

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 serves [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 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.

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.

[FR Doc. 96-22923 Filed 9-9-96; 8:45 am]

BILLING CODE 4160-16-P; 4210-33-P; 4310-02-P