and an executive conference. —

- o Computer networking - The OIPs were connected to the Office of Indian Housing's new microcomputer to facilitate uniform data exchanges throughout the program. The potential for cost savings and management improvements is great.

- o Traditional materials projects were authorized for four IHAs. The Gila River adobe project is nearing completion.

- o An accelerated development ("proclaimer") program for highly competent IHAs reduces federal involvement in an effort to speed the construction process. Increased local responsibility throughout development will result.

The Secretary's Committee on Indian and Alaska Native Housing meets regularly to discuss major issues in Indian housing. A recommendation of the Committee is the separation of the Office of Indian Housing from the Public Housing program, a change based upon the unique and special needs of the Indian constituency.

Another significant initiative during FY'85 concerned the status of rental projects and the difficulties involved in managing the different home ownership programs. During the late 1970's, HUD Region IX had grappled with the same problem and suggested a new program, combining the best features of all existing efforts. The proposal was never enacted. Three memoranda from Assistant Secretary for Public and Indian Housing Warren T. Lindquist discussed the criteria for converting Turnkey III and rental housing to the Mutual-Help program.(112) The thrust of the memos was to simplify IHA management by reducing the number of different programs which an IHA must administer.

It was emphasized that decisions to convert to the Mutual-Help program were local decisions to be made by the tribe, the IHA and the family.

These policy directives are indicative of the overall effort to speed the pipeline, reduce TARs, and offer flexible alternatives, where possible, to improve the overall efficiency of the Indian housing program.

Among various other initiatives, a further step in the effort to attain program goals was publication of the HUD Housing Management Desk Guide, "Managing an Indian Housing Authority". Released in October, 1985 by the Housing Management Division, Office of Indian Programs, Region VIII, this comprehensive management tool provides explanations, definitions, policy guidelines and practical information on IHA functions.

January, 1986 marked another milestone for the Office of Indian Housing. New HUD Handbook #1135.1, "Organization: Assistant Secretary for Public and Indian Housing," was released. It reflected changes made in response to a redelegation of authority and the reorganization which occurred in September, 1983. The powers, functions and duties of the Director of the Office of Indian Housing were delineated as they related to the Assistant Secretary for Public and Indian Housing.

On April 25, 1986, John V. Meyers, Director of the Office of Indian Housing, sent a memo to all Indian Field Office Directors entitled "Administrative Capabilities Assessment (ACA)".(113) The memo, a refinement of an earlier document originated in 1984, outlines the uses and purpose of the ACA. The purpose of the ACA is to objectively evaluate in a program-wide fashion certain data for all IHAs. Evaluations are to occur twice each year, and the data gathered will be used as the basis for awarding new units and CIAP funds. ACAs must be completed for all IHAs, even if they are not requesting such funds. Based on that information,

the efficacy of each IHA can then be determined. IHAs which perform well according to ACA criteria will rank high in terms of eligibility for program funds. Lower ranking IHAs will be encouraged to do better. Based on field models which were discussed with the Indian constituency, the ACA can also determine when and where technical assistance is necessary. Finally, it may be used for evaluating IHAs for good performance awards. More cost-effective and comprehensive management should result from implementation of the new system.

During FY'86, the Office of Indian Housing designed several new initiatives to streamline services delivery and improve management efficiency. Responding to congressional and Indian recommendations, including those of the Secretary's Committee on American Indian and Alaska Native Housing and the National American Indian Housing Council, the OIH requested that the Office of the General Counsel draft proposed legislation to separate the OIH from the Office of Public and Indian Housing. The concept was supported by a recent HUD Inspector General's report and strongly endorsed by four HUD Regional Administrators.

The differences between Indian housing and the urban, multi-family public housing program often result in added costs, confusion, and inapplicable policy directives. Some recent examples of the problem include interpretations of certification training policy for IHA executive directors, applicability of the lead paint, aliens, and pet rules, and the new capital grants funding and debt forgiveness legislation and its effect on the Mutual-Help program.

Consolidated and updated administrative regulations for the Indian housing program were also recently completed by the office. The new document will simplify administration for the field offices and IHAs by providing one source for all regulations regarding HUD Indian housing.

Another new program activity accomplished during the past year involved the implementation of a self-funded insurance pool to replace the HUD master insurance policy for IHAs. Several meetings were held among HUD staff, representatives of the Secretary's Committee on American Indian and Alaska Native Housing, and the National American Indian Housing Council to examine the overall feasibility of the plan. Final approval is expected shortly.

Other recent management improvements aimed at cost containment and cost reduction include the rental housing and Turnkey III conversion policy memoranda, and the ACA. Using the recently installed microcomputer network, field offices now monitor IHA operations remotely through the new Indian Housing Management Information Retrieval System (MIRS). Review and evaluation of IHAs with the combined resources of the ACA and MIRS will provide cost savings which can then be directed toward resolving problems at IHAs.

A new, fully automated cash management system, tested during FY'86 at five IHAs in Region IX, has been fully implemented. Called the Rapid Indian Housing Payments System (RIHPS), it is basically an electronic funds transfer and automated cash management system to expedite payments for new development projects. RIHPS results in less cash on hand for IHAs. Payments are made for actual invoices only and for within-budget expenditures, eliminating excessive cash forecasting reserves. Actual savings were \$600,000 during the test period. Estimated annual savings are \$9 million. This program was accomplished with the assistance of the Office of Finance and Accounting.

These new initiatives foster self-determination and the philosophy contained in the President's Indian Policy Statement. Recommendations to change and simplify rental and operating subsidy requirements and establish minimum and maximum rents are also being examined.

The OIH has made it a priority to transfer ownership of paid-off mutual-help units to the Indian homeowners. In addition, the recently instituted "proclaimer" project mentioned above was implemented at five IHAs. It allows for reduction of delays in the development process by permitting these IHAs to certify that they have complied with certain requirements that formerly necessitated HUD review and approval. These modifications have resulted in development times being cut in half in some instances.

Finally, financial management training for field office staff in accounting and the budget process allows them to better assist IHAs. Specific field office personnel have been identified to provide aid to troubled Indian housing authorities. A technical assistance contract was awarded to provide intensive help to up to 20 of the most troubled IHAs, and an additional five IHAs will be helped during the next fiscal year.

These activities will enhance the capabilities of the field offices, IHAs and the central office staff. As the new policies are implemented and changes occur, the Office of Indian Housing will continue to monitor the progress of IHAs and the field offices and provide planning and strategies to accomplish the mission of the office.

V. INDIAN HOUSING: THE FUTURE

The Indian housing program at HUD is dynamic. As changes and improvements occur, organizational and programmatic adjustments are inevitable. Building upon the basic concepts already in place, the OIH is poised to accept new responsibilities and challenges as they present themselves.

As a middle class continues to develop on reservations, the housing needs of this group will require attention. While the mission of the office is to serve the needs of lower income Indian families, the impact and effects of the changing characteristics of the on-reservation Indian population must be considered. The future appears brighter but much remains to be done.

FOOTNOTES

1. Pub.L. No.75-412, amended by Housing and Community Development Act of 1974, Pub.L. No. 93-383, 42 U.S.C. sec. 1437 et seq.(1982).
2. Pub.L. No. 81-171, 42 U.S.C. sec. 1450 et seq., repealed by, Pub.L. No. 93-383.
3. U.S. Dept. of the Interior, Bureau of Indian Affairs, Budget Justifications, F.Y. 1989, at 241; U.S. Dept. of HUD, 1989 Budget Summary at PIH-1.
4. Report to the Secretary of the Interior by the Task Force on Indian Affairs, July 10, 1961.
5. These recommendations stemmed in part from discussions between BIA personnel and Housing and Home Finance Administration (HHFA) staff on ways to serve the large number of low-income Indians living on reservations. At that time, HHFA's International Housing Office was producing large numbers of self-help units in developing countries. HHFA International Housing staff members Ervan Bueneman and G. Ronald Peake took part in discussions with BIA personnel, PHA General Counsel Joseph Burstein, his assistant, Ralph Reeser, and others on ways to apply the lessons learned in international self-help housing to Indian reservations.
6. See Memorandum from Legal Div., PHA to Commissioner, PHA, PHA Mutual-Help Housing Program in Conjunction with the Bureau of Indian Affairs 1 (Nov.30, 1962).
7. Id.
8. Id. at 2-3.
9. Id. at 7,14-15.
10. Id. at 3.
11. The author has relied on the excellent article Indian Housing: 1961-1971, A Decade of Continuing Crisis, 48 N.D. L.Rev. 593, (1972), coauthored by Professor Arnold C. Sternberg and Catherine M. Bishop, for much of the information on early development of Indian housing programs.
12. Memorandum from Legal Div., PHA to Commissioner, PHA, PHA Mutual-Help Housing Program in Conjunction with the Bureau of Indian Affairs 2 (Nov. 30, 1962).

13. U.S. Dept. of HUD, 1983 Annual Report to Congress on Indian and Alaska Native Housing and Community Development Programs 9 (Mar., 1985)
14. 48 N.D. L.Rev. 593, 602 n.48 (1972).
15. Act of Feb. 8, 1887, 24 Stat. 388, 25 U.S.C. secs. 331 et seq., essentially terminated by the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. secs.461-465.
16. Id.
17. From the inception of the Indian housing programs, IHS was responsible for building all water and sewer facilities for Indian housing projects. Since 1982 this has been modified and HUD Indian housing projects can now use either IHS or contract with another sanitation facilities provider.
18. See letter to Phileo Nash, Commissioner, BIA from Marie C. McGuire, Commissioner, PHA (May 29, 1963).
19. Pub.L. No. 89-117, 79 Stat. 667, 42 U.S.C. sec. 3531.
20. Act of Nov.2, 1921, c.115, 42 Stat. 208, 25 U.S.C. sec.13 (1982).
21. 48 N.D. L.Rev. 593, 600 n.37 (1972).
22. Id. at 594.
23. Id. at 595.
24. Id. at 599.
25. See U.S. Dept. of the Interior Budget Justifications, F.Y. 1987 at 284. BIA and Dept. of the Interior rely on these figures as a basis for their annual budget requests.
26. 48 N.D. L.Rev., supra, at 595-596 (footnotes omitted).
27. H.R. Doc.No. 363, 91st Cong., 2d Sess.(1970). See also, Indian Tribes, A Continuing Quest for Survival, A Report of the U.S. Commission on Civil Rights 6 (June, 1981).
28. 48 N.D. L.Rev., supra, 599 n.36.
29. Id.
30. Pub.L. No.90-448, 82 Stat. 476, 42 U.S.C. sec. 3531 et seq. (1968).

31. Memorandum of Understanding, Provision of Sanitation Facilities for Indian Housing (April 15, 1969).
32. See 48 N.D. L.Rev., supra, 603 for a discussion of the 40,000 unit commitment from FY'70 to FY'74.
33. Interdepartmental Agreement on Indian Housing, by Thomas S. Kleppe, Secretary, Department of the Interior, David Mathews, Secretary, Department of Health, Education, and Welfare, and Carla A. Hills, Secretary, Department of Housing and Urban Development, March 2, 1976.
34. U.S. Dept. of HUD, 1978 Annual Report to Congress on Indian and Alaska Native Housing and Community Dev. Programs, App.I, Table I-1.
35. Report to the Congress, Slow Progress in Eliminating Substandard Indian Housing, G.A.O. Report No.B 114868 (Oct. 12, 1971).
36. G.A.O. Report at 10.
37. 48 N.D. L.Rev., supra, 606.
38. Id. at 610.
39. 1978 HUD Annual Report to Congress, supra, App.I, Table I-1.
40. 48 N.D. L.Rev. at 611-612 n.92.
41. Id.
42. See Leatherman, Final Report, Appendix III, American Indian Policy Review Commission, G.P.O., Washington, D.C., (1977), for a discussion of the 40,000 unit goal during the years FY'70-FY'74, and a subsequent commitment by HUD to continue that level of production for FY'75-'76.
43. Pub.L. No. 93-383.
44. Act of Dec. 18, 1971, 43 U.S.C. secs. 1601-1628.
45. See Leatherman, supra, at 178.
46. See Report, Indian Housing in the U.S., Hearings before the Subcomm. on Indian Affairs of the Senate Interior and Insular Affairs Comm., 94th Cong., 1st and 2nd Sess.(1975-6).
47. The functions of that office had briefly been transferred to within the Office of the Secretary, but that arrangement did not work. Delegation to the Office of Consumer Affairs was an attempt at solving the problem.

48. The Indian Self-Determination and Education Assistance Act of 1975, Pub.L. No. 93-638, 88 Stat. 2203, 25 U.S.C. secs. 450-450n.
49. In the late 1920s the federal government commissioned a study of the federal - Indian relationship and the conditions existing on reservations. The report concluded that the assimilation policy had failed and that conditions on American Indian reservations were disastrous. See Brookings Institution, Institute for Government Research, Lewis Meriam, Technical Director, The Problem of Indian Administration (Washington, D.C., 1928).
50. Leatherman, supra, at 190-192.
51. Exhibit to Interdepartmental Agreement-BIA Homebuyer Training Program, d. HUD Responsibilities, 44 Fed. Reg. 27 (Nov. 6, 1979), reprint of Jan. 16, 1980.
52. See generally HUD Annual Reports to Congress for 1978-1980 for a description of these activities.
53. Id.
54. Pub.L. No.95-128.
55. Senator Gravel of Alaska had originally introduced a Title VI, the "Indian and Alaska Native Housing and Community Development Program", which provided for a special Office of Indian and Alaska Native Programs. Rejected by the conferees in the final bill, the Special Assistant position was a compromise.
56. See Pub.L. No.95-128, sec. 901.
57. See 1978 HUD Annual Report to Congress, supra, at 20, for a discussion of the need to transfer funding authority for Indians from Sec.106 to Sec. 107, the Secretary's Discretionary Fund.
58. This program was proposed in May of 1976 by HUD Region IX, and submitted to HUD in September of 1976 by the Regional Administrators of Regions V, VIII, IX and X. Previously rejected in the fall of 1975 by HUD Secretary Carla Hills, it was particularly appropriate in 1977 since the HUD 701 Comprehensive Planning Assistance Grants Program was being phased out. Indians had relied heavily on these funds for planning purposes. Interim regulations for the new Indian CDBG program were promulgated on March 23, 1978. Indians were specifically included in the consultation process under the regulations.

59. See 1978 HUD Annual Report to Congress, supra, Appendix II for full text of memorandum.
60. Id.
61. Report to the Congress, No.78-63, Substandard Indian Housing Increases Despite Federal Efforts - A Change is Needed, G.A.O., March 31, 1978.
62. See 1971 GAO Report, supra.
63. 24 CFR Part 805 (1979).
64. Shenk, P., Report on Indian Housing, U.S. Senate Select Committee on Indian Affairs, Comm. Print, G.P.O., Washington, D.C., (1979).
65. See 1978 HUD Annual Report to Congress, supra, Appendix I, Table I-1.
66. U.S. Dept. of HUD, 1981 Annual Report to Congress on Indian and Alaska Native Housing and Community Development Programs 6(Dec. 1, 1981).
67. Gardner, Edward, Innovative Indian Programs in the Denver Region, Vol.XII, No.6, Challenge!, at 8-10. HUD, Washington, D.C. (June, 1980).
68. Id.
69. 1981 HUD Annual Report to Congress, supra, at 12.
70. Interview with Patricia Arnaudo, Deputy Director, HUD Office of Indian Housing, May 16, 1986.
71. U.S. Dept. of HUD, 1980 Annual Report to Congress on Indian and Alaska Native Housing and Community Development Programs, at 4. (Dec. 1, 1980).
72. Id. at 6-10.
73. See 1981 HUD Annual Report to Congress, supra, at 2.
74. See Memorandum, Indian Housing Program - Options, Dept. of the Interior, Bureau of Indian Affairs, Division of Housing Assistance (January, 1982).
75. H.R. 5988 and S. 2847, 97th Cong., 2nd. Sess. (1982). See also H. Rep. No. 97-695 (Aug. 4, 1982).
76. Pub.L. No. 97-35 (Aug. 13, 1981).

77. Act of Dec. 24, 1969, Pub.L. No. 91-152, 83 Stat. 389, as amended by Act of Aug. 22, 1974, Pub.L. No. 93-383, Title II, sec. 201(a), 88 Stat. 654.
78. Pub.L. No. 97-35, Sec. 323.
79. Id.
80. Winn, P., HUD Asst. Secretary for Housing - FHA Commissioner, Memorandum, The Correction of Design and Construction Deficiencies (July 21, 1981).
81. Pub.L. No. 96-399.
82. Authorized by the Housing and Community Development Act of 1980, Pub.L. No. 96-399, the Comprehensive Improvement Assistance Program (CIAP) provides funding to assist PHAs and IHAs in improving the physical condition and management and operation of housing projects. Both mutual-help and rental projects are eligible for modernization funds under CIAP. Beginning in FY'81, CIAP funds could be used for correction of Indian housing design and construction deficiencies. Indian set-aside funding levels for the 3 year period were: FY'81, \$1.20 million; FY'82, \$1.97 million; FY'83, \$11.97 million (loan authority, other figures are contract authority).
83. Kenison, R., Assoc. General Counsel, HUD, to Sherman, T., Acting Deputy Asst. Secretary, Office of Public Housing and Indian Programs, Memorandum, HUD Assumption of Responsibility for Off-Site Water and Sewer Services for Indian Housing, (Sep. 1, 1981).
84. Id. at 2.
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86. Spencer, V., Indian Housing; 1984, at 13, Housing Assistance Council, Washington, D.C., (1984).
87. Through FY'83, the money used for the provision of off-site water and sewer facilities came from HUD amendment dollars. In FY'84, Congress made \$9 million available from HUD CDBG funds for water and sewer needs (above the \$30.7 million Indian CDBG allocation).
88. Winn, P.D., HUD Asst. Secretary for Housing - FHA Commissioner, Memorandum, Troubled Indian Housing Authorities (IHAs) (July 16, 1981).
89. Id. at 1-2.

90. Winn, P.D., HUD Asst. Secretary for Housing - FHA Commissioner, Memorandum, Policies for Indian Housing Authorities, (Nov. 13, 1981).
91. Id. at 1-2.
92. U.S. Dept. of HUD, 1982 Annual Report to Congress on Indian and Alaska Native Housing and Community Development Programs 15 (Dec.1, 1982). See also S. Rep. No. 97-163, 97th Cong., 2nd. Sess.(1982).
93. Id. at 2-3.
94. Id. at 21.
95. U.S. Dept. of HUD, 1983 Annual Report to Congress on Indian and Alaska Native Housing and Community Development Programs, at 2 (March, 1985).
96. Abrams, P., HUD Asst. Secretary for Housing - FHA Commissioner, Memorandum, Implementation of Indian Housing Cost Reduction Policies and Procedures (Nov. 30, 1982).
97. 1983 HUD Annual Report, supra, at 7.
98. Id. at 2.
99. Id. at 2-3.
100. Id. at 21.
101. Id. at 15.
102. Id. at 20.
103. Id. at 22.
104. Pub.L. No. 98-181 (Nov. 30, 1983).
105. 49 Fed. Reg. 41,212 (Oct. 19, 1984).
106. 51 Fed. Reg. 21,866 (June 18, 1986).
107. Indian Policy Statement by President Ronald Reagan, January 14, 1983.
108. Id. at 2.
109. Average number of new Indian housing units allocated with funds appropriated from FY'81 through FY'86.
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111. Lindquist, Warren T., Asst. Secretary for Public and Indian Housing, Memorandum, Indian Housing Project Action Deadlines (Mar. 18, 1985).
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