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INDIAN HOUSING: 1961-1971, A DECADE OF CONTINUING CRISIS*

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More than a decade has passed since the existence of a housing problem among the Indians¹ was first recognized by the federal government. Despite this recognition, housing conditions for the vast majority² of Indians have not improved and it is questionable whether the situation will change substantially in the coming decade.

The purpose of this article is to review a number of the reports issued since 1961 regarding the condition of Indian housing—including a brief description of the major programs, to evaluate the response of the federal government to those reports, and to comment upon the present ability of the federal government to solve the Indian housing problem.

A review of the reports and recommendations that have been made in the past ten years regarding Indian housing reveals that many of the problems that were recognized in the early sixties still exist today. Despite the chronic state of Indian housing some of the problems emphasized by the reports have been solved or alleviated. But the full impact of such solutions has not been realized

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1. For the purposes of this article, the term Indian includes Alaskan Natives, Aleuts and Eskimos. Unless otherwise specified the term also refers to those Indians that live on or near restricted land areas—more commonly referred to as reservations. This is a commonly accepted definition. For example, the service population of the Bureau of Indian Affairs "includes the various reservations . . . [and] Indian lands and communities such as Nevada Colonies, California Rancheries, New Mexico Pueblos and communities and . . . the former Oklahoma Reservation areas." *Hearings before a Subcomm. of the Comm. on Appropriations*, 91st Cong., 2nd Sess. 1939 (1970). According to the 1971 U.S. Census there are 826,869 Indians including Aleuts and Eskimos. The BIA and IHS estimate that about 460,000 Indians live on or near reservations.

2. The consolidated FY-71 Area Housing Inventory estimates that there are 85,858 existing homes. 34,735 of the housing units need replacement, 20,739 need renovating, 4,184 are lacking one or more utilities and 15,105 families need new housing due to overcrowding. The total need for replacement of new and repaired homes is 74,763.

in the form of new and better housing since the majority of the housing problems are interrelated. A partial solution in one program area has little or no effect upon the end product of increasing the standard housing supply for Indians.

The ineffectiveness of partial responses by the federal government is further exacerbated in the case of the Indians because of the involvement of a minimum of three agencies³ in every housing project, and because of the various cultures and traditions of the American Indian.⁴

In 1961, a Task Force on Indian Affairs appointed by Secretary Udall recognized (in 3 pages of a 77-page report) the magnitude of the Indian housing program and the apathy of both the Indians and the federal government in providing a solution to the substandard condition of Indian housing.⁵ The Task Force briefly summarized its findings and suggested that the existing federal housing programs could be utilized to solve the dire Indian housing need, provided that certain problems could be solved. The federal loan programs, i.e., Federal Housing Assistance (FHA), Veterans Administration (VA) and Farmers Home Administration (FmHA), could be effective on the reservations if it were not for the fact that the high rate of unemployment made the establishment of "credit worthiness" difficult, if not impossible. Further, the need on the reservations was for new units, not repairs, and there were restrictions on alienation which complicated mortgage financing. The particular problems of implementing the FmHA loan program were not discussed because there was no contact recorded by the Task Force between the Indians and that agency.⁶ The public housing program was just beginning on the reservations and its expansion (especially the self-help home ownership program) was encouraged. Finally, to bring the benefits of the various federal programs to the Indians, the Task Force recommended that the Bureau of Indian Affairs (BIA) establish a Housing Branch within the Bureau.

In October of 1966, the BIA again reviewed the Indian housing problem. The growing recognition of the problem is easily seen by reference to the mere size of the report—133 pages. This report

3. The supplier, or guarantor of funds generally is the Department of Housing and Urban Development, Housing Assistance Administration (HUD, HAA); but may also be Farmers Home Administration (FmHA); HUD, Federal Housing Administration (HUD, FHA); Veterans Administration (VA) or the Department of Interior, Bureau of Indian Affairs (DOI, BIA); the builder of streets and roads is generally DOI, BIA but may be HUD, HAA, and the supplier of water and sewage facilities generally is the Department of Health, Education and Welfare, Indian Health Services (DHEW, IHS) and may be HUD, HAA.

4. It is has been said that the only thing Indians have in common is poverty.

5. The Report did not expand upon the statement concerning the apathy of the Indians. However, the lack of involvement of the federal government was documented with respect to each responsible agency. Report to the Secretary of the Interior by the Task Force on Indian Affairs, July 10, 1961, at 36.

6. *Id.* at 38.

enumerated and refined many of the same problems listed in the 1961 report. The magnitude of the need was the major theme of this report. Between 1963 and 1966 the need had been more clearly defined as a result of a survey on 69 reservations by tribal housing authorities. From this survey, the BIA estimated that 30 per cent of the housing was "unfit for human habitation," 65 per cent was grossly substandard and that a maximum of 5 per cent was able to meet minimum FHA low cost housing standards.⁷ In the report, the BIA admitted that the housing need figures were just an estimate and that the precise magnitude of the need could be distorted due to ". . . the lack of a common definition of adequacy and . . . the subjectivity of the appraisers. . . ."⁸

The potential of the loan programs was again recognized, as was their 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;⁹

7. Appendix D, Indian Housing - Needs, Alternatives, Priorities and Program Recommendations, BIA, October, 1966 at 2, [hereinafter referred to as Appendix DJ].

8. Appendix D, at 35. The Report suggested that the BIA should "take the initiative in developing, with the cooperation of the Public Health Service and the housing agencies, a definition of adequacy for housing which would take into account not only such factors as health, safety and protection from the elements, but also the physical and cultural environments in which the houses are located and the operations of the Indians who occupy them." *Id.* at 10.

9. As can be seen by these figures the income levels required by the programs prohibit participation by the vast majority of Indians. The tables below concentrate on three regions of Indian settlement: the Pueblos in New Mexico, the Navajo Reservation, and native villages in Alaska, excluding the Aleuts and the people of the southeast panhandle and of the "north slope" region. These areas encompass 49% of the total Indian population.

TABLE 4.4:

MINIMUM AND MAXIMUM INCOMES REQUIRED FOR ELIGIBILITY IN EXISTING HOUSING PROGRAMS

HOUSING PROGRAM	FAMILY INCOME*					
	Navajo		Pueblo		Alaska**	
	min	max.	min	max.	min	max.
HIP (all categories)	0	5400	0	3000	0	NA
Mutual-Help	2000	6200	1000	4800	0	8300
Turnkey	2000	6200	2000	6000	0	8300
Low-Rent	2000	5600	1200	4800	0	8300

* Maximum and minimum incomes are correlated with maximum and minimum family size.

** In Alaska, the BIA or GSA does, in most programs, subsidize a minimum required housing payment when the family's income will not support it. Thus, a family with negligible cash income may still participate. Current HUD-approved income limits for public-assisted housing range from \$5100 for one person to \$8300 for eight or more.

TABLE 4.5:

PERCENT OF FAMILIES ELIGIBLE TO PARTICIPATE IN HOUSING PROGRAMS, BY REGION

HOUSING PROGRAM — Percentage of Family Eligible by Income to Participate in Program	Navajo	Pueblos	Alaskan
HIP (all categories)	82%	40%	90%
Mutual-Help	41	50	90
Turnkey	41	10	90
Low-Rent	38	10	90

A Self-Help Housing Process for American Indians and Alaskan Natives, prepared by

(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.¹⁰

The additional recommendations proposed in this report include such factors as the need for increasing Indian employment along with the improvement of housing; the importance of Indian contributions, monetary or manual, toward the construction of housing; the need for evaluating the unique environmental and aesthetic standards of the Indian communities prior to the construction of housing; the failure of existing programs to consider the Indians' ability to maintain the new and improved homes, and their inexperience in managing housing authorities; the need for housing for large families; and, finally, the commitment toward relocating employable Indians in better homes off the reservation.¹¹

By the mid-sixties, the grossly substandard condition of Indian housing had gained recognition by governmental officials outside of the federal agencies directly responsible for the Indian housing program. President Johnson, at the swearing-in ceremony for BIA Commissioner Bennett in April of 1966, cited the critical shortage of housing among the Indians and estimated that 90 per cent of the existing housing was substandard. A report by a staff member of the Senate Appropriations Committee discussed the Indian housing problem and stated that 82 per cent of the available housing for families was substandard.¹²

The Report by the President's National Advisory Commission on Rural Poverty, *The People Left Behind*, compared the housing conditions of Indians to the other minorities and found that the conditions were worse for Indians than any other minority group in the United States. The Commission estimated that three-fourths of the houses were "below minimum standards of decency, . . . grossly overcrowded . . ." and more than half, "too delapidated to repair."¹³

This report again recapped the major problems that prevented a solution to the housing problem. Among other factors, they noted:

Organization for Social and Technical Innovation, Inc. and Association on American Indian Affairs, June, 1970.

10. Appendix D, at 27-28.

11. Much of this Report is not generally relied upon by the BIA because of the emphasis in the Report on the comparative cost to the BIA of relocation off the reservation vs. welfare payments to be paid to a family if they remained on the reservation.

12. Some reservations were excepted from this high percentage rating. Mamie L. Mizen, Professional Staff Member, Senate Appropriations Committee, 1965-66, Federal Facilities for Indians, Tribal Relations with the Federal Government Report.

13. *The People Left Behind*, a Report by the President's National Advisory Commission on Rural Poverty, September, 1967, at 99.

[T]he high construction cost of low-rent housing and the indifference to its upkeep by its renters, the long construction period for mutual self-help housing, the difficulty of small groups in qualifying as housing authorities, and the dearth of Indian managerial ability. Conventional loans are available to very few Indians.¹⁴

In October, 1971, the General Accounting Office released a comprehensive report on the condition of Indian housing.¹⁵ The report took more than two years to complete and involved an exhaustive on-site investigation of housing projects, interviews with occupants, tribal housing authorities and administrative field personnel, as well as an examination of applicable federal laws, and BIA and HUD administrative policies.¹⁶ The findings, conclusions and recommendations of this report were substantially similar to the findings, conclusions, and recommendations of the preceding reports.¹⁷ The primary conclusion of the report was that the goal of the BIA "to eliminate substandard Indian housing on reservations in the 1970's will not be achieved unless the program is accelerated substantially,"¹⁸ and, if not, thousands of Indian families will continue to live under severe hardship conditions. More importantly, the report indicated that the failure to reach the projected goal was the result of not meeting the yearly established goal of 8,000 new and renovated homes,¹⁹ the inadequate assessment of the total Indian housing need on the reservations,²⁰ and poor design and construction of many of the new units which rendered them substandard.²¹

The report recommended that an accurate and comprehensive

14. *Id.* at 100-101.

15. The GAO Report was made pursuant to the Budget and Accounting Act of 1921, 31 U.S.C. § 53 (1970), and the Accounting and Auditing Act of 1950, 31 U.S.C. 67 (1970). The report was initiated by GAO and was not in response to a Congressional request.

16. Report to the Congress, *Slow Progress in Eliminating Substandard Indian Housing* by the Controller General of the United States, October 12, 1971, at 6 [hereinafter referred to as GAO Report].

17. The documentation, independence and comprehensiveness of this report, however, is far superior to the prior reports.

18. GAO Report, at 10. The BIA's objective of eliminating the substandard condition of Indian housing is mentioned in *Hearings Before a Subcomm. of the Comm. on Appropriations of the Senate*, 91st Cong., 2nd Sess. 2085, (1970). This commitment is a reflection of the National Housing Goals in which Congress determined that a "decent home and suitable living environment for every American family . . . can be substantially achieved within the next decade . . ." 42 U.S.C. § 1441a (1970).

19. Memorandum of Understanding signed by William H. Stewart, Acting Assistant Secretary for Health Scientific Affairs, Department of Health, Education and Welfare on March 17, 1969 and by Lawrence Cox, Assistant Secretary for Renewal and Housing Assistance, Department of Housing and Urban Development on April 4, 1969 and Harrison Loesch, Assistant, Public Land Management, Department of Interior on April 15, 1969, at 19.

20. Housing needs were generally determined by desk estimates based on insufficient data. For example, Pine Ridge Reservation inventories showed an increase of 245 homes between 1966-1968 but no homes were constructed during that period. On the Yakima Reservation 22 houses were built in 1969 yet the inventory estimated a 500 house increase. GAO Report, at 10 and 24.

21. GAO Report, at 31-58.

identification of the Indian housing needs could be achieved by coordinating the existing surveys of BIA, HUD and IHS and by establishing uniform guidelines to be used in periodic surveys, and by including other relevant factors such as family migration, adjacent off-reservation Indian populations,²² housing deterioration,²³ and family size and income.²⁴

The report also noted that care should be taken to assure that new or renovated units were not included in the survey as standard unless the minimum HUD standards were met.²⁵

The problem of faulty design and defective or incomplete construction of the new housing units was severely criticized by the report. The investigators found that of 24 projects visited, 25 reservations had design or construction defects in some or all of the units. The reasons for the defective conditions include the tri-agency (HUD, BIA and IHS) involvement (which resulted in undefined areas of responsibility), a lack of coordination in planning and development, and a lack of compliance with deadlines.²⁶ Also mentioned was the failure to consider the unique environmental conditions.

Failure to complete construction was noted, particularly with the mutual-help housing projects. However, there were documented cases of five housing programs other than mutual-help that were also not completed.²⁷ Another problem with the mutual-help projects was the lengthy construction period which averaged 19 months.²⁸

The design and construction defects were found to be exacerbated by poor maintenance.²⁹ Despite the realization of this problem,

22. 4 out of 10 families on the Swimomish Reservation previously lived off the reservation. Some families at Rosebud had also returned to the reservation to occupy the new homes. And there is information to the effect that at the Lummi, Pine Ridge, and Cheyenne Reservations, some families living off the reservation will return as soon as housing is available. GAO Report, at 27.

23. HUD, on a national basis, estimated that 2.2 million housing units considered adequate in 1967 would be substandard within 10 years. GAO Report, at 27.

24. See note 9 *supra*.

25. 51 of the 83 new or renovated homes on the Rosebud, Pine Ridge and Cheyenne River Reservation were classified by the BIA as standard but were in fact substandard according to the minimum HUD criteria. GAO Report, at 23.

26. The lack of coordination was not limited to inter-agency communications. The HUD financed Cheyenne River Reservation project, for example, discovered a defect in the attic vents in 1965, yet in 1966 and again in 1968, HUD authorized the design and construction of units, on the Rosebud Reservation, with the same defect. GAO Report, at 50. A HUD official has also said that due to the lack of coordination between Management and Production, Housing Production may allocate new housing units to LHA's having no knowledge of whether the particular authority is operating smoothly, or has sizeable tenant accounts receivable, or possesses the necessary management skills. Inter-agency problems resulted in water pipes being installed improperly causing them to freeze and break, and paved streets not being provided, resulting in roads becoming impassible in the winter. The estimated cost of providing streets at Rosebud was \$1,611,000 and at Yakima \$25,000. GAO Report, at 63.

27. GAO Report, at 62. According to HUD four of the five projects were contracted to the LHA, not a conventional bid contractor.

28. GAO Report, at 55.

29. In about 1/3 of the homes visited by the GAO inspectors, deferred maintenance and poor house-keeping had contributed to the deterioration. Of the 232 new or renovated homes that were inspected, 100 homes needed repairs or adjustment of the

HUD and the BIA had provided few inspections and limited assistance to the families involved.³⁰ The reasons cited by LHA and BIA officials for Indian family maintenance and housekeeping problems were low incomes, unpreparedness for exposure to modern living, and the low priority of home maintenance to other family needs.³¹

AGENCY PROGRESS IN THE SIXTIES

Despite the fact that during the sixties actual housing construction for Indians amounted to "about 1,000 to 1,500 units annually, [which did] not even keep pace with deterioration, decay and population growth,"³² a few administrative and legislative changes occurred in partial response to the various reports, which could have facilitated the elimination of substandard housing on the Indian reservations.

1. Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) did establish a special division with the express objective of improving Indian housing by assisting Indians in obtaining funding from various federal housing programs. In 1965, the Housing Development Program³³ received funds through the Housing Improvement Program (HIP) to do limited repairs and construction on houses of Indians who were unable to receive assistance from other sources.

It was the housing division that in 1966 made the first estimates of the Indian housing need.³⁵ Another survey of need was taken in 1968 because the 1966 guidelines were "rather loosely formulated . . . and consequently reflected much too low a need. . . ."³⁶ Yearly surveys have been taken since that time.

heating or ventilation, 90 needed repairs of the water or plumbing, 90 needed electrical repairs, 140 needed paint or stain on the exterior walls, 50 needed roof repairs, 170 needed interior repairs or paint and 130 were found to have solid waste debris that was a health or safety hazard. GAO Report, at 31-32.

80. The GAO Report cited examples of effective home maintenance assistance at two projects at Nez Perce Reservation, Idaho. GAO Report, at 87.

31. Query whether reason one and three are not one and the same. If funds are limited and a family has a roof over its head other needs such as food and clothing naturally take precedence.

32. The People Left Behind, *supra* note 13, at 99. BIA statistics for FY 68-70 show a total of 11,874 new homes built from every source and 7,228 homes repaired.

33. Note that the BIA has two line items for housing assistance; the Housing Development Program which provides staff positions and limited LHA management and tenant training; and the HI Program which provides funds for actual home repairs and new home construction.

34. 1,193 houses were built and 7,228 repaired between FY 63-70 with HIP money.

35. See note 7 and accompanying text, *supra*.

36. *Hearings Before a Subcomm. of the House Comm. on Appropriations*, 92nd Cong., 1st Sess. 1260 (1971). The housing needs in 1966 showed 57,400 families needing housing; in 1968, 68,304 families and in 1969, 68,061; and 1970,, 60,411.

Initially, the HI Program funds³⁷ were allocated to new dwellings for Indians who could not afford, or participate in, other federal programs—typically the elderly.³⁸ Sometime in 1967-1968, the BIA decided to modify the program and emphasize repairs rather than the construction of new homes. The Indian tribes reportedly were also involved in the planning and use of these funds.³⁹

The HUD, HAA housing programs were extended to the Indian reservations in 1961.⁴⁰ Although applications were received and dwellings built, the formal agreements between the BIA and HUD outlining each agency's responsibilities were not signed until 1968 for the mutual-help⁴¹ and conventional low-rent programs.⁴² The agreements in general required HUD to aid the tribal governments in qualifying for assistance, to assist the LHA with all the procedures necessary for obtaining funding—including assistance with site selection, preliminary loan contracts, ACC formulations and funding, etc., to provide training in development and management procedures for LHA and BIA staff, to 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 are as follows: assisting the LHA 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 representative 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. Subject to BIA approval and if the LHA was incapable of the responsibility, the BIA assumed some management and administrative responsibilities for the public housing units. The BIA was to perform fiscal audits,

87.	Fiscal Year	Appropriated Funds
	1965	500,000
	1966	1,000,000
	1967	1,000,000
	1968	3,080,000
	1969	3,671,000
	1970	5,711,000
	1971	6,652,000
	1972	9,164,000
	Requested 1973	9,673,000
Available figures for the Housing Development Program are:		
	1971	2,880,000
	1972	2,483,000
	Requested 1973	2,376,000

38. *Hearings Before a Subcomm. of the House Comm. on Appropriations*, 90th Cong., 1st Sess. 682 (1968).

39. *Id.*

40. The Public Housing Authority received 4 housing applications from two Indian tribes in South Dakota (the Kyle-Oglala for 15 units and Pine Ridge for 114 units) in August, 1961.

41. See letter to Philleo Nash, Commissioner of the BIA, from Marie C. McGuire, Commissioner of the PHA, May 29, 1963.

42. See Agreement Concerning Conventional Low-Rent Housing on Indian reservations,

certify to PHA that the low-rent character of the project was being maintained, and take any steps necessary to correct the deficiencies found, as well as furnish annual reports to the PHA covering all phases of the PHA-assisted housing programs.

The agreements in effect provided the BIA personnel would carry out certain functions normally accomplished by the HUD staff. This division of responsibility, however, did not work effectively and serious management problems arose in late 1966.⁴³ Accordingly the management functions were returned to HUD and a plan for financial reimbursement between the two agencies was established. The BIA was to reimburse HUD up to \$147,000 for the two years of 1968-1969. This arrangement also failed. Other proposals were made with the final result being the refusal of the BIA to renew the reimbursement agreement. Discussions followed after which Secretary of Interior Walter Hickle recommended changes in the agreement.⁴⁴ The reply from George Romney, Secretary of HUD,⁴⁵ suggested a comprehensive review of the entire inter-agency agreement, which to date has not occurred.

During the time that the two agencies have been negotiating to re-negotiate agreements, HUD financed housing has continued to be built on the reservations.

2. Department of Housing and Urban Development

The three types of public housing programs that are generally used on Indian reservations include the conventional low-rent, mutual help and Turnkey III (with some variations).⁴⁶ The conventional low-rent and Turnkey III programs operate the same way on the Indian reservations as elsewhere. In conventional low-rent housing, the units are rented to low-income families with HUD's financial assistance payments being made over a 40-year period during which the development cost of the project is retired. Like other housing authorities, the Local Indian Housing Authority finances the project by selling bonds to private investors.⁴⁷

signed by Marie C. McGuire and Philleo Nash on February 12, 1965.

43. "The provisions of the 1963 Agreement have been interpreted by some tribal, HUD and BIA staff to provide for the placing of a BIA 'layer' between the tribes and HUD. In some cases, the intended role of the BIA has been interpreted as being that of the defacto operators of the tribal housing authorities with the tribal housing authorities' commissioners and staff being a subordinate 'rubber stamp.'" Letter from Walter Hickle to George Romney, June 10, 1970.

44. *Id.*

45. Letter from George Romney, to Walter J. Hickle, October 21, 1970.

46. The Housing Assistance Administration of HUD received 4 housing applications from two Indian tribes (the Kyle-Oglala - 15 units and Pine Ridge - 114 units) in South Dakota in August, 1961.

47. The only exceptions to the above programs are the following: As of December 1970, the Seminole Nation in Oklahoma has partial occupancy of a leased housing project. Both the Seminole and Chickasaw of Oklahoma have one project of leased housing with rehabilitation. And the Seneca Nation of New York and Crow Creek, S.D. have a project of acquisition with and/or without rehabilitation. Except for the two pending applications from the Passamaquaddy Reservation in Maine for the latter type of project, no other applications have been received for the above types of projects.

The Turnkey III program is the public housing-home ownership program which enables low-income families to purchase a home by using a combination of public housing subsidy and maintenance obligations by the home occupant. In the Turnkey III plan, the Local Housing Authority (LHA) makes an application to HUD for reservation of units. Upon approval, proposals from developers are publicly invited. The developer is selected and builds the housing for sale on completion to the LHA. The Authority uses 25-year tax exempt notes or bonds for the purchase of the project, and provides the family with two-year lease-purchase option ownership rights in the house.

The families are required to maintain their own homes. They are individually compensated for doing so by the LHA's depositing in their individual accounts the amount that the LHA would otherwise have to pay for maintenance. This earned "sweat" equity belongs to the family. If the family decides to leave at any time prior to obtaining title, they take this accumulated amount with them. If the family does not leave, this equity is applied to enable the family to obtain title sooner.

While these funds are building up, the LHA uses the annual contributions provided by HUD to make payments on the capital debt of the home. As the capital debt is reduced, the eventual sale price to the resident family is also reduced. The family is ready for title when their income and assets increase to the amount necessary to assume the costs of ownership and obtain a mortgage on the balance of the capital debt of the house.

During the sixties, HUD designed the "mutual-help" program to meet the unique needs of Indians living on the reservation.⁴⁸

48. The request to HUD for a program of mutual or self-help housing came from the BIA. Joseph Burstein, General Counsel for Public Housing Administration approved the concept on November 30, 1962. (See Memorandum to Commissioner, PHA from Legal Division, Subject PHA Mutual Housing in conjunction with BIA, November 30, 1962). A formal agreement was entered into between the BIA and HUD on May 29, 1963. Two documents commonly referred to as the Nash-McGuire Agreement set forth the responsibilities of each agency (see letter to Philleo Nash, Commissioner of the BIA from Marie C. McGuire, Commissioner of the PHA, May 29, 1963). The first applications were received in the spring of 1963 from LHA in North Dakota and Arizona.

UNITS IN MANAGEMENT — DECEMBER 31, 1970

CONVENTIONAL	ACQUISITION W/OUT REHAB.	LEASED HOUSING	MUTUAL OR SELF-HELP	TURNKEY	TURNKEY MUTUAL HELP	LEASED WITH SUBSTANT. REHAB.	LEASED HOUSING	TOTAL
2080	70	65	878	785	865	115	230	5088

IMPORTANT NOTE:
The above statistics were compiled from raw data in HPMC Statistics Branch

Mutual-help homes are produced at lower rents than the Turnkey III homes, primarily as the result of the owner-participants "sweat" equity contribution (estimated at \$1,000 to \$1,200 per unit, or \$1,500 for those that include land). Additional rents are kept lower by virtue of a waiver of the requirements for vacancy losses and maintenance.⁴⁹

Financing and development of these public housing projects is accomplished by the tribal LHA through the sale of one-year tax exempt notes insured by HUD, with cost amortized over a 20-year period. These notes are traded in the same market and in much the same fashion as United States Treasury bills. In the summer of 1967 and 1968 BIA conducted a training program for prospective LHA management employees at the University of New Mexico. Course material was prepared by HUD staff. Since that time, however, the BIA has not conducted any training programs.⁵⁰

Perhaps the most significant development of the sixties, beyond the acknowledgement of the Indian housing problem and the HUD and BIA agreement, was the signing of two tri-agency memoranda of understanding by HEW, IHS; DOI, BIA; and HUD, HAA in the spring of 1969. The purpose of the agreements was to define the objectives of the Indian housing program and the responsibilities of each agency so that sanitation facilities would be provided "proportionate to the number of housing units being constructed."⁵¹ In order to define the responsibilities and "alleviate funding problems associated with the provision of sanitation facilities for Indian housing in fiscal 1969," a projection of 8,000 housing units to be constructed and renovated in each of fiscal years 1970-1974 was established. HUD was responsible for 6,000 units of new housing; BIA for 1,000 units of new or improved housing; and tribal groups for 1,000 units of new housing.⁵² It was this memorandum, along with the stated objective of the BIA that the substandard condition of Indian housing would be eliminated in the 1970's,⁵⁴ that prompted the GAO Report. The second memorandum, signed later that same month, has since been operationally modified (although not officially

and have neither been sifted for errors nor double checked. A figure of less than "5500 units in management" is suggested until these figures can be refined.

49. Most sources guide the lowest monthly payment for BMIR (Below Market Interest Rate) home ownership on the reservation at \$35.00 as compared with \$9.87 for the mutual-help. Transcript of Indian Housing Management Conference, July 28, 29, 30, 1971, at 53 and Appendix D, at 28.

50. In 1971, however, the BIA financed a number of trainees in NAHRO training.

51. Memorandum of Understanding, Provision of Sanitation Facilities for Indian Housing HEW, IHS; DOI, BIA; HUD, HAA (April 15, 1969).

52. *Id.*

53. *Id.* Because of the varied uses to which tribal funds are put and the inability to obtain much significant information, the use of tribal funds for Indian housing will not be discussed. However, the BIA does estimate that in 1968, \$2,271,400 in loans were made from both the BIA and tribal sources. In 1969 the figure increased to \$4,704,400 and in 1970 was \$3,877,400.

54. See note 18 *supra*.

modified). The memorandum identified more specifically the functions and essential points of coordination between the three agencies.

3. *Farmers Home Administration and Veterans Administration*

During the sixties the major problems that had prevented the Farmers Home Administration from assisting Indians with home loans were eliminated. Through legislative enactments, FmHA was permitted to make loans to individuals with leasehold interests and to non-farm rural families.⁵⁵ Despite the legislative changes the use of FmHA loans by Indians has been limited.⁵⁶

The Veterans Administration (VA) apparently has done little to increase the number of loans to Indians. Only recently have they even begun to collect statistics on the number of loans applied for by and granted to Indians.⁵⁷

4. *Office of Economic Opportunity*

The most vigorous effort of the OEO in Indian housing was in the construction of 375 "transitional" homes on the Rosebud Sioux Reservation in South Dakota. Conceived as a multi-purpose project, the effort had as its goal the construction of 375 low-cost houses, the creation of a new local home building industry, the development of new or improved skills for 200 reservation residents, and the creation of new local institutions for 21 communities on the reservation. The project was designed to demonstrate that a low cost house could be designed and developed which would fulfill the present expectations of the Indian families for an adequate house—including adequate space, privacy, and a healthful environment—and which would not overburden the families with high costs for operation and maintenance.

The house ultimately designed contained 620 square feet. It included 2 bedrooms, a bath, a living room-dining room, and a kitchen area. These houses were originally designed for wood heat, but some 200 families chose the optional oil heating system available.

55. 42 U.S.C. §§ 1470, 1471 (1970).

56. According to FMHA records \$5,703,200 in rural housing loans were made in FY -71. In FY -70 the figure was \$2,406,640. The BIA estimates that in the calendar year of 1969 \$1,974,700 in loans were made or guaranteed and in 1968 \$2,076,700 in loans were made or guaranteed.

57. Figures available from the VA at this time show only the following information:

	Oct. '71	Nov.	Dec.	Jan. '72
Applications rec'd.	41	53	34	18
Commitments issued	35	24	33	15
Evidence of Guaranty issued	21	24	27	30
Cancelled or Withdrawn	1	3	4	6
Pending end of month	47	77	104	97

No figures are available from the VA as to the amount of money involved in the loans. The BIA's estimates show that in the calendar year of 1970 \$982,600 in home loans were made, in 1969 \$863,900 in loans were made and in 1968, \$647,400 in loans were made.

The houses as constructed did not conform to minimum HUD specifications.⁵⁸ The goal of the "demonstration grant" was to establish that such a house below HUD standards, yet carefully designed to meet specific needs, was a feasible alternative to existing Indian housing programs.⁵⁹ The OEO considered the program completed as of July, 1968 and the homes are presently occupied.

The GAO Report specifies several instances of construction defects and incomplete construction. However, there has been no follow-up by the OEO to correct these defects. HUD and the BIA have not lowered their standards and no further "transitional" units have been built.⁶⁰

The OEO has also been involved in supplemental funding to HI Program activities through grants to several community action agencies. The OEO funds are used to pay workers (who are not the homeowners) to repair homes with HIP funds. The estimated funding is \$700,000 or approximately \$35,000 per grantee per year.

From 1961 to 1971, little improvement was made in increasing the supply of standard housing for Indians.⁶¹ Indian housing programs have been refined and expanded but the same problems persist. The agencies and reports were still concerned that the precise housing need was not defined. Query what difference it would make if everyone knew that the housing need was 50 per cent or 70 per cent of the actual supply, if the need was not being met?

The problems of construction and design persisted. Designers failed to heed repeated recommendations to anticipate unique environmental and cultural needs. The mutual-help construction period continued to be slow. The low incomes of the Indian families continued to exacerbate the home maintenance problems. The inability of the majority of Indian families to obtain "credit-worthy" ratings prevented large-scale use of the loan guarantee programs, despite the important legislative changes. The training of homeowners, tenants and LHA staff had yet to be realized on a significant scale.

Recently, HUD, BIA and IHS have made some significant changes in their programs in response to the GAO Report. However, as in the past, the changes are evolving too slowly and

58. See Preconstruction Manual for Low and Moderate Income Housing.

59. Such a low-cost home, would, if constructed under the public housing program, provide more houses per dollar expended, if constructed under a Below Market Interest Rate program it would lower the income levels necessary to participate in the program.

60. Some OEO officials have suggested that HUD's concern over standards is primarily to insure that investors are adequately protected, that is, not so much to protect Indian families against inferior living conditions as to insure sound investments for the mortgage investors.

61. The BIA consolidated housing report for FY -70 shows that between 1968 and 1970 11,874 new homes were built and 7,228 were repaired.

never seem to result in an expansion of the standard housing market.

AGENCY RESPONSE TO THE GAO REPORT

The impact of the GAO Report on the three principle agencies⁶² can be clearly seen by their willingness to accept and respond to the draft copy of that Report. In response to the GAO Report's criticism of the existing need assessment, the BIA in May, 1970, issued new HIP guidelines that established housing standards for general construction, heating, plumbing, wiring and living space. The guidelines, although providing the option of incorporating the state or tribal code, are substantially below the FHA minimum property standards.⁶³

The guidelines also define five categories for assistance under the HI Program. Two of the categories involve home repairs and the remaining three the construction of new homes. One of the repair categories and one of the new construction categories pertain to dwellings that do not meet the standards established in the HIP criteria, even after the work has been completed. The rationale for expenditures on homes that do not result in decent, safe and sanitary structures is that the condition is temporary to alleviate grossly substandard conditions, and the eventual aim is a decent, safe and sanitary home.⁶⁴ Due to the exigencies of the Indian housing situation, the repair and building of substandard homes cannot be summarily criticized. However, a new problem does arise in measuring the Bureau's achievements in reducing the number of substandard houses. The consolidated FY-71 area housing

62. IHS was not requested to officially respond to the Report. But it did make some administrative changes as a result of the Report and did comment upon its reaction to the Report in the Senate Appropriation Committee hearings for FY-73.

63. Heading the list of HIP standards is that of "maintaining a minimum temperature of 70 degrees," which is substantially similar to the FHA requirement. See MINIMUM PROPERTY STANDARDS FOR ONE AND TWO LIVING UNITS, § 1003-32 at 200, [hereinafter referred to as FHA STANDARDS.] Plumbing: The only substantial difference is that the FHA STANDARDS require as a minimum a laundry tray, or in lieu thereof, piping for a clothes washing machine, *id.*, § 1006.31, at 213., while the HIP criteria do not mention the above. Electrical system: The HIP criteria require a "minimum of two circuits per dwelling and provision for . . . one additional circuit." No mention is made as to the minimum amount of ampere per circuit. The minimum FHA requirement is 15-ampere circuits for all areas except the kitchen, dining and laundry areas, for which two 20-ampere circuits must be provided. *Id.* §1007-6.1, 6.2, at 26. Overcrowding: The HIP criteria provide for 1BR - 1-3 persons; 2 BR - up to six persons; and 3 BR - adequate for all but the very largest families (the first BR will have 100 sq. ft. and a minimum of 80 sq. ft. is required for the others). The FHA STANDARDS do not include occupancy standards. However, their minimum room sizes are larger than those mentioned above:

1-BR	120 sq. ft. total
2-BR	200 sq. ft. total
3-BR	280 sq. ft. total

Id. § 602-31, at 32.

The crowding standard for HUD financed units is 2 persons to a bedroom. See, LOW-RENT PUBLIC HOUSING PRECONSTRUCTION HANDBOOK, December, 1971, HPMC-FHA 7410.8 § 3-5.

64. See Housing Improvement Program Criteria, BIA.

inventory states that 755 new homes were constructed and 4,205 dwellings repaired in FY-71. The report does not clearly reflect that 434 of the new homes were less than standard and 2,804 of the repaired homes were not standard after the repairs were completed.⁶⁵

The official BIA answer to the report⁶⁶ also reflected improvements in the housing survey process. In general, the BIA stated that it had responded to all of the recommendations relating to the identification of housing needs,⁶⁷ except that the Bureau was not presently considering the factor of the off-reservation Indian population.⁶⁸

HUD and IHS were not involved in the recommendations concerning the identification of housing needs, but the BIA did state that it would use the statistics that each of these agencies had available and include them in the annual inventories.⁶⁹ The real problem of coordination in the area of need surveys, however, has not been addressed. The problem is that HUD-constructed homes are appearing on the housing charts as completed standard dwellings when in fact, the construction is not complete, or if completed, is less than standard.

The second area in which the GAO Report found severe deficiencies in the housing program was in the development and operation of housing projects. The BIA generally agreed with the conclusions of the Report, but felt that since the problems referred to HUD-assisted dwellings, it was HUD's responsibility to respond more fully. The Bureau did mention, however, the efforts that it had made within the limited resources available to train the LHA's in management techniques, and to provide supplemental home ownership train-

65. It would not be too difficult to clearly reflect this information. Note that the chart reflecting the total housing need distinguishes houses in standard condition except for one or more utility from the total housing units needing renovation.

66. Letter from Warren Brecht, Deputy Assistant Secretary of Interior to Chairman Hollifield, Jan. 28, 1972. [hereinafter cited as Brecht letter].

67. The only need assessment form that the Bureau has developed since the GAO Report is found in the HIP criteria. It deals only with the homes built and/or repaired by the Bureau and places them into the five HIP categories. The Washington office of the Bureau has instructed the area offices to collect the data suggested by the GAO Report but has not supplied any guidelines. This could be a major weakness in the assessment of needs, but it is the contention of this writer that a more accurate assessment of the need at this point in time without a substantial increase in the supply of standard homes would be a useless exercise.

68. The refusal of the Bureau to consider the returning off-reservation Indians in the statistics could be an important weakness. The GAO Report cited several cases where Indians have actually moved back to the reservation when housing became available and mentioned several other areas where there was evidence of a desire among the off-reservation Indians to return. *But see* note 67 *supra*, for further comment on the relevance of need assessment surveys at this point in time.

69. *See* Brecht letter. IHS has begun to conduct a very complete environmental survey of Indian homes. More than 37,000 homes have been surveyed yet it does not appear that the BIA has utilized this data in its annual inventory. The IHS survey includes the type of construction, the persons per room, persons per home, selected factors such as walls, roof, ceiling, floors, steps, doors, heating, electricity, sanitation facilities, accident hazards, etc. for each dwelling surveyed.

ing for new and prospective tenants.⁷⁰ These efforts are not new. The BIA was performing the same minimal training in the latter part of the sixties.⁷¹ It is unfortunate to note that even though the BIA is not subject to the statutory funding limitations of HUD⁷² and could supply a large amount of the training money for the LHA staff and homeowners, it has not increased its budget request in this area and has in fact, reduced its total personnel request.⁷³

In response to the GAO Report's recommendations, HUD has promulgated a number of circulars with respect to construction and design defects. Together these circulars reflect only minimal program changes and, except for two significant commitments, could be termed a whitewash. Two circulars have been issued regarding the force account mutual-help program.⁷⁴ The first circular established criteria for the acceptance of new projects⁷⁵ and stressed the necessity of expediting the construction of existing projects. The second circular, in effect, terminated the force account mutual-help program by prohibiting the development of any new projects or the execution of any Annual Contribution Contracts (ACC) where the units are not yet under construction.⁷⁶

In June 1971, HUD issued another circular that updated the department's authority and policy in connection with remote Indian areas.⁷⁷ This circular encourages LHA's to develop new design and program concepts to overcome the factors that make it difficult to provide economical housing in remote areas and to obtain housing that conforms to local living patterns. The policy of this circular is commendable. However, it is unfortunate that HUD has not seen fit to supply the LHA's with additional resources to ensure that solutions to the enumerated problems will be achieved. Also, it should be remembered that the BIA in the Nash-McGuire Agreements was

70. The FY -72 funds were allocated as follows: \$150,000 for management services and training of LHA's and \$40,000 for training of LHA staff who in turn would teach home maintenance to the Indians. The remainder of \$2,243,000 was used for the salaries of the BIA housing staff which totals 141. Interview with Monte McMichael, BIA. See also note 61, *supra*.

71. See note 49 *supra*.

72. The only source of HUD-funds in conventional low-rent housing for training the staffs of Indian LHA's is the operating income and subsidy. Thus if the training of LHA staffs is included in the developmental costs of a project the rents of that project must also increase. The same is true for the BMIR projects.

73. The Housing Development line item provides these services. The funding for Housing Development in FY -72-\$2,433,000 and requested for FY -73-2,376,000. The difference of \$77,000 between FY -72 and FY -73 is for employment reductions. U.S. Department of Interior Budget Justifications FY -1973, BIA, at IA-58.

74. HUD Circular HPMC-FHA 7580.2, February 26, 1971 and HPMC-FHA 7580.2A, January 14, 1972. The Mutual-help programs in these circulars are limited to the force account method which are those units that are developed under the auspices of an LHA, not by turnkey or a competitive bid contractor.

75. The criteria is nearly identical to the GAO Draft Report, at 51-52.

76. The BIA has supported HUD's action in this area by terminating their program of supplying construction superintendents for mutual-help programs. See Bredt letter, at 4.

77. HUD Circular HPMC-FHA 7581.2, June 18, 1971.

committed to do the same thing. Nothing was developed by the BIA because of a similar lack of funding.⁷⁸

Another circular issued by HUD in January, 1972, clearly established that HUD was ultimately responsible for any housing constructed through its programs.⁷⁹ This circular also quoted the GAO Report recommendations regarding the need to *strengthen* reviews of housing designs to ensure that local climatic conditions are adequately considered and to *increase* the emphasis on periodic inspections to reduce construction problems. Unfortunately, however, HUD did not see fit to provide solutions for these recommendations.

HUD also issued two circulars concerning the development costs for housing projects in Indian areas.⁸⁰ These circulars together permit HUD to include within the costs of planning, construction, and inspections of the low-rent public housing projects, the cost of providing (*within project boundaries*) all needed water and sewage facilities and all-weather streets, sidewalks, curbing, and street lights. Also, if connection with existing systems appears more feasible, HUD may include connection fees in the pro rata share of the construction costs for water and sanitation facilities.⁸¹ This circular did respond to the GAO Report. It merely emphasized the fact that housing for Indians should be, as it is for other Americans, consolidated under the auspices of one agency.⁸²

A final circular issued by HUD that relates to the GAO Report, but which is not directly responsive to that Report, pertains to "Indian Employment, Training, and Economic Benefits from Public Housing Development."⁸³ This circular authorizes HUD area directors and regional administrators to waive the competitive bidding and advertising requirements of the Annual Contributions Contract (ACC), and to approve an employment training and economic benefits preference to qualified local Indian residents.⁸⁴ The problem that still exists, and that was not addressed by the circular, is that there are in fact very few Indian design, architecture, or construction firms.

78. See notes 47 and 48 and accompanying text *supra*.

79. HUD Circular HPMC-FHA 7410.7, January 14, 1972. The GAO Report had pointed out some major areas of inadequate definition of responsibilities and lack of coordination among the three agencies (BIA, HUD and IHS).

80. HUD Circular HPMC-FHA 7581.1 and HPMC-FHA 7581.A. These circulars, unlike the others mentioned above, do not specifically mention the GAO Report. However, HUD Circular HPMC-FHA 7410.7 January 14, 1972, note 79 *supra*, does mention the GAO Report and makes reference to HPMC-FHA 7581.1A.

81. The costs may not exceed the cost of on-site facilities.

82. IHS and HUD met to discuss HPMC-FHA 7581.1 on July 26, 1971. As a result of this meeting IHS issued a memorandum on August 26, 1971 to all area directors signed by H.V. Chideen for Emery Johnson, Assistant Surgeon General, that informed the area directors of the HUD Circular and outlined a procedure for IHS Staff.

83. HUD Circular HPMC-FHA 7580.1, November 2, 1970.

84. "During fiscal years 1971 and 1972, projects involving over 1800 units of housing worth more than \$21 million have been or will be contracted out to Indian firms." Remarks by Samuel J. Simmons, Assistant Secretary for Equal Opportunity, U.S. Department of Housing and Urban Development, 41st Annual Convention of the National Housing Conference, March 6, 1972.

A final step that HUD has taken in response to the GAO Report and in light of its obligation to build 6,000 units per year from 1970 to 1974, a total of 30,000, is to earmark a specific number of units per region.⁸⁵ Despite the earmarking however, HUD has continually fallen short of its goal. This failure to meet the stated goal, along with the BIA estimated population growth⁸⁶ will necessarily mean that the objective of eliminating the sub-standard housing on the Indian reservations cannot be achieved.⁸⁷

In light of the meager response to the GAO Report and the reports which preceded it, the real question is what can be done now to increase the total housing supply for Indians on reservations. The answer is basically political. It is political because the solution involves the coordination and commitment of three agencies. It is political because of the variety of cultures and traditions among the Indians. It is political because of the relative isolation—or call it invisibility—of the reservation Indian in America today. And it is political because the abuses of the past that must be exposed, were permitted by the same agencies that can provide the only real solution to the problem today. Although politics may be viewed as an amorphous answer, there are a number of specific tools available that can be utilized to achieve the goal of improved and increased

85. Annual Contributions Contract FY -71 Construction Starts				
	Targets	Executed	Targets	Completed
Boston	100	0	100	0
New York	50	0	50	0
Atlanta	300	270	200	100
Chicago	375	389	300	244
Fort Worth	2425	2495	1750	1403
Kansas	50	70	50	56
Denver	1950	1871	1000	1259
San Francisco	1350	2099	2100	1877
Seattle	500	270	450	35
	<u>7100</u>	<u>7464</u>	<u>6000</u>	<u>4974</u>
FY -72				
	Targets		Targets	
Boston	0		0	
New York	0		0	
Atlanta	0		350	
Chicago	250		200	
Fort Worth	1400		1600	
Kansas City	100		50	
Denver	1400		1050	
San Francisco	2150		2300	
Seattle	1200		450	
	<u>6500</u>		<u>6000</u>	

86. The BIA estimates a population growth that will increase housing needs by about 15,000 per year. GAO Report, at 13.

87. In the FY -71 Consolidated Area Housing Inventory, the BIA states that 20,735 housing units needed repair; that 4,184 houses were in standard condition except that one or more utilities were not available; and, that 49,840 new housing units were required as of FY '71 for a total need, excluding the standard units without one or more utilities, of 70,579. The goal of 8,000 units per year (6,000 HUD, 1,000 BIA and 1,000 Tribal funds) will produce only 80,000 units, 5,579 less than the known objective. In addition, this known objective does not take into account the increased needs which will arise in the 70's from the deterioration of presently standard units and the return of Indians to reservations, especially in view of the new BIA policy not to encourage the resettlement of Indians into urban areas.

housing supply. These tools include: the tri-agency memorandum which specifies a total of 8,000 homes constructed annually;⁸⁸ the BIA's commitment to solve the substandard Indian housing problem in the seventies; the President's commitment to involve the Indians more in decisions that affect their welfare;⁸⁹ the growth of "Red-Power;" and, the recommendations of the GAO Report. These tools could be utilized to focus national attention on the Indians and their housing conditions. They can also be used to obtain stronger commitments from the federal government that will protect both the individual Indian and the tribal governing bodies and LHAs. The most obvious way for a minority to obtain commitments from the federal government is through publicity and constant prodding.⁹⁰

The beginning of a forum for the recognition and identification of solutions to Indian housing problems was initiated by HUD in a meeting of representatives of various Indian Housing Authorities.⁹¹ As a result of this meeting sixteen recommendations were presented to George Romney.⁹² Some of these recommendations

88. Memorandum of Understanding, Provision of Sanitation Facilities for Indian Housing, HEW, IHS; DOI, BIA; HUD, HAA (April 15, 1969).

89. Message from the President of the United States, July 8, 1970.

90. The need for constant prodding cannot be over-emphasized. The breaching of the Nash/McGuire Agreements, by both the BIA and HUD are perfect examples that both agencies will perform as they wish, if permitted, despite any agreement, contract or memorandum.

91. July 28, 29, 30, 1971, DHUD.

92. Resolution

1. We request that the Secretary, by the end of 1971, recruit and place Indian employees in positions at levels in the HUD staff structure where they could make a significant contribution to HUD understanding of the unique relationship between the Indians and the United States Government and the continuing problems of Indian people and their critical need for special assistance with their housing problems. A Deputy Under-Secretary at the Central Office and appropriate existing positions at the Regional and Area Offices manned by qualified Indian persons would be most helpful to HUD and to the Indian Housing Authorities in expediting delivery of housing to Indians and Alaskan Natives.

2. We request that HUD, recognizing the key role that the LHA Executive Director plays in the delivery and management of Indian housing, find means to assist the Authorities to strengthen their Executive Directors by funding a program to subsidize the Executive Directors' salaries and *training expenses in advance of project operation*, so that each new Authority will have a *qualified manager when it begins operations*.

— We request that HUD fund tuition, travel expense, salary of substitutes and other necessary expenses for continuing programs of development and growth for Executive Directors when LHA funds are insufficient to allow the LHA to carry out such a program on its own.

— We request that HUD give Executive Directors the opportunity to meet frequently with key HUD personnel, in groups of five to ten people, to search actively for improvements, both in HUD policies and in LHA operations.

— We request that HUD provide field accountants in each Region who could assist the Authorities in their own offices, when needed.

— We request that HUD develop a *training program, utilizing Indian input, for Board members, office staff members and maintenance people*.

— 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.

3. We request that development funds from HUD include money for streets, roads, water and sewer facilities, as well as for houses, so that the project can be completed as a unit with all elements necessary for occupancy present. We request that that portion of the development cost which is for facilities normally provided for

have been adequately answered,⁹³ but others have not. These proposals need more intensive follow through. In conjunction with these proposals, the following areas could also be considered:

1. *Housing Criteria:* Steps could be taken to get the BIA to establish housing guidelines that comply with the national FHA-HUD guidelines. This is not to suggest that the BIA should eliminate its program of providing grants to Indians to improve their housing or to build homes which do not meet the standards established in the guidelines. But, as a minimum, the guidelines—the measure of decent, safe and sanitary homes—for an Indian should be equivalent to the national model. Obviously, the difficulty of this position is that the standards of one agency are not necessarily binding on another, but a petition should be filed.

Indian people by other agencies, such as roads from BIA and sanitary facilities from Indian Health Service, be handled as a grant and not added into the project cost.

— We request that HUD assist LHA's with road problems in areas where the existing road systems are not adequate to serve the areas in which Indian families wish to live.

4. Since the Turnkey Mutual-Help Program is the only HUD Program that serves the very low income (and is a program well-liked by Indian people), provision should be made in that program for administrative costs in such a way that these costs will not be an added burden on the low-income family. This financial help should be available from the very inception of the program, which is not presently possible.

5. We request that the LHA be allowed grant funds to correct deficiencies which develop in houses where there is no fault or recourse against the contractor. There is a precedent for this in the 1970 Housing Act where the FHA is authorized to repair such deficiencies in 235 Program homes at no cost to the tenant or buyer.

6. We request that Local Indian Housing Authorities be given discretionary power to raise income limits to serve Indians whose housing needs are not being met from any source.

7. We request that HUD develop the insurance program to include vandalism coverage for all programs.

8. We request that a program and funds be made available to assist mutual-help participants in meeting their maintenance responsibilities.

9. We request that HUD publish a completely new manual for the Mutual-Help Housing Program, and that the reporting requirements for Mutual-Help Programs be reviewed, simplified and tailored to Indian program requirements.

10. Income reexaminations should be required every two years, rather than annually.

11. We request that Indian Housing Authorities be audited by the Department of Housing and Urban Development, rather than by the Department of the Interior.

12. We request that Indian Authorities be allowed to write tenant leases on Low-Rent Programs to fit their individual situations and not be required to make the overall lease change as outlined in Transmittal Notice RHM 7465.8 dated Feb. 22, 1971, but conform more to conditions as listed in Circular HPMC-FHA 7581.2, Housing Assistance in Indian Areas.

13. We request that HUD allow the LHA to make a reasonable per diem payment to LHA Commissioners for attendance at LHA meetings as a proper project cost. Include funds in the development budget for the extra meetings required during the planning and construction periods for new projects.

14. We request that authorization be given to LHA's to acquire GSA Excess Personal Property, such as sanitation trucks, 1/2-ton utility service trucks and maintenance tools.

15. We request that HUD recognize the need for flexibility in the administration of Indian Housing Programs.

16. We request that an Indian Housing Management Advisory Committee of four or five members be formed to monitor this Resolution and to provide further in-depth Indian guidance and leadership to assure that the Indian and Alaska Natives' housing needs are thoroughly understood.

— We request that a Conference similar to the July 28-30, 1971, conference between HUD officials and Indian Housing Authority representatives be held annually and that the Advisory Committee be consulted in determining the arrangements and invitation lists for the Conference.

93. Letters from George Romney to Frank Hornett, September 30, and February 1, 1972.

2. *Housing Need*: Indian groups should carefully monitor the various HUD regional offices and the BIA to assure that the 8,000 homes agreed upon are *constructed* annually. As noted previously, it will be necessary to petition the agencies to produce at least 10,000 units per year if the substandard housing problem is to be eliminated in the 1970's. For the sake of publicity, an administrative complaint or court action by the Indians as third party beneficiaries should be initiated against HUD if it does not fulfill its present commitment of 6,000 homes constructed per fiscal year through 1974.⁹⁴

3. *Housing Designs*: In light of the HUD circular on housing assistance in Indian areas,⁹⁵ which established HUD's current policy for the provision of housing in remote areas of the reservations, LHAs or Indian groups should request that funds be provided to assist them "to overcome the factors that make it difficult to economically provide such housing and to obtain housing that might conform to the local patterns of living."⁹⁶

4. *Housing Construction*: For those dwellings which have been built with HUD assistance, the available complaint, suspension and debarment procedures should be utilized.⁹⁷ Also, a petition should be submitted to HUD for rulemaking to establish guidelines for the *enforcement* of the maintenance inspections and design reviews. Due to the magnitude of the existing problem and the inevitability of an increase in that problem with the continued construction of new units, it is imperative that HUD be requested to respond.

In addition, because of the overwhelming support of the mutual-help program by Indian families, and the low monthly payments and ownership incentives, a review of a selected number of the programs should be made to assure that the full benefits of this program can be extended to more families.⁹⁸

In addition, in order to promote the ethnic and cultural traditions of the Indians, the tribes and LHAs should petition HUD and the

94. The Bureau of Indian Affairs met its goal of 1,000 new or improved homes for FY -71. See note 65 *supra* and accompanying text.

95. HUD Circular HPMC-FHA 7581.2, June 18, 1971.

96. The failure of the BIA to accomplish the same goal without additional funding should be kept in mind.

97. The first step is a rather informal one. HUD may initiate the proceeding by requesting that a contractor make specific repairs. If the repairs are not made, no further housing applications are accepted from that contractor. If the housing is FHA guaranteed, and if the contractor consistently builds poor homes, then the contractor through the procedures spelled out in 24 CFR 200.200 may be determined to be an undesirable risk determination (URD). The final step for housing under FHA programs is debarment subject to § 512 of the National Housing Act.

98. See Transcript of Indian Housing Management Conference, July 28, 29, 30, 1971, DHUD.

99. A proposal has been circulated within HUD suggesting that an R.F.P. be developed to evaluate areas. The major problem with this draft RFP is that the questions are basically geared to improving the HUD program delivery and not to increasing the total housing supply. However, it is conceivable that if the former is corrected the latter will naturally follow.

BIA for a determination as to whether the definition of "decent, safe and sanitary housing" includes the use of indigenous materials.

5. *Home Ownership and Tenant Training*: The GAO Report described the simple but successful process of maintenance inspections, follow up, and advice and instruction in making repairs at the Nez Perce Reservation.¹⁰⁰ This process or a similar one should be provided for all new and old construction sites. The training programs initiated by the BIA to send LHA staff to NAHRO housing conferences should be significantly increased.

6. *Involvement and Employment of the Indians*: The commitment of HUD to the waiver of the competitive bidding procedure for construction on Indian reservations was a positive step.¹⁰¹ The problem that still exists, however, is that there are only a small number of Indian construction, design, and architecture firms on the reservations. The commitment of the Labor Department, HEW, and the Division of Education within the BIA is essential if this problem is to be solved.¹⁰² The need for this type of coordination is readily apparent when one looks at the amount of money spent or insured yearly by the various agencies for on-reservation housing.¹⁰³

7. *Interagency Coordination*: Based upon the recommendations of the GAO Report and the limited response of HUD, petitions should be filed with either or both the BIA and HUD requesting a study and determination of the legislative authority needed to combine housing and related public facilities within one agency.¹⁰⁴ At a minimum, some procedure should be established whereby the agency that has completed its work notifies the delinquent agency of its non-compliance.¹⁰⁵ Also within HUD, FmHA, and the VA there should be a desk established that is responsible for promoting Indian housing. More particularly within HUD—the agency with the major

100. GAO Report, at 37.

101. HUD Circular HPMC-FHA 7580.1 November 2, 1970.

102. A HUD official has indicated that a proposal has been circulated within HUD which would require HUD to routinely inform OEO and the Department of Commerce where HUD housing allocations are to be made and to work with these agencies in the development of on-reservation construction companies. See also the OEO proposal for establishing construction companies, p. 639 *infra*.

103. HUD estimates that \$750 million will be spent to construct 30,000 homes through FY -74. That is an average of \$25,000 per home. (Some HUD officials estimate a lower rate of \$14,000 per unit.) The yearly expenditure therefore would be between \$84,000,000 and \$150,000,000. The BIA has been spending about \$9,600,000 annually. FMHA guaranteed \$5,703,200 in loans for FY -71. The VA estimated new loans for FY -70 were \$1,188,100. There is no accurate data available on the total amount of money spent on housing annually but the BIA estimated for FY -70 that from all sources, \$59,937,900 was spent for new construction and home purchases and \$3,375,900 was spent for rebuilding and repairs.

104. A similar recommendation is presently being circulated within HUD. Remembering the continual problems of coordination that have plagued the BIA and HUD agreements, plus the end result of defective and incomplete housing, this recommendation should not be taken lightly.

105. On the basis of the Memorandum of Understanding, it is conceivable that the complying agency could sue another for non-compliance or that a tribe or Indian could sue as a third party beneficiary.

commitment—a task force should be created to promote Indian housing.¹⁰⁶

8. *Special Indian Program*: Despite the problems that specific Indian programs have suffered,¹⁰⁷ an investigation should be made by the BIA in conjunction with the LHAs and tribal leaders to develop a housing program designed to meet the unique problems of Indians including such factors as environment, ethnic and cultural differences, and physical isolation.

In addition, information regarding the existing programs should be designed for, and distributed to, Indians.¹⁰⁸ Perhaps some of the information should be published in Indian dialects.¹⁰⁹

In addition to the above recommendations, other new legislative and agency proposals should be considered.

The Bureau of Indian Affairs is in the process of implementing the Rapid Acceleration Program (RAP). This program is designed to provide for the distribution of funds, to those tribes that have comprehensive development plans, in a manner that is more in keeping with the desires of the tribe. The key to the process is that the tribes, through planning, will direct the program through a continuous review and adjustment of their own budget process. Since the plan includes a reallocation of the BIA staff to assist RAP tribes and "more responsive use of the existing budgets"¹¹⁰ it would seem possible that a tribe could request and be granted more money for home repairs, maintenance, new construction and training of LHA staff and tenants.

Aside from the use of the RAP program, other developments in Indian housing that bear watching include:

1. The establishment of savings and loan banks to be owned and operated by local residents of Indian reservations. This project is the long-term objective of a contract signed by the National League of Insured Savings Associations and the BIA.

106. A suggestion such as this has been circulated within HUD.

107. There was a special bill passed by Congress for an Alaska Remote Housing Program. This program was terminated according to HUD for the following reasons:

The decision to terminate this program . . . was made by the President as a part of the Government's effort to eliminate programs that have been superceded by more recent efforts that are more attuned to current needs or are simply of a low priority relative to the amount of tax money needed to support them under current economic circumstances. In the case of the Alaskan program specifically, the needs of the beneficiaries of the program can be served equally as well under other housing programs; and a special categorical program is no longer necessary.

Hearings before a Subcomm. of the Comm. on Appropriations of the House of Representatives, 91st Cong., 2nd Sess., 1970 (1970).

108. The Non-Profit Housing Center has developed A MANUAL ON TRIBAL HOUSING ENTERPRISES AND RESOURCES. The manual, which covers all federal programs that have or can effect Indian housing, has been completed and is awaiting official agency approval.

109. A proposal such as this has been circulated within HUD.

110. Policy Statement, Reservation Acceleration Program, by Reservation Development, BIA. Statement of Louis R. Bruce, Commissioner, BIA; U.S. DOI before Subcommittee on App. DOI and Related Agencies, Spring, 1972.

2. The expansion of the Government National Mortgage Association (GNMA)¹¹¹ program Number B—Mortgages on Restricted Indian Lands.¹¹² HUD has made a request to the Office of Management and Budget to increase the fund from its present level of \$1 million to \$6 million.

3. The progress of RAMA, Inc., a non-profit organization funded by the Small Business Administration to assist in the implementation of Indian owned and managed mortgage banking companies. In April, 1971, the American Indian Mortgage and Financial Services Corporation was incorporated to function as a correspondent of existing lending institutions to attract private sources of capital for investment on the reservations.

4. Presently awaiting final approval within OEO is a \$520,000 grant for the purpose of stimulating the creation of construction companies on reservations. As presently conceived, the program would involve grants of \$30,000 to \$100,000 each to seven grantees to establish Indian-owned home construction companies. The Department of Labor is also involved in the program and will supply money for the training of workers.

5. Pending legislation that would authorize appropriation of an additional \$50 million for the revolving Indian loan fund; inaugurate and establish a \$200 million loan guaranty and insurance fund; authorize interest subsidy payments on guaranteed and insured loans; and, authorize the selling of loan instruments for loans made from the revolving fund and deposit the proceeds in the revolving fund.¹⁴¹

111. GNMA is authorized to purchase certain mortgages that are insured by FHA or guaranteed by the VA.

112. GNMA mortgage program Number B, as authorized by the President, became effective in November, 1962. Program Number B was originally allowed a ceiling of 5 million dollars. This amount was reduced in 1969 by 4 million. Of the \$1 million outstanding, \$719 is still available. Thus, according to a HUD official, there is no real urgency for the increase but it is nonetheless being requested in anticipation of the need. (Conversation with HUD official, March 17, 1972.)

113. Final approval shall be granted by the end of FY-72.

114. The pending bill in the Senate is S.2036; in the House there are four bills, H.R. 2378, H.R. 7688, H.R. 8063 and H.R. 9357. Similar bills had been introduced in the 91st Congress in response to the President's stated Indian policy but no action was taken on these bills.