

IHS-HUD TRIBAL CONSULTATION REPORT

IHS–HUD Tribal Consultation on Housing-Related Water and Sewer Infrastructure

Consultation Date: December 16, 2024

Report Date: December 18, 2025

Agency: Indian Health Service (IHS)

Transmittal: Distributed to all federally recognized Tribes and Tribal Organizations

I. Introduction

On December 16, 2024, the Indian Health Service (IHS) and the U.S. Department of Housing and Urban Development (HUD) hosted a joint Tribal Consultation to receive input on how Federal housing, water, and sanitation programs can more effectively address the significant infrastructure needs across Indian Country. The Consultation focused on Tribal perspectives regarding the longstanding appropriations restriction that prohibits the use of the IHS Sanitation Facilities Construction (SFC) Program funding for new homes funded through HUD programs.

This report documents the Consultation process, summarizes Tribal feedback, identifies major themes, and outlines IHS’s conclusions and follow-up actions. It is prepared in accordance with Indian Health Manual (IHM) Part 6, Chapter 6, including documentation requirements contained in Section 6-6.8A.

II. Issue Summary

The central issue addressed during the IHS-HUD Tribal Consultation concerns whether the IHS should modify its position on the use of the SFC Program funds for sanitation facilities associated with HUD-funded new homes. Since the late 1990s, annual appropriations language has prohibited the IHS from performing such work. The restriction has been repeatedly reaffirmed by Congress and supported historically by Tribal consensus during early Indian Health Care Improvement Act (IHCIA) Consultation processes.

The Tribal comments reflected differing perspectives on the future of the prohibition. Large Tribal health organizations (Norton Sound Health Corporation, Alaska Native Tribal Health Consortium (ANTHC), Alaska Native Health Board) strongly opposed removing the restriction due to public health and resource limitations. Other Tribes, including Yakama Nation, Catawba Indian Nation, and Mississippi Band of Choctaw Indians, expressed a desire for greater funding flexibility.

This divergence underscores the need for careful Tribal engagement and adherence to statutory obligations.

III. Background

The IHS provides essential sanitation services under Public Law 86-121 and maintains a statutorily defined public health mission to address water and sewer deficiencies in American

Indian and Alaska Native (AI/AN) homes and communities. The HUD administers the Indian Housing Block Grant (IHBG) and Indian Community Development Block Grant (ICDBG), which fund housing construction and certain community infrastructure projects.

A. Legislative History

Tribal comments provided detailed historical documentation demonstrating that:

- In 1999, nationwide Tribal Consultations produced consensus among all 12 members of the IHCIA National Steering Committee recommending that IHS funding should not be used for new HUD-funded homes.
- Eight of nine IHCIA reauthorization bills introduced between 2003–2009 included explicit statutory language prohibiting the use of IHS funds for HUD-funded new homes.
- Congressional testimony recorded in 2003 reaffirmed that since 1982, Congress repeatedly expressed its intent that IHS funds should not be used for this purpose.

B. Interdepartmental Roles

The 1996 Interdepartmental Agreement between HUD, IHS, and BIA¹ clearly assigned responsibilities:

- HUD is responsible for funding water, wastewater, and solid waste infrastructure associated with HUD-financed homes; and
- IHS is responsible for addressing sanitation deficiencies according to congressional directives and appropriations.

This framework remains the foundation of current program implementation and informs the IHS's position.

IV. Tribal Consultation Process

A. Notice and Preparatory Materials

A joint Dear Tribal Leader Letter (DTLL) issued on September 9, 2024, solicited Tribal input on seven core questions. Written comments were accepted through early 2025, meeting the 30-day minimum comment requirement under IHM 6-6.3E(1).

B. Tribal Consultation Format

The December 16, 2024 session was conducted virtually and included Tribal leaders, environmental health experts, IHS leadership, and HUD officials. Tribal recommendations received verbally were supplemented by extensive written comments submitted by Tribal governments, Tribal health organizations, and Tribal housing entities.

¹ <https://www.govinfo.gov/content/pkg/FR-1996-09-10/pdf/96-22923.pdf>

C. Documentation

All comments were compiled and analyzed in accordance with IHM 6-6.8 and are summarized below.

V. Summary of Tribal Feedback

1. Coordination and Program Efficiency

Across all comments, Tribes emphasized the need for earlier, clearer, and more coordinated HUD–IHS planning, including shared technical assistance, joint training, and consistent interagency communication.

2. Impacts of the Appropriations Restriction

Tribes described differing impacts:

A. Tribes Opposing Removal

Organizations such as ANTHC, Norton Sound Health Corporation, and Alaska Native Health Board stated that:

- Removing the prohibition would undermine community-wide public health, as SFC resources already face a multi-billion-dollar sanitation backlog; and
- SFC funds serve entire communities, not individual units; shifting them would disadvantage the most severely underserved populations.

B. Tribes Supporting Removal

Yakama Nation, Catawba Indian Nation, Mississippi Band of Choctaw Indians, and others stated that:

- Flexibility would help address housing shortages; and
- Mixed-use developments complicate existing funding distinctions.

3. Prioritization of SFC Funds

Those advocating to maintain the prohibition emphasized that:

- SFC funds are “critically underfunded” and must remain focused on addressing the highest Deficiency Level (DL) needs; and
- SFC’s public health mission is distinct from housing development.

Those supporting change emphasized flexibility but acknowledged additional appropriations would be necessary.

4. Expanded Use of HUD Funding

Broad support existed for expanding IHBG and ICDBG authority to allow community-wide sanitation projects. Many Tribes stressed that the HUD, not the IHS, lacks adequate funding to address infrastructure needs associated with new housing stock.

5. Role of IHS in Technical Support

Nearly all Tribes, regardless of policy position, requested expanded IHS technical assistance in planning, design, and environmental review of housing infrastructure projects.

6. Feedback on Removing the Prohibition

Feedback was mixed. However, Tribes opposing removal provided significant historical and statutory evidence, while Tribes supporting removal focused primarily on flexibility and local housing impacts.

VI. Agency Response/Current Status

The IHS greatly appreciates the breadth and depth of Tribal input provided through the Tribal Consultation process and in written comments. Tribal perspectives reflected both support for maintaining the prohibition and interest in expanded funding flexibility.

After reviewing all Tribal input, legislative history, program authorities, and the SFC program's public health mission, the IHS will maintain its longstanding position that SFC funds should not be used for HUD-funded new homes.

The IHS bases this position on the following factors:

1. Statutory Direction and Congressional Intent

Congress has repeatedly affirmed through appropriations language and legislative drafting that IHS funds are not intended to support new HUD housing. Historical Tribal Consultation from 1999 to 2009 documented strong Tribal support for including the prohibition in statute.

2. Public Health Prioritization

The SFC backlog remains significant:

- Over 1,346 active projects across Indian Country;
- A total need estimated at \$4.66 billion; and
- More than 41,000 AI/AN homes lacking adequate sanitation services.

Redirecting SFC resources to HUD new homes would reduce the IHS's ability to address the most severe public health deficiencies affecting existing homes and entire communities.

3. Interagency Role Clarity

The HUD is the Agency charged with funding water and wastewater infrastructure necessary for HUD-funded homes. The 1996 Interdepartmental Agreement formalized this division of responsibilities.

4. Divergent Tribal Perspectives

While some Tribes request increased flexibility, many Tribes, including large Tribal health organizations serving hundreds of communities, strongly oppose lifting the prohibition. Maintaining the prohibition respects the need to balance varied Tribal circumstances while prioritizing public health outcomes.

5. Need for Additional Appropriations

Nearly all Tribes, regardless of position, emphasized that the root challenge is insufficient funding in both HUD and IHS programs. Policy changes that shift responsibilities between underfunded programs do not resolve underlying needs.

VII. Follow-Up Actions and Timelines

Action Item	Planned Timeline
Maintain the current SFC funding prohibition	Ongoing
Update the 1996 Interdepartmental Agreement between HUD, IHS, and BIA	FY 2026–2027
Expand IHS technical assistance to Tribally Designated Housing Entities (TDHEs)	Ongoing

VIII. Outcomes and Next Steps

The IHS–HUD Tribal Consultation reaffirmed that Federal sanitation and housing programs must be better aligned, better funded, and more collaborative. Tribal views were diverse, but the weight of historical evidence, statutory authority, and community-wide public health considerations supports maintaining the prohibition on the use of SFC funds for new HUD-funded homes.

The IHS remains committed to:

- Honoring Tribal sovereignty and diverse local priorities;
- Strengthening technical assistance and interagency coordination;
- Provide federal investment in housing and sanitation infrastructure; and
- Continuing transparent, meaningful Government-to-Government Consultation.

IX. Contact Information

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X. Appendices

Appendix A: September 9, 2024, Letter to Tribal Leaders
Appendix B: Summary of Written Tribal Comments
Appendix C. 1996 Interdepartmental Agreement between HUD, IHS, and BIA

Appendix A: September 9, 2024, Letter to Tribal Leaders



September 9, 2024

Dear Tribal Leader:

The U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Health and Human Services, Indian Health Service (IHS), are seeking your feedback and recommendations on how HUD and IHS programs can better address the housing-related water and sewer infrastructure needs of Tribal communities.

This joint letter furthers the goals of Executive Order (EO) 14112, “Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination,” which directs Federal agencies to work together to streamline processes and collaborate to resolve issues.

Background

In furtherance of the Federal Government’s trust responsibility, both HUD and the IHS provide Federal funding to Tribal communities. HUD provides funding for affordable housing and community development activities through its Indian Housing Block Grant (IHBG) and the Indian Community Development Block Grant (ICDBG) programs. The IHS provides project funding to repair existing water and sewer systems and to construct new water and sewer systems to support Indian homes and communities through its Sanitation Facilities Construction (SFC) program.

Currently, the IHS is prohibited by annual appropriations language from using SFC program funding to provide water and sewer infrastructure for new homes constructed using HUD grants, including the IHBG and ICDBG programs:

“Provided further, that none of the funds appropriated to the Indian Health Service may be used for sanitation facilities construction for new homes funded with grants by the housing programs of the United States Department of Housing and Urban Development.”¹

When the Native American Housing Assistance and Self-Determination Act (NAHASDA) was passed in 1996, Congress specified that HUD IHBG funds could be used to provide for all utilities and road access services for new affordable housing constructed using the IHBG funds, including sanitation needs of those homes. The IHS funds, on the other hand, were to be focused on the needs of existing homes and new homes not supported by the NAHASDA appropriation.

¹ See for example the FY 2024 Appropriations Act: <https://www.congress.gov/bill/118th-congress/house-bill/4366/text>

Issue

Over the years, the need for housing and water and sewer infrastructure in Indian Country has outpaced the level of government funding. As such, Tribes have been seeking ways to combine and leverage Federal funding to maximize the impact in their communities. Some Tribes have expressed support for removing the funding prohibition in order to combine funding from both programs, while others support the prohibition and prioritize providing sanitation to existing homes with the IHS funding, which is limited when compared to the level of need.

Joint Consultation

As indicated in the 2025 Budget^{2,3} both HUD and the IHS are seeking Tribal input on how Federal resources for affordable housing and water and sewer infrastructure can best be delivered to Tribal communities, including comments on the funding prohibition. We are seeking your feedback and comments on this issue and encourage you to respond to the questions raised below.

1. Are there ways that the HUD and IHS programs could work alongside each other to provide for both housing and related water and sewer infrastructure more efficiently?
2. How has the appropriations language provision, which prohibits IHS from using SFC funding to construct sanitation facilities for new housing built by Tribes or Tribally Designated Housing Entities (TDHEs) using HUD grant funding, impacted your ability to construct new housing or provide water and sewer infrastructure in your community? Please share any relevant information or data with HUD and the IHS, particularly regarding the impacts on the efficiency of planning and development processes.
3. Should IHS funds be prioritized to address sanitation facility needs for existing homes⁴ and non-HUD new and like-new homes⁵, or should some portion of IHS funds be made available to assist Tribes with sanitation facilities for new HUD-funded homes⁶?
4. The HUD ICDBG funds can address the construction or repair of sanitation facilities used by an entire low-to-moderate income Tribal community; HUD IHBG funds are limited to the construction or repair of “necessary infrastructure” associated with homes occupied by low-income Tribal members. Should HUD revise the ratio of ICDBG to IHBG funding and/or consider changes to IHBG-eligible uses in order to make a greater proportion of HUD housing funds available for community-wide sanitation facilities?

² https://www.hud.gov/sites/dfiles/CFO/documents/2025_CJ_Program_-_Native_American_Programs.pdf

³ https://www.ihs.gov/default/sites/ofa/themes/responsive2017/display_objects/documents/FY-2025-IHS-CJ030824.pdf/FY-2025-IHS-CJ030824.pdf - See FY 2025 IHS CJ, Page CJ - 153

⁴ IHS estimates existing Tribal sanitation facility needs are \$4.6 billion (FY 2023). IHS Congressional Justification. Page 155

⁵ IHS. Criteria for the Sanitation Facilities Construction Program. Chapter 6, page 2 (2003)

⁶ HUD estimates 68,000 units of affordable are needed to replace substandard or overcrowded units in Tribal areas; in 2023 IHBG funds were used to build or acquire 502 units. See FY 2025 ONAP CJ, Pages 13-2 and 13-3.

5. Prior to the NAHASDA, the IHS collaborated with Tribes or TDHEs to review proposed HUD homesites for sanitation facilities. The HUD appropriation included funds for sanitation facilities at all new HUD-funded homes to Tribes and TDHEs, which HUD then contributed to the IHS for construction. After NAHASDA, Tribes and TDHEs managed all funds and planning for new HUD homes, excluding the IHS from these processes. With Tribes and TDHEs handling site selection and infrastructure construction, what role, if any, should the IHS play in connecting new HUD homes to sanitation facilities?
6. Considering the net impact of the appropriations language provision on affordable housing and water and sewer infrastructure development in your area, both positive and negative, should the Administration propose that Congress retain, amend, or remove this longstanding provision and allow the IHS to serve HUD-funded new homes?
7. Are there any other related issues that you would like to share with our agencies?

Please email your comments and recommendations to: consultation@hud.gov and consultation@ihs.gov. Use the SUBJECT LINE: **HUD/IHS Housing-related Infrastructure for Tribal Communities**. The comment period is open for the next 60 days, closing on **November 9, 2024**.

In addition to written comments, HUD and the IHS will hold a virtual Consultation session as another way of receiving Tribal comments. Details about the virtual Consultation will be forthcoming.

Our collective goal is to find a workable solution that breaks down barriers to Federal funding and upholds E.O. 14112, all while ensuring that our programs continue to serve the housing and infrastructure needs of your communities.

Thank you for your continued partnership and collaboration in the effective delivery of HUD and IHS programs.

Sincerely,

Richard J. Monocchio
Principal Deputy Assistant Secretary
Office of Public and Indian Housing
U.S. Department of Housing and Urban
Development

Roselyn Tso
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Roselyn Tso -S
Date: 2024.09.09
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Roselyn Tso
Director
Indian Health Service
U.S. Department of Health and
Human Services

APPENDIX B: SUMMARY OF WRITTEN TRIBAL COMMENTS

Tribes Supporting Maintaining the Prohibition

- At the end-of-year 2024 severe sanitation backlog remained (1,346+ projects; \$4.66B in need).
 - End-of-year 2025 Sanitation Deficiencies Systems (SDS) data indicates a sanitation backlog of 1,163 projects at a IHS eligible cost of \$5.3 B in need.
- Public health risks require focusing SFC funds on existing unsafe homes.
- Historical Tribal and Congressional intent supports maintaining the prohibition.
- 1996 Interdepartmental Agreement defines HUD, not IHS, responsibility for HUD home infrastructure.
- Redirecting SFC funds would disadvantage Tribes with highest deficiency needs.

Organizations in this category include:

- Toiyabe Indian Health Project, Inc.
- Swinomish Indian Tribal Community
- Alaska Native Tribal Health Consortium (ANTHC)
- Alaska Native Health Board (ANHB)
- Norton Sound Health Corporation

Tribes Supporting Removal of the Prohibition

- Severe housing shortages demand more flexibility.
- Mixed-use developments complicate funding distinctions.
- Tribal governments should determine priorities for sanitation funding.
- Infrastructure gaps impede the pace of housing development.

Organizations in this category include:

- Port Gamble S'Klallam Tribe
- Catawba Indian Nation
- Mississippi Band of Choctaw Indians
- Yakama Nation

Tribes Offering Mixed or Process-Focused Positions

- Primary challenges stem from insufficient appropriations in both HUD and IHS programs.
- Calls for updated MOUs or modernized interagency agreements.
- Need stronger Tribal participation in allocation decisions.
- Requests for expanded IHS technical assistance for planning, design, compliance, and coordination.

Organizations in this category include:

- Northwest Portland Area Indian Health Board (NPAIHB)
- Mille Lacs Band of Ojibwe
- Red Lake Nation
- Chickasaw Nation

Common Themes Across All Comments

- Funding for both IHS and HUD is insufficient for current and future infrastructure demand.
- Interagency coordination must improve, particularly planning, scheduling, and communication.
- Meaningful Tribal involvement must occur early and throughout policy development.
- Safe water and sanitation remain essential public health priorities.
- Climate change is increasing system vulnerability and infrastructure stress across Indian Country.

*Resource Information
for
Indian Housing Authorities
about the
Indian Health Service
Sanitation Facilities Construction Program*



August 1996

Prepared by the
Sanitation Facilities Construction Branch
Office of Environmental Health & Engineering
Indian Health Service
Rockville, Maryland

The Indian Health Service Sanitation Facilities Construction (SFC) Program Resource Information

Introduction

On July 31, 1959, Public Law (P.L.) 86-121, the Indian Sanitation Facilities Act, was signed by President Eisenhower. The passage of this Act was a milestone in Indian health legislation and led to the creation of a Sanitation Facilities Construction (SFC) Program within the Indian Health Service (IHS). Public Law 86-121 authorizes the SFC Program to provide essential water supply and sewage and solid waste disposal facilities for American Indian and Alaska Native homes and communities.

From 1959 through 1995, approximately 7,790 sanitation facilities construction projects that have provided water, sewer and/or solid waste disposal facilities for over 206,000 American Indian and Alaska Native homes, including approximately 74,900 Department of Housing and Urban Development (HUD) sponsored homes. In 1995 alone, the SFC Program, in partnership with the tribes and Indian Housing Authorities (IHAs), provided sanitation facilities using HUD funds to approximately 1,680 homes constructed by IHAs.

The level of IHS participation in HUD-funded projects can vary. IHS can provide professional engineering support to all types of HUD-funded housing projects (provided IHS has staff available at or near the location). However, the availability of IHS funds for sanitation facilities for HUD homes is dependent on the type of HUD program involved. The distinctions are described below. For projects where the IHS SFC Program provides significant engineering services and/or financial support, the roles and responsibilities of the tribe, the IHAs and the IHS SFC Program are established on a project by project basis using a Memorandum of Agreement (MOA).

IHS Engineering Support for HUD-Funded Housing Projects

Participation by IHS can consist of technical assistance in the areas of infrastructure planning, housing site feasibility reviews, and project plan reviews, and/or complete engineering and construction management services necessary to provide sanitation facilities for HUD-funded homes.

The SFC Program routinely provides technical assistance, such as reviews of engineering plans and specifications, to tribes and IHAs for on-site sanitation facilities for new HUD-funded home construction. Technical reviews of feasibility studies and assistance with grant applications also are often provided to tribes for a wide range of civil and sanitation facilities engineering projects. Project funds may be needed to cover some IHS costs, such as soils testing. The SFC Program also provides technical assistance to tribes in the development of tribal utility organizations for O&M and management of community water and sewer facilities. This assistance may include development of rate structures to determine appropriate customer water and sewer fees.

IHS Financial Support For HUD-Funded Housing Projects

- **HUD Native American Housing Program**

The HUD Native American Housing Program, implemented through the Indian Housing Authorities (IHAs), funds both the housing and supporting infrastructure, including sanitation facilities. When requested by a tribe and its IHA, the SFC Program endeavors to participate in the construction of sanitation facilities funded by HUD. While HUD funds the total cost of sanitation facilities for these new homes, the IHS SFC Program has the legislative authority to receive HUD funds from IHAs and tribes to provide the sanitation facilities for Indian homes financed by HUD. The IHS professional engineering services are provided to the IHA at no cost; however, the IHA may need to cover some engineering support costs with project funds, such as soil testing done in a laboratory.

- **HUD Indian Community Development Block Grants (CDBG)**

Existing homes renovated by a HUD Indian Community Development Block Grant (CDBG) project may be eligible for sanitation facilities from IHS. Generally the home should be brought up to a "like-new" condition.

CDBG grant funds for sanitation facilities projects, to enhance and expand community water and sewer infrastructure, can be transferred by a tribe to the IHS SFC Program to administer both the engineering and construction management. Often the IHS can provide supplemental funds.

- **HUD Indian HOME Program**

New houses constructed with HUD HOME funds are not eligible for IHS funded sanitation facilities; the sanitation facilities for these homes is also funded from the HOME grant. However, if the HOME grant is used to renovate existing Indian homes up to a "like-new" standard, IHS may be able to provide the necessary sanitation facilities.

- **HUD Loan Guarantee Program**

Individual Native Americans who independently finance their own homes with homeowner loan under the HUD Section 184 Housing Loan Guarantee Program are typically eligible for SFC Program water and sewer assistance. They must hold title to the home. All requests for IHS assistance must be made through the respective tribes of the interested applicants. If a tribe of IHA "buys down" a portion of the homeowner loan to reduce the monthly costs to the homeowner, the home may not be eligible for IHS assistance. This situation is addressed on a case-by-case basis depending on the source of the buy-down funds.

Steps to Consider When Planning Infrastructure for a HUD Housing Project

When developing HUD-financed housing projects, the following items should be considered in the development of the physical infrastructure:

- Consider what kinds of infrastructure are necessary for the housing development (i.e.; roads, water, sewer, electricity, telephone, drainage, solid waste disposal, natural gas, cable TV, etc.)
- Research all possible factors that may influence the planning and development of this project, such as: community master plans; existing and planned developments, utilities and roads; amount and location of future growth; Federal, State, and Tribal laws and other codes and regulations.
- Identify available resources, such as the Tribal planning department, County/State planning departments, architect and engineering companies, and the Indian Health Service.
- Identify your goals for successful infrastructure development. These may include customer satisfaction, affordability, simplicity, reliability, and easy maintenance.
- Early engineering involvement is critical in infrastructure planning. Engineers can assist with housing site reviews, existing infrastructure evaluations, environmental issues, permits, and cost projections.
- Engineering design considerations should include onsite or offsite water and sewer, soil conditions, flexibility for future adjacent housing, fire protection, low flow plumbing fixtures, and cost of operation and maintenance.
- Engineering construction considerations should include construction coordination, contract documents, construction inspections, and final inspections.
- After the housing infrastructure construction is complete, post construction engineering may be necessary for the start-up of the facilities, for training, for warranties, and for long-term maintenance schedules.
- Financial considerations are very important. Identify all available sources of funds for infrastructure for your project. These may include: Regional Utilities (electricity, telephone); HUD (Housing Program, HOME Program, or CDBG Program); BIA (roads); IHS Engineering Services; IHS (water, sewer, solid waste for non-HUD Housing); USDA Grants and Loans (Rural Utility Service); State assistance; and the U.S. Environmental Protection Agency.

Summary

To maximize the use of services and resources available through the IHS SFC Program, tribes and IHAs should contact their respective IHS Area program office in the application preparation phase of a project. Options for IHS participation in the HUD Native American Housing Program are outlined in the new Interdepartmental Agreement on Indian Housing signed in August of this year. Each SFC Area Program keeps extensive sanitation facility data on most tribes and reservations. This data can be of assistance to tribes and IHAs when siting housing projects and optimizing the use of existing infrastructure. In addition, SFC Programs regularly assist tribes with grant applications and coordination with other agencies, along with providing third party recommendation letters. This information and assistance can often enhance applications.

For more information about the SFC Program, contact the IHS Area office nearest you. A directory of IHS Area SFC Program offices is given in the Sanitation Facilities Construction Program Annual Report for 1995 and on the last page of this pamphlet.

IHS Area SFC Program Office Directory

Aberdeen Area Indian Health Service
115 4th Avenue, Southeast
Aberdeen, SD 57401
Ph. (605) 226-7451

Alaska Area Native Health Service
3925 Tudor Centre Drive
Anchorage, AK 99508-5997
Ph. (907) 271-4700

Albuquerque Area Indian Health Service
505 Marquette, NW, Suite 1407
Albuquerque, NM 87102
Ph. (505) 248-5479

Bemidji Area Indian Health Service
104 Federal Building
Bemidji, MN 56601-3060
Ph. (218) 759-3393

Billings Area Indian Health Service
P.O. Box 2143
Billings, MT 59102
Ph. (406) 657-6451

California Area Indian Health Service
1825 Bell Street, Suite 200
Sacramento, CA 95825-1097
Ph. (916) 566-7001

Nashville Area Indian Health Service
711 Stewarts Ferry Pike
Nashville, TN 37214-2634
Ph. (615) 736-2503

Navajo Area Indian Health Service
P.O. Box 9020
Window Rock, AZ 86515
Ph. (520) 871-5851

Oklahoma City Area Indian Health Service
3625 NW 56th Street, Five Corporate Plaza
Oklahoma City, OK 73112
Ph. (405) 951-3882

Phoenix Area Indian Health Service
3738 North 16th Street, Suite A
Phoenix, AZ 85016-5981
Ph. (602) 640-2038

Portland Area Indian Health Service
1220 SW 3rd Avenue, Room 476
Portland, OR 97204-2892
Ph. (503) 326-2001

Tucson Area Indian Health Service
7900 South J Stock Road
Tucson, AZ 85746-9352
Ph. (520) 295-2580

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for
Public and Indian Housing

[Docket No. FR-3763-N-02]

Notice of Interdepartmental
Agreement on Indian Housing Program

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

ACTION: Notice of Interdepartmental Agreement.

SUMMARY: This notice announces an Interdepartmental Agreement which sets forth the guidelines by which HUD, the Bureau of Indian Affairs, and the Indian Health Service will coordinate their efforts in the delivery of services and financial assistance to Tribes and Indian Housing Authorities.

EFFECTIVE DATE: [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room B-133, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 755-0032. Hearing- or speech-impaired individuals may access this number by calling the Federal Relay Service TTY at 1-800-877-8339. (With the exception of the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. September 2, 1994 Notice of Proposed Interdepartmental Agreement

On September 2, 1994 (59 FR 45702) HUD published a notice which proposed to set forth the working relationship among HUD, the Bureau of Indian Affairs (BIA), and the Indian Health Service (IHS) in the delivery of services to Tribes and Indian Housing Authorities (IHAs) in conjunction with the planning and construction of new housing developed with financial assistance of HUD's

Indian housing program.

The Interdepartmental Agreement (IA) establishes a general foundation for this cooperative effort and guidelines by which each of the three agencies will interact with Tribal governments and IHAs. The IA will be supplemented, as necessary, by individual Memorandums of Agreement (MOA) developed between local decision makers and the specific Federal agencies assisting in the development of the housing.

The BIA Housing Improvement Program (HIP) was eliminated from this IA to streamline the agreement among all signatory agencies in the development of HUD Indian housing programs. It is anticipated that the IHS and the BIA will be addressing the BIA-HIP separately. Other sections pertaining to program procedures are more appropriately covered in the program handbook or program NOFA and have been deleted from the IA.

HUD solicited public comments on the proposed IA. Eight comments were received. The following section of the preamble presents a summary of the comments raised by the commenters, and HUD's responses to these comments.

II. Comments on the September 2, 1994 Notice of Proposed Interdepartmental Agreement

Comment. Two commenters wrote that proposed section 5.2.1 of the IA, which concerns the construction of access roads, should be revised to clarify that the BIA "has responsibility for access roads which provide public access to cluster sites only and not private access to individual sites which the BIA is prohibited from constructing."

Response. HUD has adopted the comment by revising section 5.2.1 to exclude individual homesites from the access road construction requirements.

Comment. One commenter wrote that the language in proposed section 5.2.1 granting the BIA a lead time of 2 1/2 years in the construction of access roads should be revised. The commenter believed that "in the 2 1/2 year interim, the 'temporary' access road built by the IHA becomes unacceptable as there is a void of responsibility for constructing a permanent access road. The BIA should be required to pick up these roads immediately

after the IHA has completed the project."

Response. HUD has not revised the IA as a result of this comment. Due to budgetary prioritization, the 2 1/2 year time-frame is necessary for BIA to complete its part of the project.

Comment. Two of the commenters urged that the IA provide for greater coordination in National Environmental Policy Act (NEPA) compliance efforts. One of the commenters recommended that section 7.0 be revised to specify that each signatory agency will follow procedures in a manner which will avoid or minimize delays and that timelines for compliance will be included in time schedules worked out at the project coordination meeting. The other commenter suggested that the IA permit the designation of a lead agency "in performing NEPA compliance where the project encompasses the functions of all [three] agencies." The commenter believed this would expedite the development of a project by eliminating "multiple comment periods, multiple opportunities for litigation, and multiple FONSI's or EISs."

Response. Based upon the IHS's recommendation, HUD has revised the IA as a result of these comments. Section 7.0 now provides that in order to minimize delays, HUD, or the Tribal government which has assumed HUD's NEPA responsibility, shall be the lead agency for the preparation of all required environmental statements.

Comment. One commenter wrote that the IA should address land acquisitions since, according to the commenter, "acquisitions require as much coordination between the BIA and HUD as does development." Specifically, the commenter believes the BIA should delegate authority to area offices to approve land acquisitions. Alternatively, the commenter proposed that the BIA designate a person to exclusively review and approve HUD financed land acquisitions. Moreover, the commenter suggested that the IA require NEPA review of these acquisitions.

The commenter also suggested that HUD and the BIA coordinate their acquisition related time requirements. The commenter believed that, due to the time needed by the BIA to take land in trust, some IHAs may not be able to

meet HUD's requirement that construction commence within 30 months of a program reservation date. The commenter urged that HUD and the BIA "negotiate time lines and procedures to avoid these conflicts."

Response. HUD and the BIA will work more closely in coordinating time requirements.

Comment. One commenter wrote to suggest that proposed section 2.2 of the IA be revised to specify that the BIA will review and approve all Tribal trust, restricted fee and allotted land housing leases in accordance with 25 CFR part 162. Furthermore, the commenter suggested additional language stating that BIA will review and approve all easements to housing sites in accordance with 25 CFR part 169. Lastly, the commenter recommended that proposed section 2.3 be revised to require that all housing sites have approved easements and leases before the start of construction.

Response. HUD has adopted the first two elements of this comment. In reference to requiring the IHAs to complete all easements and leases prior to construction, this is a requirement that is inappropriate for this IA since the IA does not encompass the Indian Housing Authorities. This is a requirement that would more appropriately be added to the local Memorandum of Understanding (MOU).

Comment. One commenter objected to the fact that proposed section 2.2 of the IA "does not specifically state that the BIA is responsible for funding access road construction in HUD assisted housing projects." According to the commenter, "this weakens the BIA's responsibility of supporting HUD-assisted housing projects."

Response. HUD has not adopted this comment. The IA does not have the force of law, but merely sets forth the coordination efforts of HUD, the BIA, and the IHS. Accordingly, the comment is inappropriate for inclusion in the IA.

Comment. Two commenters objected to the language in proposed section 6.3, IHS PARTICIPATION IN HUD FUNDED SANITATION FACILITIES CONSTRUCTION, which states that the IHS "may participate" in the construction of sanitation

facilities. According to the commenters "this statement does not adequately commit the IHS to execute their responsibility for sanitation system development which servers [sic] Native Americans."

Response. Based on the IHS's recommendation, HUD has adopted this comment by revising section 6.3 to require that the IHS endeavor to participate in the construction of sanitation facilities.

Comment. One commenter wrote that because the IA's scope is limited to Indian mutual help and low rent programs, it does not go far enough in achieving coordination between the signatory Federal agencies. The commenter recommended that other programs, such as Indian HOME and the BIA Housing Improvement Program (HIP) be included in the IA.

Response. HUD has not revised the IA as a result of this comment. The HOME and HIP programs have different requirements and agency responsibilities. If the coordination of efforts becomes a problem for these programs, separate agreements can be negotiated.

Comment. One of the commenters recommended that language be inserted in section 5.0, DEVELOPMENT OF ON-SITE AND OFF-SITE ROADS, which includes the "standards of road design and construction that would be required to assure States, cities, counties, townships, etc. assume responsibility for the maintenance and up-keep of roads and streets within the on-site construction area." These standards would be in effect when the State and local government have construction and design requirements that exceed ASHTO requirements.

Response. HUD has not revised the IA as a result of this comment. Under 24 CFR 905.250, the IHAs are already required to comply with appropriate local road design standards.

Comment. One of the commenters recommended that the IA specify which agencies are responsible for the costs of complying with Federal, State, or local statutory requirements. Among other examples, the commenter pointed to the costs associated with meeting EPA environmental requirements.

Response. HUD has not revised the IA as a result of this comment. The question of financial responsibility for complying with the various statutory

requirements is more properly addressed in the individual MOAs.

Comment. One commenter wrote that the IA was vague concerning IHS duties. The commenter urged that the IA be revised to specify that the IHS has the responsibility of providing water, waste water and solid waste facilities, and O&M infrastructure.

Response. Based on the IHS's recommendation, HUD has adopted this comment by revising section 6.2. This section now details the IHS's statutory authority and responsibility for utilizing HUD funds to provide sanitation facilities for HUD financed Indian homes.

The text of the Interdepartmental Agreement follows:

INTERDEPARTMENTAL AGREEMENT
ON THE INDIAN HOUSING PROGRAM

THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT--
OFFICE OF NATIVE AMERICAN PROGRAMS

THE DEPARTMENT OF INTERIOR--BUREAU OF INDIAN AFFAIRS

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES--
INDIAN HEALTH SERVICE

1.0 STATEMENT OF PURPOSE.

The purpose of the Interdepartmental Agreement (IA) is to set forth the working relationship among the Department of Housing and Urban Development (HUD), the Bureau of Indian Affairs (BIA), and the Indian Health Service (IHS) in the delivery of services to Tribes and Indian Housing Authorities (IHAs) in conjunction with the planning and construction of new Indian housing developments. The above agencies share a common goal to assist Tribes in improving their living environment through the delivery of quality housing and

infrastructure. This goal can be more readily achieved with an efficient and integrated utilization of available resources.

This Interdepartmental Agreement establishes a general foundation for this cooperative effort and the guidelines by which each of the three agencies will interact with Tribal governments and IHAs. The IA will be supplemented, as necessary, by individual Memorandums of Agreement (MOA) developed between local decision-makers and the specific federal agencies assisting in the development of the housing.

2.0 GENERAL AGENCY RESPONSIBILITIES.

2.1 HUD RESPONSIBILITIES. HUD will provide financial and technical assistance for the development and management of low income housing and community developments in Indian and Alaska Native areas through the mutual help/low rent Indian Housing Development Program.

2.2 BIA RESPONSIBILITIES. BIA will provide real estate and transportation assistance to IHAs pursuant to 25 CFR parts 162, 169, and 170. These services may include (i) assistance in preparing appropriate lease documents for housing sites and required easements; (ii) review, approval and recordation of all required trust or restricted fee land lease and easement documents; where resources are available, providing assistance in obtaining real estate appraisals; (iii) development of access roads to housing sites in accordance with the Tribe's road priorities; (iv) providing maintenance services to those IHA constructed roads and streets accepted into the BIA road systems in accordance with 25 CFR part 170; and (v) provision of other support, when available, necessary for the timely development of housing.

2.3 IHS RESPONSIBILITIES. The IHS provides a comprehensive primary and preventive health services delivery system for American Indians and Alaska Natives. The environmental health component of IHS assists Tribes in the development of Tribal sanitation facilities [water, waste water, and solid waste facilities and operation & maintenance (O&M) infrastructure]. IHS has the primary responsibility and authority to provide Native American homes and

communities with the necessary sanitation facilities and related services.

3.0 AGENCY COORDINATION.

3.1 PROCESSING PROCEDURES. The signatories of the IA agree to maintain timely and relevant processing of regulations, handbooks, notices and other administrative guidance for use by Tribes and IHAs. All signatory agencies will be given an opportunity to comment on such documents before they are made effective.

3.2 PROGRAM ADMINISTRATION. The signatories of the IA agree to enforce the provisions of current program guidelines with their respective area/regional offices. Disputes between or among the signatory agencies may be made in writing to the head of the appropriate area or field office involved, with a copy to the other agencies. Unresolved disputes extending more than 90 days beyond the date of submission shall be referred, in writing, to the Headquarters Working Group for resolution. This group is composed of the Director, Office of Native American Programs in HUD; Director, Office of Trust Responsibilities in BIA; and the Director, Division of Environmental Health in IHS.

3.3 INFORMATION SHARING. Whenever possible, the signatory agencies will provide, or cause to be provided, copies of housing and supporting infrastructure planning documents, to include utility master plans, transportation plans, and IHA comprehensive housing plans, to the appropriate area/regional offices of other signatory agencies.

HUD Field Offices of Native American Programs will provide quarterly reports on the progress of HUD's assisted housing projects to BIA and IHS. These reports will indicate the method of construction, project number, and number of units. Scheduled and actual completion dates for applicable project review points will be provided, where available.

3.4 GRANT AWARD. Signatory agencies will provide copies of applicable housing and supporting infrastructure grant/project award notices to the other signatory agencies as soon as practicable after notification to Tribes.

4.0 DEVELOPMENT OF HOUSING UNITS.

4.1 HUD RESPONSIBILITIES.

4.1.1 **Applications.** HUD will advise IHAs to use BIA and IHS information on existing infrastructure and new construction recommendations to support proposed housing project applications for funding.

4.1.2 **Project Coordination.** HUD will advise IHAs to use handbooks concerning procedures the IHA may use to determine what assistance they need from the BIA and IHS. At the request of a Tribe through the IHA, the BIA (including Area Road Engineers and Realty Officers) and IHS will provide, to the extent feasible, technical reviews and recommendations on project planning, design and construction documents involving supporting infrastructure, and related requirements at appropriate project review points. Appropriate project review points will be determined on a project by project basis and may include: project coordination schedule review, housing site feasibility review, project plan review, project final inspection, and record drawings review. Schedules or commitments made as a result of project coordination require the approval of the appropriate IHS and/or BIA official.

4.1.3 **Standard vs Assisted Housing Development Method.** The Standard Method of development refers to all procedures, guidelines and requirements associated with the normal development of an Indian housing project by an administratively capable IHA. The Assisted Method contains all of the procedures, guidelines and requirements associated with the development of an Indian housing development by an IHA which has requested additional HUD assistance due to its inexperience or lack of staff resources, or by an IHA which has been deemed by HUD to need additional assistance, monitoring and supervision during the development process. The Standard Method will require less technical assistance by the signatory agencies as compared to the Assisted Method.

4.2 BIA RESPONSIBILITIES.

Leases, Easements and Real Estate Appraisals on Trust or Restricted Fee Property. Where resources are available, the BIA will provide real estate

appraisals at the request of the IHA. All leases and easements shall be approved by the BIA.

5.0 DEVELOPMENT OF ON-SITE AND OFF-SITE ROADS.

5.1 HUD RESPONSIBILITIES.

On-Site Street Construction. HUD will provide sufficient funds for the construction of on-site streets, in accordance with the American Association of State Highway and Transportation Officials (AASHTO) standards. The IHA will have the overall responsibility for construction of on-site streets. The Tribal government must determine the type of streets to be constructed in conjunction with housing projects, and whether the streets will be included in the BIA Roads System for maintenance by the BIA. HUD will advise each IHA and Tribe which receives a HUD Housing Grant that the on-site streets must be designed and constructed to AASHTO standards to be eligible for inclusion on the BIA Roads System.

5.2 BIA RESPONSIBILITIES.

5.2.1 Access Road Construction. When requested by the Tribal government, and when resources are available, the BIA will plan and construct access roads to housing developments, excluding individual homesites. Sufficient lead time is required to develop access roads. This lead time may be as much as 2 1/2 years. The BIA will coordinate access road construction with the IHA and make every effort to complete such roads prior to the completion of the housing project.

5.2.2 Road/Street Maintenance. IHA-developed streets may be added to the BIA Roads System only when the street(s) and related curb, gutters and drainage features have been built to acceptable AASHTO specifications and standards as well as to the requirements of section 504 of the Americans with Disabilities Act, and the right-of-way is transferred to the BIA. When requested by the Tribal government, and when resources are available, the BIA Area Office will accept IHA developed streets on the BIA Roads System and will provide ongoing maintenance for those streets that meet

the above specifications and standards.

6.0 DEVELOPMENT OF SANITATION FACILITIES.

6.1 HUD RESPONSIBILITY. To the extent that funds are appropriated by Congress, HUD will provide funding to IHAs to develop water, waste water, solid waste facilities, and O&M infrastructure necessary to support individual low-rent or mutual help housing projects financed by HUD. O&M infrastructure includes the plant, equipment, tools and training needed by utility authorities to provide continuing sanitation service to the residents of HUD-financed homes, as well as the long range planning necessary to identify and implement those requirements.

6.2 IHS AUTHORITY. Under section 302 (b) (3) of the Indian Health Care Improvement Act, the IHS has the authority to receive HUD funds to provide sanitation facilities for Indian homes financed by HUD.

6.3 IHS PARTICIPATION IN HUD FUNDED SANITATION FACILITIES CONSTRUCTION. When requested by the Tribe and the IHA, IHS will endeavor to participate in the construction of sanitation facilities funded by HUD under the mutual help/low rent HUD-assisted housing development program. IHS participation will be on a project by project basis, pursuant to an approved MOA duly executed by the IHA, Tribe, IHS, and if necessary, HUD.

6.4 INDIVIDUAL AND COMMUNITY SANITATION SYSTEMS. Where it is determined that sanitation facilities are feasible and necessary, the following conditions will apply:

6.4.1 HUD will finance the installation of all dwelling plumbing facilities.

6.4.2 Where facilities serve only HUD-assisted housing project homes, HUD will fund the total cost of the sanitation facilities necessary to serve the project. Where HUD-assisted housing project homes are interspersed with existing homes also served by a sanitation facility, HUD shall fund a prorated share of sanitation facilities costs. All community sanitation system construction, improvement, or expansion will be designed on the basis of a

total community concept, such that the proposed sanitation facilities are (a) safe and adequate to meet the environmental health needs of residents, (b) compatible with Tribal infrastructure development, (c) economically feasible to construct and operate, and (d) in compliance with applicable codes, ordinances, and industry standards.

7.0 ENVIRONMENTAL COMPLIANCE. Each signatory agency (HUD, BIA, and IHS) shall be responsible for following its own applicable procedures addressing the requirements of the National Environmental Policy Act (NEPA), and related and/or similar environmental legislation and/or Executive Orders. A Memorandum of Understanding (MOU), dated June 21, 1991, signed by BIA, HUD, IHS, and the Environmental Protection Agency, clarifies each agency's role in environmental protection.

In the implementation of the roles and responsibilities identified in the MOU and herein, signatory agencies will, to the extent feasible, adopt and/or combine environmental documents which are provided by the other signatory agencies. Joint use of environmental documents that comply with NEPA and related regulations will reduce duplication and paperwork. Copies of one signatory agency's environmental determination documentation (e.g., archeological review) may be required by another signatory agency prior to granting approvals; however, the approving agency shall not require the applying agency to change procedures, format, etc., during the review process and prior to granting its approval.

Unless otherwise provided for in a duly executed MOA, HUD, or a Tribal government which has assumed HUD's NEPA responsibility, shall be the lead agency for the preparation of environmental review, assessments and impact statements in compliance with NEPA for all HUD-assisted housing and related

infrastructure projects. When BIA and IHS participate directly in these projects, they shall be cooperating agencies for the purposes of NEPA compliance.

MAY 6 1996

Date: _____



Henry G. Cisneros, Secretary
Department of Housing and Urban Development

infrastructure projects. When BIA and IHS participate directly in these projects, they shall be cooperating agencies for the purposes of NEPA compliance.

AUG 19 1996

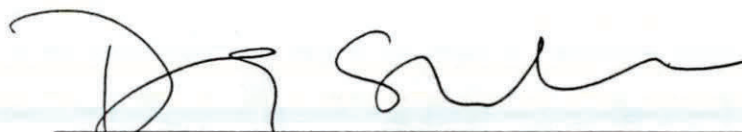
Date: _____



Bruce Babbitt, Secretary
Department of the Interior

infrastructure projects. When BIA and IHS participate directly in these projects, they shall be cooperating agencies for the purposes of NEPA compliance.

Date: April 30 1996



Donna E. Shalala, Secretary
Department of Health and Human Services

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR-3763-N-02]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Interdepartmental Agreement on Indian Housing Program

AGENCIES: Offices of the Indian Health Service (HHS); the Assistant Secretary for Public and Indian Housing, (HUD); and the Bureau of Indian Affairs, (Interior).

ACTION: Notice of Interdepartmental Agreement.

SUMMARY: This notice announces an Interdepartmental Agreement which sets forth the guidelines by which HUD, the Bureau of Indian Affairs, and the Indian Health Service will coordinate their efforts in the delivery of services and financial assistance to Tribes and Indian Housing Authorities.

EFFECTIVE DATE: September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room B-133, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 755-0032. Hearing- or speech-impaired individuals may access this number by calling the Federal Relay Service TTY at 1-800-877-8339. (With the exception of the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. September 2, 1994 Notice of Proposed Interdepartmental Agreement

On September 2, 1994 (59 FR 45702) HUD published a notice which proposed to set forth the working relationship among HUD, the Bureau of Indian Affairs (BIA), and the Indian Health Service (IHS) in the delivery of services to Tribes and Indian Housing Authorities (IHAs) in conjunction with the planning and construction of new housing developed with financial assistance of HUD's Indian housing program.

The Interdepartmental Agreement (IA) establishes a general foundation for this cooperative effort and guidelines by

which each of the three agencies will interact with Tribal governments and IHAs. The IA will be supplemented, as necessary, by individual Memorandums of Agreement (MOA) developed between local decision makers and the specific Federal agencies assisting in the development of the housing.

The BIA Housing Improvement Program (HIP) was eliminated from this IA to streamline the agreement among all signatory agencies in the development of HUD Indian housing programs. It is anticipated that the IHS and the BIA will be addressing the BIA-HIP separately. Other sections pertaining to program procedures are more appropriately covered in the program handbook or program NOFA and have been deleted from the IA.

HUD solicited public comments on the proposed IA. Eight comments were received. The following section of the preamble presents a summary of the comments raised by the commenters, and HUD's responses to these comments.

II. Comments on the September 2, 1994 Notice of Proposed Interdepartmental Agreement

Comment. Two commenters wrote that proposed section 5.2.1 of the IA, which concerns the construction of access roads, should be revised to clarify that the BIA "has responsibility for access roads which provide public access to cluster sites only and not private access to individual sites which the BIA is prohibited from constructing."

Response. HUD has adopted the comment by revising section 5.2.1 to exclude individual homesites from the access road construction requirements.

Comment. One commenter wrote that the language in proposed section 5.2.1 granting the BIA a lead time of 2½ years in the construction of access roads should be revised. The commenter believed that "in the 2½ year interim, the 'temporary' access road built by the IHA becomes unacceptable as there is a void of responsibility for constructing a permanent access road. The BIA should be required to pick up these roads immediately after the IHA has completed the project."

Response. HUD has not revised the IA as a result of this comment. Due to budgetary prioritization, the 2½ year time-frame is necessary for BIA to complete its part of the project.

Comment. Two of the commenters urged that the IA provide for greater coordination in National Environmental Policy Act (NEPA) compliance efforts. One of the commenters recommended that section 7.0 be revised to specify

that each signatory agency will follow procedures in a manner which will avoid or minimize delays and that timelines for compliance will be included in time schedules worked out at the project coordination meeting. The other commenter suggested that the IA permit the designation of a lead agency "in performing NEPA compliance where the project encompasses the functions of all [three] agencies." The commenter believed this would expedite the development of a project by eliminating "multiple comment periods, multiple opportunities for litigation, and multiple FONSI or EISs."

Response. Based upon the IHS's recommendation, HUD has revised the IA as a result of these comments. Section 7.0 now provides that in order to minimize delays, HUD, or the Tribal government which has assumed HUD's NEPA responsibility, shall be the lead agency for the preparation of all required environmental statements.

Comment. One commenter wrote that the IA should address land acquisitions since, according to the commenter, "acquisitions require as much coordination between the BIA and HUD as does development." Specifically, the commenter believes the BIA should delegate authority to area offices to approve land acquisitions. Alternatively, the commenter proposed that the BIA designate a person to exclusively review and approve HUD financed land acquisitions. Moreover, the commenter suggested that the IA require NEPA review of these acquisitions.

The commenter also suggested that HUD and the BIA coordinate their acquisition related time requirements. The commenter believed that, due to the time needed by the BIA to take land in trust, some IHAs may not be able to meet HUD's requirement that construction commence within 30 months of a program reservation date. The commenter urged that HUD and the BIA "negotiate time lines and procedures to avoid these conflicts."

Response. HUD and the BIA will work more closely in coordinating time requirements.

Comment. One commenter wrote to suggest that proposed section 2.2 of the IA be revised to specify that the BIA will review and approve all Tribal trust, restricted fee and allotted land housing leases in accordance with 25 CFR part 162. Furthermore, the commenter suggested additional language stating that BIA will review and approve all easements to housing sites in accordance with 25 CFR part 169. Lastly, the commenter recommended that proposed section 2.3 be revised to

require that all housing sites have approved easements and leases before the start of construction.

Response. HUD has adopted the first two elements of this comment. In reference to requiring the IHAs to complete all easements and leases prior to construction, this is a requirement that is inappropriate for this IA since the IA does not encompass the Indian Housing Authorities. This is a requirement that would more appropriately be added to the local Memorandum of Understanding (MOU).

Comment. One commenter objected to the fact that proposed section 2.2 of the IA "does not specifically state that the BIA is responsible for funding access road construction in HUD assisted housing projects." According to the commenter, "this weakens the BIA's responsibility of supporting HUD-assisted housing projects."

Response. HUD has not adopted this comment. The IA does not have the force of law, but merely sets forth the coordination efforts of HUD, the BIA, and the IHS. Accordingly, the comment is inappropriate for inclusion in the IA.

Comment. Two commenters objected to the language in proposed section 6.3, *IHS PARTICIPATION IN HUD FUNDED SANITATION FACILITIES CONSTRUCTION*, which states that the IHS "may participate" in the construction of sanitation facilities. According to the commenters "this statement does not adequately commit the IHS to execute their responsibility for sanitation system development which servers [sic] Native Americans."

Response. Based on the IHS's recommendation, HUD has adopted this comment by revising section 6.3 to require that the IHS endeavor to participate in the construction of sanitation facilities.

Comment. One commenter wrote that because the IA's scope is limited to Indian mutual help and low rent programs, it does not go far enough in achieving coordination between the signatory Federal agencies. The commenter recommended that other programs, such as Indian HOME and the BIA Housing Improvement Program (HIP) be included in the IA.

Response. HUD has not revised the IA as a result of this comment. The HOME and HIP programs have different requirements and agency responsibilities. If the coordination of efforts becomes a problem for these programs, separate agreements can be negotiated.

Comment. One of the commenters recommended that language be inserted in section 5.0, *DEVELOPMENT OF ON-SITE AND OFF-SITE ROADS*, which

includes the "standards of road design and construction that would be required to assure States, cities, counties, townships, etc. assume responsibility for the maintenance and up-keep of roads and streets within the on-site construction area." These standards would be in effect when the State and local government have construction and design requirements that exceed ASHTO requirements.

Response. HUD has not revised the IA as a result of this comment. Under 24 CFR 905.250, the IHAs are already required to comply with appropriate local road design standards.

Comment. One of the commenters recommended that the IA specify which agencies are responsible for the costs of complying with Federal, State, or local statutory requirements. Among other examples, the commenter pointed to the costs associated with meeting EPA environmental requirements.

Response. HUD has not revised the IA as a result of this comment. The question of financial responsibility for complying with the various statutory requirements is more properly addressed in the individual MOAs.

Comment. One commenter wrote that the IA was vague concerning IHS duties. The commenter urged that the IA be revised to specify that the IHS has the responsibility of providing water, waste water and solid waste facilities, and O&M infrastructure.

Response. Based on the IHS's recommendation, HUD has adopted this comment by revising section 6.2. This section now details the IHS's statutory authority and responsibility for utilizing HUD funds to provide sanitation facilities for HUD financed Indian homes.

The text of the Interdepartmental Agreement follows:

Interdepartmental Agreement on the Indian Housing Program

The Department of Housing and Urban Development—Office of Native American Programs

The Department of Interior—Bureau of Indian Affairs

The Department of Health and Human Services—Indian Health Service

1.0 Statement of Purpose

The purpose of the Interdepartmental Agreement (IA) is to set forth the working relationship among the Department of Housing and Urban Development (HUD), the Bureau of Indian Affairs (BIA), and the Indian Health Service (IHS) in the delivery of services to Tribes and Indian Housing Authorities (IHAs) in conjunction with

the planning and construction of new Indian housing developments. The above agencies share a common goal to assist Tribes in improving their living environment through the delivery of quality housing and infrastructure. This goal can be more readily achieved with an efficient and integrated utilization of available resources.

This Interdepartmental Agreement establishes a general foundation for this cooperative effort and the guidelines by which each of the three agencies will interact with Tribal governments and IHAs. The IA will be supplemented, as necessary, by individual Memorandums of Agreement (MOA) developed between local decision-makers and the specific federal agencies assisting in the development of the housing.

2.0 General Agency Responsibilities

2.1 HUD Responsibilities. HUD will provide financial and technical assistance for the development and management of low income housing and community developments in Indian and Alaska Native areas through the mutual help/low rent Indian Housing Development Program.

2.2 BIA Responsibilities. BIA will provide real estate and transportation assistance to IHAs pursuant to 25 CFR parts 162, 169, and 170. These services may include (i) assistance in preparing appropriate lease documents for housing sites and required easements; (ii) review, approval and recordation of all required trust or restricted fee land lease and easement documents; where resources are available, providing assistance in obtaining real estate appraisals; (iii) development of access roads to housing sites in accordance with the Tribe's road priorities; (iv) providing maintenance services to those IHA constructed roads and streets accepted into the BIA road systems in accordance with 25 CFR part 170; and (v) provision of other support, when available, necessary for the timely development of housing.

2.3 IHS Responsibilities. The IHS provides a comprehensive primary and preventive health services delivery system for American Indians and Alaska Natives. The environmental health component of IHS assists Tribes in the development of Tribal sanitation facilities [water, waste water, and solid waste facilities and operation & maintenance (O&M) infrastructure]. IHS has the primary responsibility and authority to provide Native American homes and communities with the necessary sanitation facilities and related services.

3.0 Agency Coordination

3.1 *Processing Procedures.* The signatories of the IA agree to maintain timely and relevant processing of regulations, handbooks, notices and other administrative guidance for use by Tribes and IHAs. All signatory agencies will be given an opportunity to comment on such documents before they are made effective.

3.2 *Program Administration.* The signatories of the IA agree to enforce the provisions of current program guidelines with their respective area/regional offices. Disputes between or among the signatory agencies may be made in writing to the head of the appropriate area or field office involved, with a copy to the other agencies. Unresolved disputes extending more than 90 days beyond the date of submission shall be referred, in writing, to the Headquarters Working Group for resolution. This group is composed of the Director, Office of Native American Programs in HUD; Director, Office of Trust Responsibilities in BIA; and the Director, Division of Environmental Health in IHS.

3.3 *Information Sharing.* Whenever possible, the signatory agencies will provide, or cause to be provided, copies of housing and supporting infrastructure planning documents, to include utility master plans, transportation plans, and IHA comprehensive housing plans, to the appropriate area/regional offices of other signatory agencies.

HUD Field Offices of Native American Programs will provide quarterly reports on the progress of HUD's assisted housing projects to BIA and IHS. These reports will indicate the method of construction, project number, and number of units. Scheduled and actual completion dates for applicable project review points will be provided, where available.

3.4 *Grant Award.* Signatory agencies will provide copies of applicable housing and supporting infrastructure grant/project award notices to the other signatory agencies as soon as practicable after notification to Tribes.

4.0 Development of Housing Units

4.1 HUD Responsibilities.

4.1.1 *Applications.* HUD will advise IHAs to use BIA and IHS information on existing infrastructure and new construction recommendations to support proposed housing project applications for funding.

4.1.2 *Project Coordination.* HUD will advise IHAs to use handbooks concerning procedures the IHA may use to determine what assistance they need from the BIA and IHS. At the request of

a Tribe through the IHA, the BIA (including Area Road Engineers and Realty Officers) and IHS will provide, to the extent feasible, technical reviews and recommendations on project planning, design and construction documents involving supporting infrastructure, and related requirements at appropriate project review points. Appropriate project review points will be determined on a project by project basis and may include: project coordination schedule review, housing site feasibility review, project plan review, project final inspection, and record drawings review. Schedules or commitments made as a result of project coordination require the approval of the appropriate IHS and/or BIA official.

4.1.3 *Standard vs Assisted Housing Development Method.* The Standard Method of development refers to all procedures, guidelines and requirements associated with the normal development of an Indian housing project by an administratively capable IHA. The Assisted Method contains all of the procedures, guidelines and requirements associated with the development of an Indian housing development by an IHA which has requested additional HUD assistance due to its inexperience or lack of staff resources, or by an IHA which has been deemed by HUD to need additional assistance, monitoring and supervision during the development process. The Standard Method will require less technical assistance by the signatory agencies as compared to the Assisted Method.

4.2 BIA Responsibilities.

Leases, Easements and Real Estate Appraisals on Trust or Restricted Fee Property. Where resources are available, the BIA will provide real estate appraisals at the request of the IHA. All leases and easements shall be approved by the BIA.

5.0 Development of On-site and Off-site Roads

5.1 HUD Responsibilities.

On-Site Street Construction. HUD will provide sufficient funds for the construction of on-site streets, in accordance with the American Association of State Highway and Transportation Officials (AASHTO) standards. The IHA will have the overall responsibility for construction of on-site streets. The Tribal government must determine the type of streets to be constructed in conjunction with housing projects, and whether the streets will be included in the BIA Roads System for maintenance by the BIA. HUD will advise each IHA and Tribe which receives a HUD Housing

Grant that the on-site streets must be designed and constructed to AASHTO standards to be eligible for inclusion on the BIA Roads System.

5.2 BIA Responsibilities.

5.2.1 Access Road Construction.

When requested by the Tribal government, and when resources are available, the BIA will plan and construct access roads to housing developments, excluding individual homesites. Sufficient lead time is required to develop access roads. This lead time may be as much as 2½ years. The BIA will coordinate access road construction with the IHA and make every effort to complete such roads prior to the completion of the housing project.

5.2.2 *Road/Street Maintenance.* IHA-developed streets may be added to the BIA Roads System only when the street(s) and related curb, gutters and drainage features have been built to acceptable AASHTO specifications and standards as well as to the requirements of section 504 of the Americans with Disabilities Act, and the right-of-way is transferred to the BIA. When requested by the Tribal government, and when resources are available, the BIA Area Office will accept IHA developed streets on the BIA Roads System and will provide ongoing maintenance for those streets that meet the above specifications and standards.

6.0 Development of Sanitation Facilities

6.1 *HUD Responsibility.* To the extent that funds are appropriated by Congress, HUD will provide funding to IHAs to develop water, waste water, solid waste facilities, and O&M infrastructure necessary to support individual low-rent or mutual help housing projects financed by HUD. O&M infrastructure includes the plant, equipment, tools and training needed by utility authorities to provide continuing sanitation service to the residents of HUD-financed homes, as well as the long range planning necessary to identify and implement those requirements.

6.2 *IHS Authority.* Under section 302(b)(3) of the Indian Health Care Improvement Act, the IHS has the authority to receive HUD funds to provide sanitation facilities for Indian homes financed by HUD.

6.3 IHS Participation in HUD Funded Sanitation Facilities

Construction. When requested by the Tribe and the IHA, IHS will endeavor to participate in the construction of sanitation facilities funded by HUD under the mutual help/low rent HUD-assisted housing development program. IHS participation will be on a project by

project basis, pursuant to an approved MOA duly executed by the IHA, Tribe, IHS, and if necessary, HUD.

6.4 *Individual and Community Sanitation Systems.* Where it is determined that sanitation facilities are feasible and necessary, the following conditions will apply:

6.4.1 HUD will finance the installation of all dwelling plumbing facilities.

6.4.2 Where facilities serve only HUD-assisted housing project homes, HUD will fund the total cost of the sanitation facilities necessary to serve the project. Where HUD-assisted housing project homes are interspersed with existing homes also served by a sanitation facility, HUD shall fund a prorated share of sanitation facilities costs. All community sanitation system construction, improvement, or expansion will be designed on the basis of a total community concept, such that the proposed sanitation facilities are (a) safe and adequate to meet the environmental health needs of residents, (b) compatible with Tribal infrastructure development, (c) economically feasible to construct and operate, and (d) in compliance with applicable codes, ordinances, and industry standards.

7.0 *Environmental Compliance*

Each signatory agency (HUD, BIA, and IHS) shall be responsible for following its own applicable procedures addressing the requirements of the National Environmental Policy Act (NEPA), and related and/or similar environmental legislation and/or Executive Orders. A Memorandum of Understanding (MOU), dated June 21, 1991, signed by BIA, HUD, IHS, and the Environmental Protection Agency, clarifies each agency's role in environmental protection.

In the implementation of the roles and responsibilities identified in the MOU and herein, signatory agencies will, to the extent feasible, adopt and/or combine environmental documents which are provided by the other signatory agencies. Joint use of environmental documents that comply with NEPA and related regulations will reduce duplication and paperwork. Copies of one signatory agency's environmental determination documentation (e.g., archeological review) may be required by another signatory agency prior to granting approvals; however, the approving agency shall not require the applying agency to change procedures, format,

etc., during the review process and prior to granting its approval.

Unless otherwise provided in a duly executed MOA, HUD, or a Tribal government which has assumed HUD's NEPA responsibility, shall be the lead agency for the preparation of environmental review, assessments and impact statements in compliance with NEPA for all HUD-assisted housing and related infrastructure projects. When BIA and IHS participate directly in these projects, they shall be cooperating agencies for the purposes of NEPA compliance.

Dated: April 30, 1996.

Donna E. Shalala,
Secretary, Department of Health and Human Services.

Dated: August 19, 1996.

Bruce Babbitt,
Secretary, Department of the Interior.

Dated: May 6, 1996.

Henry G. Cisneros,
Secretary, Department of Housing and Urban Development.

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