

Registered
Proposed

THURSDAY, JANUARY 11, 1979
PART II



**DEPARTMENT OF
HOUSING AND
URBAN
DEVELOPMENT**

**Office of the Assistant
Secretary for Housing—
Federal Housing
Commissioner**

**Indian Housing
Proposed Rules**

[4210-01-M]

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

Office of the Assistant Secretary for Housing—
Federal Housing

[24 CFR Part 805]

[Docket No. R-78-599]

INDIAN HOUSING

Proposed Rulemaking

AGENCY: Department of Housing and Urban Development.

ACTION: Proposed rule.

SUMMARY: This notice sets forth proposed amendments to the regulations for the HUD Indian Housing Program under the United States Housing Act of 1937. The amendments would include changes in the procedures for development of the housing, changes in the procedure for providing Indian enterprise preference in IHA contracting, and for Mutual Help housing, changes in the computation of required homebuyer payments and a provision for payment of needed operating subsidy.

DATE: Comments are due on or before February 12, 1979.

ADDRESS: Comments should be filed with the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451-7th Street, SW., Washington, D.C. 20410, (202) 755-7603 (this is not a toll-free number).

Each person submitting a comment should include name and address and refer to the document by the document name indicated in the heading and give reasons for any recommendation. Copies of all written comments received will be available for examination by interested persons in the office of the Rules Docket Clerk at the address listed above.

FOR FURTHER INFORMATION CONTACT:

Thomas Sherman, Office of Assisted Housing, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755-5658 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Comprehensive regulations for the Indian Housing Program became effective on March 9, 1976. At that time it was anticipated that amendments would probably be required on the basis of experience under the published regulations. The present amendments provide for important changes in the present regulations, reflecting the concerns of Indian Housing Authorities and of HUD during the period the regulations have been in effect. These changes can be accom-

plished under present statutory authority. The Department recognizes that more extensive changes, requiring new legislation, may be needed in order to realize a more comprehensive solution to the problems of the program.

The changes which are now proposed for public comment are already the result of an extensive series of consultations with IHAs and other concerned Indian organizations, since early 1977. Successive working drafts of the amendments were simultaneously circulated to these groups and to HUD Field Staff. Numerous comments from HUD and non-HUD sources were received on successive rounds of the amendments, and have been carefully considered.

The following is a summary of the specified proposed amendments:

**PRODUCTION METHOD—MODIFIED
TURNKEY**

1. Section 805.203(a) now provides that the IHA's application for a Project shall state which production method it prefers to use and that the IHA shall provide a justification for its chosen method. Under this system, some IHA's have been using the Turnkey method, while others have been using the Conventional method. Section 805.203(a) is continued without change. It has been determined, however, that a modified form of the Turnkey method should be established in order to provide a more expeditious and less costly method and to take account of certain complaints by IHA's that under the present Turnkey method they do not have sufficient control of the design.

Accordingly, §805.203 would be amended to set forth a modified form of the Turnkey method which responds to the two objections mentioned above and combines the best features of both production methods. The modified form of Turnkey includes the following basic provisions.

(A) Before advertising for Turnkey Proposals, (1) the sites shall have been selected, (2) HUD shall have approved drawings and specifications for the housing in sufficient detail to enable a developer to quote a firm price and to assure the quality of the design and construction, and (3) on the basis of these drawings and specifications, HUD shall have approved an estimate of the Total Development Cost and separate estimates of the cost of Dwelling Construction and Equipment Cost (DC&E Cost) and of the maximum total construction contract price which it has determined to be reasonable and within applicable limitations.

(B) The invitation for Turnkey Proposals shall be based on a Developer's Packet which includes a description of

the sites and the detailed drawings and specifications.

(C) Accordingly, each developer will be required to quote a firm price. After the developer has been selected, and the ACC executed, the Contract of Sale will be executed.

(D) Finally, whatever the production method used, the IHA shall provide (and sufficient development funds will be provided for this purpose) regular inspections by a qualified inspector sufficient to assure compliance with the approved drawings and specifications and the quality of the completed housing. (See comment 41.)

PROHIBITION ON BONDING FOR TURNKEY

2. The regulations would provide, for both the standard and the modified Turnkey Method, that the developer may not be required to post a bond for performance or payment (§805.203(b) and (c)).

PRODUCTION METHOD—FORCE ACCOUNT

3. In response to comments, §805.203(f)(3) would authorize the field offices to approve the use of Force Account for repairs and rehabilitation of acquired housing, correction of deficiencies, or completion after default by the original contractor. For new construction, however, §805.203(d)(2) would permit the use of Force Account only with the approval of the Assistant Secretary for Housing, and only if the tribe agrees in writing to cover any excess costs. The tribe would have to demonstrate that it has the financial resources to meet this commitment up to a specified amount.

In all cases where an IHA requests authority to use the Force Account method, it would have to provide the justification and demonstrate that it has the capability to achieve timely completion of the work within the Total Development Cost and with the additional assurances provided by the tribe.

**PUBLIC ADVERTISEMENT FOR
COMPETITIVE PROPOSALS**

4. A number of comments requested authority to enter into construction contracts on a negotiated basis. It has been determined that the arguments given are insufficient to outweigh the public interest in providing public opportunity for competitive bidding. Accordingly, §805.203(g), provides that contracts for development of a Project may be awarded, whether to Indian Enterprises or to others, only after public advertisement for competitive proposals.

5. Difficulties have arisen in the past where the lowest bid or proposal could not be accepted because it was above the amount budgeted for the contract, or because the amount allocable to

DC&E Cost was in excess of the applicable Prototype Cost limit. These difficulties arose because there was nothing in the advertisement or in the information made available to the prospective contractors to apprise them of any such limitations. Accordingly, § 805.203(g) would provide that the advertisement for proposals shall inform all prospective contractors of the amount of the applicable Prototype Cost limit and of the maximum total contract price which has been determined to be reasonable.

INDIAN PREFERENCE IN CONTRACTING

6. Section 805.106(a) would be amended to clarify the meaning of "Indian Organizations and Indian-owned Economic Enterprises," the class of businesses entitled to contracting preference under Section 7(b) of the Indian Self-Determination and Education Assistance Act. This class includes both an "economic enterprise" as defined in Section 3(e) of the Indian Financing Act of 1974, and a "tribal organization" as defined in Section 4(c) of the Indian Self-Determination and Education Assistance Act. The regulations now incorporate only the Indian Financing Act definition of an "economic enterprise," and would be amended to add the statutory definition of "tribal enterprise."

7. Since it has been determined to exempt programs subject to Section 7(b) from the conflicting requirements under Section 3 of the HUD Act of 1968, Section 3 requirements would be deleted from § 805.106.

8. Experience has shown that public advertisement for bids or proposals addressed to all types of contractors, with a provision that the bid of an Indian Enterprise shall be preferred if its price is within 110 percent of the otherwise low bid, is not workable. Generally, non-Indian contractors are reluctant or unwilling to participate in such bidding. In addition, troublesome questions have arisen as to how the 10 percent price preference can be reconciled with Prototype Cost limits and reasonable contract cost determinations. This experience indicates that the most practicable and effective method of providing preference to Indian Enterprise is to issue an advertisement for proposals limited to Indian Enterprises.

Accordingly, § 805.204 would be revised to incorporate this with HUD approval as an optional method of providing preference to Indian Enterprises. When this method is used, the amended § 805.204 would also specifically authorize the IHA, with HUD approval, to publish a prior invitation for Indian Enterprises to submit a Statement of Intent to respond to an advertisement for proposals when published and to furnish evidence to establish

their qualifications in accordance with § 805.204(a)(4).

9. Where a contractor seeks to qualify for award of a contract under the new preference provisions, the contractor's eligibility for preference must be approved by HUD (§ 805.204(a)(4)). This section would state the nature of the submission by any prospective contractor seeking to qualify for the preference. The contractor would be required to submit evidence showing fully the extent of Indian ownership and interest, and evidence of structure, management and financing affecting the Indian character of the enterprise.

10. Section 805.204(d) would provide that for all construction contracts, the information for prospective contractors shall set forth all Indian preference requirements affecting award of or to be included in the terms of the Contract.

IHA COMMISSIONERS

11. A new § 805.110(b) would be added to provide that a member of the Board of Commissioners shall not be eligible for employment by the IHA except under unusual circumstances and with the approval of HUD. While some comments suggested allowing employment of a Board member in the position of Executive Director, it was the consensus of the comments that the role of Commissioner was basically incompatible with concurrent employment by the IHA in any capacity and that exceptions should be allowed only for the most compelling reasons.

12. There were several recommendations from IHAs and Indian groups that IHA Commissioners be compensated for losses in income incurred by reason of attendance at board meetings and that such compensation be funded by additional operating subsidy from HUD. Either a flat rate of compensation would have to be established which would be paid to Commissioners regardless of the varying amounts of lost income or HUD would have to become involved in calculations of individual losses of income.

The present policy is in line with that which prevails in the public housing program generally, and it is felt that this issue, as well as other operating policy issues, should be deferred until consideration has been given to the recommendations of the Counselor to the Secretary under which increased responsibility for operations and for maintaining the financial stability of the projects without HUD operating subsidy would be placed on the tribal governments and their IHAs. For these reasons, no amendment on the issue of compensation for Commissioners is proposed.

ALLOCATION OF CONTRACT AUTHORITY

13. A proposal to amend § 805.205 to provide that HUD will allocate contract authority for Indian housing in accordance with need and administrative capability of the IHA was rejected based upon negative comments.

COMPLIANCE WITH SECTION 213 AND OMB CIRCULAR A-95

14. Section 805.206 would be amended to provide that the application shall designate at least the general locations of the proposed housing as needed to permit the commencement of the Section 213 local review process. To expedite processing for Section 213 purposes, the application may be accompanied by comments on the application by the Chief Executive Officer on behalf of the local government. Appropriate provisions of OMB Circular A-95 are quoted. Section 805.217(a) would be revised to eliminate a description of procedural requirements under A-95, and to provide only that tentative site approval shall not be given until the requirements for compliance with Section 213 and with A-95 (where applicable) have been met.

PROGRAM RESERVATION AND DEVELOPMENT PROGRAM

15. The definition (in § 805.102) of the term "Program Reservation" has been modified to indicate that the obligation of contract and budget authority will be made at the program reservation stage and that the number of units which may be approved for ACC will be the number of units in the Program Reservation or such lesser number as is consistent with the reserved amount of contract and budget authority.

16. Section 805.206(b)(4) would require submission of an approvable Development Program within one year from issuance of the Program Reservation.

17. Section 805.208 would be substantially expanded to provide a mechanism for an ongoing process of coordination and cooperation by HUD, the IHA, the tribe and other concerned agencies during the development period. The amendments would require institution of the coordination process as soon as sites are identified. By concurring in tentative site approval, each party would be committed to providing any agreed funding or other assistance.

Section 805.208 would also provide for periodic consultations between the tribe, as well as IHA, HUD and other concerned federal agencies, on the progress of project development, at which times the parties would agree on necessary action on problems delaying the project development. Before the end of the one-year period,

the parties would recommend to HUD whether to extend the one-year limit or cancel the Program Reservation.

PRELIMINARY LOANS

18. The provisions for preliminary loan funding (§ 805.209) would be comprehensively revised. Because the amount of preliminary loan previously authorized (\$500 per unit, \$1,000 in Alaska) has often been insufficient, the amendments would allow a higher and more flexible limitation for preliminary surveys and planning. The new limitation is 3 percent of estimated Total Development Cost (\$1,500 in the case of a \$50,000 TDC). In addition, the HUD field office could under certain specified conditions approve preliminary loan funding for purposes other than preliminary surveys and planning, or for more than 3 percent.

19. While increasing the amounts of preliminary loan, the regulations would also establish limitations on the availability and use of the funds. The regulations would clarify that preliminary loan funds are only available for purposes and in amounts that can be included in a Development Cost Budget (§ 805.209(c)). In order to establish tighter controls over the use of the funds, the IHA would be required to adopt, and submit for HUD approval, a budget for use of the loan funds (§ 805.209(d)). Finally, since adequate preliminary loan funding is now to be provided, the amendments would explicitly prohibit an IHA from the use of funds from other projects to cover the pre-ACC expenses (§ 805.209(e)).

CAPABILITY OF CONTRACTOR

20. A new § 805.211(c) would provide that the IHA may not award a construction contract until the prospective contractor has demonstrated that he has the technical, administrative and financial capability to perform the contract work within the time provided under the contract.

DESIGN OF THE HOUSING

21. Section 805.212(a) sets forth a revised statement of the basic design standards. In the interests of clarity, all the relevant standards are brought together in one paragraph. In addition, the revision states that the HUD Minimum Property Standards shall be taken into account, but shall not be controlling. This will eliminate the need for specific exceptions or waivers where deviations from the MPS are considered desirable or appropriate.

22. Section 805.212(b) is a new provision which sets forth the procedure for obtaining HUD approval of a design preliminary to preparation of a Developer's Packet and advertisement for proposals. Under this procedure, the IHA shall prepare and submit to

HUD a basic outline for a minimum acceptable house for its jurisdictional area and attendant water supply and waste disposal facilities. This shall be done after consultation with the families to be housed. HUD shall approve a basic outline of the housing and facilities which, as determined by HUD, can be constructed within the applicable Prototype Cost limit and at a reasonable total contract price, and within an acceptable Total Development Cost. These amounts shall be stated in HUD's approval of the basic outline and, as stated earlier, the prototype cost limit and the maximum total contract price which has been determined to be reasonable shall be included in the advertisement for proposals. Following HUD approval of the basic outline, the IHA shall prepare the drawings and specifications needed for the advertisement for proposals and shall submit these, together with the remainder of the information for prospective contractors, to HUD for its approval.

COST LIMITS—NEW CONSTRUCTION OR ACQUISITION

23. Section 805.213 which provides procedures for special prototype cost determinations for this program, would be amended to clarify that these provisions apply only to separate Indian prototype cost areas.

24. The statement of the special factors to be considered in establishing prototype costs for separate Indian areas (now § 805.213(b)(1)) would be modified by adding a sentence requiring that prototype costs shall provide for features, appropriate for the area, designed to conserve energy, lower utility costs, or utilize indigenous energy sources.

25. Section 805.213(b)(2), a new provision, states that a copy of the prototype design on which a published prototype cost is based shall be supplied to the IHA for its guidance in preparing the basic house design to be submitted to HUD for approval.

26. Section 805.212(c) deals with revisions of prototype cost, in the context of the procedure which calls for the submission by the IHA to HUD of a basic outline of the housing and facilities it desires to have built. This section states that if the IHA finds that a proposed housing design cannot be built within 110 percent of the existing prototype cost because construction costs have increased (but not because the design has more expensive features than the prototype design) the IHA shall so state and request a revision of the prototype cost. This request shall be accompanied by evidence of the cost increase. HUD shall agree to revise the prototype cost only if (1) it determines that the evidence of cost increases supports the request

and (2) the design cannot be modified to reduce the cost sufficiently.

27. Section 805.214(d) would be amended to clarify that the prototype cost limit applies only to new construction, and to provide that where a Project is developed under the Acquisition method Development Cost shall not exceed 90 percent of the imputed Development Cost of a comparable hypothetical new construction project (or an appropriately lower percentage if the projected useful life of the acquisition project is less than the ACC term).

28. Many comments addressed the delay in the publication of the annual updates and interim revisions of prototype costs. The Department is reviewing actions it might take to alleviate this problem by expediting the present process or by delegating authority to field offices subject to total development cost ceilings. Comments from the public are specifically invited on this point.

PROVISIONS RELATING TO DEVELOPMENT COST

29. At the request of the BIA, § 805.214(c) would be amended to provide that where BIA is to assume responsibility for maintenance of streets after the housing development is completed, BIA must be given the opportunity to review the design and to inspect the construction of the streets.

30. Section 805.214(e) presently provides that connections to utility distribution systems may be included in Development Cost. In view of questions and comments relating to the meaning of the word *connections* and whether costs of extensions to distribution systems may be included, the paragraph has been revised to change the word *connections* to *hookups* and to provide that where reasonably short extensions are needed to make the utility distribution system available to the site, such costs may be included in the Development Cost if the costs can be justified on the basis of net savings in the Development Cost or long-term savings based upon utility analysis.

31. Section 805.214(e) now provides that costs of facilities to be provided by other than HUD shall not be included in Development Cost. This paragraph has been revised to state that such costs may not be included unless such costs are offset by other parties assuming costs that would otherwise be included in Development Cost.

TENANT COUNSELING

32. A new paragraph, § 805.214(i), has been added to provide for the costs of a HUD-approved counseling program (up to \$500 per dwelling unit) in Development Costs for tenants of a Rental Project. Previously such coun-

seling programs were allowable only for Mutual-Help projects.

SITE SELECTION AND APPROVAL

33. Section 805.216(b) is being amended to specify that a site may not be approved unless, in addition to assurances of access roads in time for initial occupancy of a proposed project, there are assurances that there will be access to the site in time for construction purposes.

34. Section 805.216(e) would be amended to specify that IHAs may only use sites for which the costs of surveys and planning, including test borings and drillings, are expected to be reasonable. A new §805.216(g)(5) would state that final site approval will not be given unless HUD determines there is not an unreasonable risk of natural hazard.

35. Section 805.217(b) would be amended to include an exception permitting execution of an ACC before final site approval on donated sites or contributed sites for which the MH Contribution credit is \$750 or less per site under the following conditions:

a. All projects have tentative site approval before ACC;

b. At least 50 percent of the sites have final site approval before ACC;

c. It is shown to the satisfaction of HUD that the balance of the sites will probably meet the requirements for final site approval no later than one year from execution of the Construction Contract; and

d. The Construction Contract shall provide that is all sites, finally approved and with executed leases, have not been delivered by the IHA to the contractor within one year from execution of the Construction Contract (or HUD-approved extension), the Construction Contract shall be reduced by the amount attributable to the units to be developed on the undelivered sites.

36. Section 805.217(c) would prohibit the acquisition of a site until after (1) final site approval and any necessary approvals from IHS and BIA and (2) execution of the ACC, unless HUD authorizes advance acquisition.

APPRAISALS

37. In response to field recommendations, the dollar amount below which an appraisal is not required is raised from \$500 to \$750 (§805.219(a)).

38. Section 805.219(b) would be amended to eliminate the provision that HUD or BIA appraisals shall not be requested until receipt of a HUD notification that a sufficient number of sites have been approved to permit the project to proceed. It is intended to facilitate and encourage the submission of requests for site appraisals for particular sites, or batches of sites, at

the earliest possible date, to avoid delays in project development.

39. Section 805.219(c)(4) provides that the valuation of a leasehold interest on trust land may not exceed 3/4 of the value of the land as if alienable in fee. This limitation would be retained, but the regulation would be amended to provide that the 3/4 limitation may be exceeded with approval of the Assistant Secretary for Housing in exceptional cases where no other suitable sites are available.

FINANCIAL FEASIBILITY—RENTAL PROJECTS

40. An amendment of §805.220 to state in detail the process by which financial feasibility of a rental project shall be determined has been eliminated based upon comments that it was difficult to understand. Therefore, the section remains unchanged and the financial feasibility test is referenced to the test applicable to projects subject to the Performance Funding System (24 CFR 890.101 et. seq.) for providing operating subsidy. Operating subsidy for these projects is now provided under PFS.

INSPECTIONS

41. Section 805.221(a) has been expanded to make it clear that whatever the production method used, inspections during construction must be performed with such frequency and under such procedures as will assure completion of quality housing in accordance with the contract.

42. Section 805.221(c) would provide that the homebuyer must be given a copy of the report on the final inspection when the home is completed.

ACC AMENDMENTS

43. A new §805.223(b) would provide explicitly that the Development Program and ACC may be amended to provide amounts needed to correct deficiencies in design, construction or equipment and resulting damages, where it is not possible to obtain timely correction by the responsible parties.

44. In the case of a MH home, the additional development cost for such work will not result in an increase in the homebuyer's purchase price. However, before approving work on a MH home for correction of deficiencies, the field office may review the homebuyer's compliance with the MHO Agreement and may require the IHA to reach an agreement with the homebuyer for the correction of significant non-compliances.

ADMISSION POLICIES

45. The existing regulation permits IHAs to set maximum income limits for eligibility at the maximum permit-

ted under the Act, which limits participants to families who cannot afford to pay enough to cause private enterprise to build an adequate supply of decent, safe and sanitary dwellings for their use. It was anticipated that under permissible income limits, families of relatively higher incomes who could not obtain decent housing because of the near impossibility of obtaining private financing on trust or restricted land would be able to participate in the program and the existing regulation specifically states that "HUD shall approve the IHA's schedules of maximum income limits unless it finds that the IHA's determination of such limits is arbitrary or capricious."

Evidence has been received that higher income limits in some cases are not being approved. Therefore, the provision would be revised (a) to state that IHAs in submitting higher income limits to HUD for approval may furnish a certification that private (conventional, FHA or VA) or Farmers Home Administration financing is not available to the prospective tenants or homebuyers along with such other supporting evidence as the IHAs deem advisable and (b) to eliminate the "arbitrary and capricious" language and provide a new standard for HUD field offices in acting up on an IHA's request. The new standard is that HUD shall not disapprove such income limits on the ground of their being too high unless it finds that the IHA certification is incorrect.

46. The regulations now require (§805.302(b)(2)(i)) the adoption by an IHA of admission policies for Rental, MH and Turnkey III Projects designed to achieve occupancy by families with a "broad range of incomes and rent-paying ability which is generally representative of the range of incomes of low-income Indian families in the area." These provisions would be amended to change the standard of reference to "range of income of low-income Indian families in the area, as determined by HUD, who would be qualified for admission to the type of project (Rental or Mutual-Help)." Thus, in the case of a Mutual-Help project, the relevant area population would consist of only those families who would be income-eligible for a Mutual-Help project, taking into account the obligation to pay as a minimum the amount of the Administration Charge and to provide maintenance and utilities. A similar amendment would be made in §805.302(b)(2)(iv) in connection with the requirement for at least 20 percent occupancy of an MH project by those of very low income.

MAINTENANCE AND IMPROVEMENTS

47. Section 805.306(d) presently states, with respect to IHA homeownership projects, that the IHA is responsible to HUD for assuring that the housing is being kept in decent, safe and sanitary condition. In response to concern that this does not sufficiently express the responsibility of the IHA, bearing in mind that the obligation to provide the maintenance is on the homebuyer, this section would be amended to provide that the IHA has the overall responsibility for assuring that the home and grounds are maintained in a manner that will preserve their condition, normal wear and depreciation excepted. A provision would also be added requiring the IHA to conduct a complete interior and exterior examination of each home at least once a year, and to take appropriate remedial action, including steps to assure performance of the homebuyer's obligations.

48. A new provision which would have required that any improvements to rental, Turnkey III or MH units must be performed under HUD-approved plans and specifications, even if financed by non-project funds, and has not been included because minor improvements by homebuyers would be delayed and excessive paperwork and administrative time would be required.

OPERATING SUBSIDY FOR MUTUAL-HELP PROJECTS

49. Some comments requested the payment of operating subsidies to assist homebuyers in paying the Administration Charge and utilities and in maintaining the homes, since the costs of these items have increased faster than the incomes of homebuyer families. It is felt that this issue, as well as other operating policy issues, should be deferred until consideration has been given to the recommendations of the Counselor to the Secretary under which increased responsibility for operations and for maintaining the financial stability of projects without HUD operating subsidy would be placed on the tribal governments and their IHAs. However, to provide for the immediate need for operating subsidy for items for which the homebuyer is not responsible, a new Section 805.311 would be added. In addition to the use of operating subsidy to pay for Independent Public Accountant Audits, operating subsidy could be authorized to pay for the following:

a. Administration Charges for vacant units where the IHA is making all reasonable efforts to fill the vacancies.

b. Collection losses due to delinquencies of homebuyers who have vacated their homes, and the costs of repairs to the vacant homes.

c. Costs of homebuyer counseling not funded under the Development Cost Budget, and training of staff and Commissioners.

d. Costs resulting from other unusual circumstances determined by HUD as justifying payment of operating subsidy.

Under the "unusual circumstances" provision, it is the intent that operating subsidy presently being paid for existing projects will be continued to the extent otherwise justified. However, it is also anticipated that each IHA will update the amount of the Administration Charge in accordance with its Operating Budget.

50. Many comments pointed out that although the Development Cost Budgets for projects developed under the new Regulation may include an amount of \$500 per unit for homebuyer counseling, there is no source of funds for homebuyer counseling with respect to the occupants of the older Mutual-Help projects, or for training of IHA staff and Commissioners. Moreover, these are ongoing needs for which "one-shot" funding from development cost is not in itself sufficient. The provision authorizing operating subsidy for ongoing training and counseling would permit payment of operating subsidy to meet these needs.

DEVELOPMENT OF MH PROJECTS

51. Unrestricted land (fee land) may be purchased for a Mutual-Help homesite if the tribe and the homebuyer cannot donate or contribute enough usable sites. Under the present Regulation, §805.404(c), the maximum amount that may be paid for a purchased site is \$1,500 per unit, unless the excess cost is paid for by non-project funds or is compensated for by additional Mutual-Help contribution. In view of rising costs, as well as cost differences among localities, it has been determined that a more flexible ceiling is necessary. Another problem with the flat dollar ceiling is that it fails to give credit for those cases where the purchased site happens to include improvements which can be used in the development of the projects and which would otherwise have to be provided at additional development cost. Accordingly, §805.404(c) would be amended in three respects:

a. The ceiling amount for an unimproved site would be stated as 8.75 percent of the estimated Dwelling Construction and Equipment Cost (DC&E Cost). This percentage would amount to approximately \$1,500 where the DC&E Cost is about \$17,000. This ceiling could be exceeded if the site has such topographic features that offsetting savings will be achieved through lower site improvement costs.

b. In case of an improved or partially improved site, the purchase price, to-

gether with the cost of further site improvements, must be reasonable in relation to the estimated DC&E Cost and consistent with an acceptable Total Development Cost.

52. In order to reflect increases in land cost, the maximum cost for a homesite, below which an appraisal is not required, has been raised from \$500 to \$750, and the maximum Mutual Help credit for a contributed homesite has been revised from \$1500 per homesite to a project average of \$1500 per homesite. (Section 805.219(a); 805.408(c)(2)).

53. Section 806.404(e) would provide that after final site approval a change of site shall not be permitted except with specific HUD approval on the basis of a showing of special circumstances and that the change will not unreasonably delay or add to the cost of the project.

54. Section 805.404(f) requires that contributed or donated land be leased or conveyed to the IHA before execution of the construction contract. This section would be amended to provide for exception as allowed by HUD.

55. Section 805.404(g) would provide that the IHA shall be responsible for determining the extent to which homebuyers be given an opportunity to comment on the planning and design of the homes, consistent with HUD standards and cost limitations.

ADMISSION TO MH PROJECTS

56. A new §805.406(a)(2) which would have required that a family to be eligible for a MH project must have at least one person (not counting minors) who is not yet either sixty-two years of age or disabled was considered on the basis that this would help assure the ability to maintain the property. This section was withdrawn, however, based upon comments that such a section would adversely affect elderly family applicants and would not necessarily assure maintenance.

57. Section 805.406(b), which states the requirement for limiting admission to MH projects to families able and willing to meet all obligations under an MHO Agreement, would be amended to refer specifically to the MH homebuyer's duty to perform or provide the necessary maintenance.

HOMEBUYER ACCOUNTS

58. Section 805.409(a) would be amended to clarify the treatment of MH contribution credits after a substitution. In particular the amendment would provide that any additional MH credit after a substitution must be offset by an agreed reduction in the amount paid to the contractor. The additional credit cannot be covered by an increase in the total contract price included in development cost.

59. Section 805.414 would be amended to clarify the treatment on termination of MH credits for contributed land where the terminated homebuyer does not receive reimbursement or return of property.

60. Sections 805.418(a)(2)(ii) and (b) and 805.421(c)(4) would be amended to allow charges to be made to an MH homebuyer's equity account if necessary for the correction of a condition which presents an immediate risk of serious damage to the property.

MUTUAL-HELP—REQUIRED MONTHLY PAYMENTS

61. Under § 805.416(a) of the present Regulations, a homebuyer is required to pay the higher of (a) the Administrative Charge, the amount necessary to meet per unit monthly operating expense of the IHA, or (b) 25 percent of the family's adjusted income ("Family Income"), less an allowance for utilities. If a family pays more than the Administrative charge, the family gets individual equity credit for the additional amount. Comments to the Department have indicated a need for more flexibility by permitting the use of a lower percentage than 25 percent and by permitting a ceiling for those homebuyers of relatively high income. In response to these comments § 805.416(a) would be amended to provide that, except as necessary to meet the Administrative Charge, the amount of the Required Monthly Payment shall be computed by multiplying Family Income by a specified percentage (no less than 15 percent and no more than 25 percent). In addition, an IHA may provide for a maximum Required Monthly Payment of not less than the economic rent (Administration Charge plus debt service).

62. Sections 805.416(b) and (d) would be amended to provide for changes of Required Monthly Payments under a HUD-approved schedule to reflect changes in any of the factors affecting computation of the monthly payment.

63. The new rules for determination of Required Monthly Payments would be applicable only to MH projects placed under ACC on or after March 9, 1976. These rules would not apply to existing projects unless they are converted to development or operation under the new regulations.

64. A new provision, § 805.416(d)(2), is added to permit agreements to be made with homebuyers for seasonably adjusted payments schedules in order to accommodate wide fluctuations in a payments burden due to seasonal conditions.

MH OPERATING RESERVE

65. Section 805.420(a) would be amended to provide that the Operating Reserve for an MH project must be

sufficient for working capital and other HUD-approved purposes.

PURCHASE OF HOME

66. Section 805.442(c)(2) and (3) would be amended to provide a simplified and uniform procedure for computation of the purchase price for an MH homebuyer other than the homebuyer who first occupies an MH home.

67. Section 805.422(d)(4) would be amended to specify that the home may not be conveyed until the homebuyer has met all his obligations under the Mutual-Help Agreement.

68. Sections 805.422(d)(5) and 805.423(d) would be amended to state the IHA's obligation to invest, and later to send to HUD, the purchase monies received by the IHA.

69. Section 805.422(a) and (e) would be amended to delete any requirement for a homebuyer to take title when his income increases, although the homebuyer does have the right if he so desires to obtain title with IHA homeownership financing (see § 805.423). Under the new text of § 805.422(e), when the IHA finds that a homebuyer is eligible to purchase with IHA homeownership financing, it will send him a written notification to that effect. This notification will also advise the homebuyer that until he purchases the home, his status will be governed by § 805.422(e)(2). Under this provision, the homebuyer will continue to make payments based upon his income, equity credits will continue to build up, but the purchase price will be frozen at the amount as of the date of the written notification.

70. Section 805.424(f) would be added to state the IHA's obligation to take action for non-compliance by a homebuyer with the Mutual-Help Agreement, and to require adoption of an agreed plan for bringing a homebuyer into compliance. Where a homebuyer does not comply with the plan, the IHA is required to proceed with eviction.

SETTLEMENT UPON TERMINATION—MAINTENANCE CREDIT ACCOUNT

71. Under the present Regulation, § 805.424(d)(3) provides that in case of termination of the MHO Agreement before acquisition of ownership, any credit balance in the Monthly Equity Payments Account (MEPA) shall be disposed of (after making all the necessary charges for repairs, etc.) by paying to the departing homebuyer only the amount that is equal to his total Maintenance Credit. This system has required that a special Maintenance Credit account be carried for each homebuyer to show the estimated value of the maintenance he is required under the present Regulation to provide. Comments have indicated that this adds to the complexity of

bookkeeping and it has been urged that since the Maintenance Credit account serves no function under any other circumstances, it should be eliminated. In recognition of the need for simplifying the program as much as possible, the Regulation would be amended by deleting the Maintenance Credit account and authorizing payment to a departing homebuyer of the amount remaining in the MEPA Account after charging that account with the cost of all necessary repairs to the home and other delinquencies, if any.

CONVERSION

72. Section 805.428(b) would be amended to state the form of agreement by a Participant in the old Mutual-Help Program (before March 9, 1976) to convert his unit to the new Mutual-Help system.

A finding of inapplicability regarding the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours at the office of the Rules Docket Clerk at the above address.

Accordingly, it is proposed to amend Part 805 as follows:

Subpart A—General

- Sec.
- 805.101 Applicability and scope.
 - 805.102 Definitions.
 - 805.103 Types of low income housing projects.
 - 805.104 Assistance from Indian Health Service and Bureau of Indian Affairs.
 - 805.105 Applicability of civil rights statutes.
 - 805.106 Preferences, opportunities, and non discrimination in employment and contracting.
 - 805.107 Compliance with other Federal requirements.
 - 805.108 Establishment of IHAs pursuant to Tribal law or State law.
 - 805.109 Procedures for establishment of IHAs by Tribal ordinance.
 - 805.110 IHA Commissioners who are tenants or homebuyers.
- Appendix I—Tribal Ordinance.

Subpart B—Development

- 805.201 Definitions.
- 805.202 Roles and responsibilities of Federal agencies.
- 805.203 Production methods.
- 805.204 Indian preference in contracting.
- 805.205 Allocations of contract authority.
- 805.206 Submission and HUD review of application for Program Reservation.
- 805.207 Prerequisites for application approval.
- 805.208 Interagency and Tribal Coordination.
- 805.209 Preliminary loans.
- 805.210 Development program.
- 805.211 Contracts in connection with development.
- 805.212 HUD's minimum property standards.

PROPOSED RULES

Sec.

- 805.213 Prototype costs in Indian areas.
 - 805.214 Development cost.
 - 805.215 Design for economy in fuel consumption.
 - 805.216 Site selection.
 - 805.217 Site approval.
 - 805.218 Types of interest in land.
 - 805.219 Appraisals.
 - 805.220 Financial feasibility of rental projects.
 - 805.221 Construction inspection.
 - 805.222 Inspections after acceptance and enforcement of warranties.
 - 805.223 Cost to correct deficiencies.
- Appendix I—Interdepartmental Agreement on Indian Housing. Exhibit to Agreement—BIA Homebuyer Training Program.

Subpart C—Operation

- 805.301 Definitions.
- 805.302 Admission policies.
- 805.303 Grievance procedures.
- 805.304 Determination of rents and homebuyer payments.
- 805.305 Rent and homebuyer payment collection policy.
- 805.306 Maintenance.
- 805.307 Procurement and administration of supplies, materials and equipment.
- 805.308 Correction of management deficiencies.
- 805.309 Indian preference in contracting.
- 805.310 Contracts for personal services.
- 805.311 Operating Subsidy—MH Projects.
- 805.312 Operating Subsidy—Other Projects.

Subpart D—Mutual Help Homeownership Opportunity Program

- 805.401 Scope and applicability.
- 805.402 Definitions.
- 805.403 Contractual framework.
- 805.404 Special provisions for development of an MH Project.
- 805.405 Financing of development cost.
- 805.406 Selection of MH homebuyers.
- 805.407 Notifications to applicant families.
- 805.408 MH contribution.
- 805.409 MH contributions in event of substitution of homebuyer.
- 805.410 MH work contribution.
- 805.411 Cash contribution.
- 805.412 Materials or equipment contribution.
- 805.413 Special requirements for NH construction contracts.
- 805.414 Disposition of contributions on termination before date of occupancy.
- 805.415 Actions upon completion; commencement of occupancy.
- 805.416 Required monthly payments.
- 805.417 Inspections; responsibility for items covered by warranty.
- 805.418 Maintenance, utilities, and use of home.
- 805.419 Administration charge and operating expense.
- 805.420 Operating reserve.
- 805.421 Homebuyer reserves and accounts.
- 805.422 Purchase of home.
- 805.423 IHA homeownership financing.
- 805.424 Termination of MHO agreement.
- 805.425 Succession upon death, mental incapacity or abandonment.
- 805.426 Miscellaneous.
- 805.427 Annual contributions contract.
- 805.428 Conversion of existing projects.
- 805.429 Counseling of homebuyers.
- 805.430 Cross references to defined terms.

AUTHORITY: Section 7(d), Department of Housing and Urban Development Act (42

U.S.C. 3535(d)); sections 201(b) and 203 of the Housing and Community Development Act of 1974 (42 U.S.C. 1437, note and 1437f, note); U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.), especially sections 5(b), 5(c), and 5(h) (42 U.S.C. 1437c(b), 1437c(c), and 1436c(h)).

Subpart A—General**§ 805.101 Applicability and scope.**

(a) *General.* (1) Under the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.), the U.S. Department of Housing and Urban Development provides financial and technical assistance to public housing agencies for the development and operation of low income housing projects. This Part is applicable to such projects which are developed or operated by an Indian Housing Authority in the area within which such Indian Housing Authority is authorized to operate.

(2) If assistance under this Part is not available to a low income Indian family because the family desires housing in an area within which no Indian Housing Authority is authorized to provide housing, or if for any other reason an Indian family desires housing assistance other than under this Part, a family may seek housing assistance under other Parts of this Chapter.

(b) *Other HUD regulations and requirements.* The provisions of this Part do not constitute a self-contained or complete statement of the HUD regulations and requirements affecting the development or operation of low income housing Projects of Indian Housing Authorities. Except as modified or supplemented by the provisions of this Part, HUD regulations, procedures and requirements generally applicable to the development or operation of low income housing are applicable to Projects subject to this Part.

§ 805.102 Definitions.

This section sets forth certain definitions of terms used in this Part. Definitions of other terms are contained in various sections where the terms are used. For a list of cross references to the location of the various definitions, see 805.430.

ACC. An Annual Contributions Contract.

Act. The U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.).

Annual Contributions Contract. A contract on a form prescribed by HUD for loans and annual contributions between HUD and an IHA, under which HUD finances the development of a low income housing project under the Act, and the IHA agrees to develop and operate the project in compliance with all provisions of the ACC and the Act, and all HUD regulations, requirements and procedures pursuant thereto. The amount charged against con-

tract authority is the maximum contribution payable under the ACC (Maximum Contribution Percentage times Maximum Development Cost), and this amount multiplied by the maximum number of debt service annual contributions over the term of the ACC is the amount charged against budget authority.

BIA. The Bureau of Indian Affairs in the Department of the Interior.

Construction Contract. The contract for construction in the case of the Conventional method, or the Contract of Sale in the case of the Turnkey method.

Conversion. A conversion of an Existing Project in accordance with § 805.428.

Development Cost. See Total Development Cost.

Development Program. A statement of the basic elements of a Project, including the estimated Total Development Cost of the Project, as adopted by the IHA and approved by HUD.

Existing Project. A Mutual Help Project placed under ACC before March 9, 1976, the effective date of this Part.

Home. A dwelling unit covered by a Homebuyer's Mutual Help and Occupancy Agreement.

Homebuyer. A person(s) who has executed a Mutual Help and Occupancy Agreement with the IHA, and who has not yet achieved homeownership.

Homeowner. A Homeowner who has achieved ownership of his Home.

HUD. The Department of Housing and Urban Development, including the Regional, Area or Insuring Office which has been delegated authority under the Act to perform functions pertaining to this Part for the area in which the IHA is located.

IHA. An Indian Housing Authority.

IHA Homeownership Financing. IHA financing for purchase of a Home by an eligible Homebuyer who gives the IHA a Promissory Note and Mortgage for the balance of the purchase price (see section 805.423).

IHS. The Indian Health Service in the Department of Health, Education, and Welfare.

Indian. Any person recognized as being an Indian or Alaska Native by a tribe, the Government, or any state.

Indian Area. The area within which an IHA is authorized to provide housing.

Indian Housing Authority. A public housing agency established (a) by exercise of a tribe's powers of self-government independent of state law, or (b) by operation of state law providing specifically for housing authorities for Indians.

Interdepartmental Agreement. The agreement among HUD, the Department of Health, Education and Welfare and the Department of the Interi-

or concerning assistance to Projects developed and operated under the Act (Appendix I to Subpart B).

MEPA. The Monthly Equity Payments Account (see § 805.421(b)(1)).

MH. Mutual Help.

MH Construction Contract. A Construction Contract for an MH Project where an MH contribution of work, materials or equipment is to be made, which contract shall be on a form prescribed by HUD.

MH Contribution. A contribution of land, work, cash, materials or equipment toward the Development Cost of a Project in accordance with a Homebuyer's MHO Agreement, credit for which is to be used toward purchase of a Home unless used earlier to pay for maintenance or other obligations of the Homebuyer.

MHO Agreement. A Mutual Help and Occupancy Agreement between an IHA and a Homebuyer.

MH Program. The Mutual Help Homeownership Opportunity Program.

MH Project. A Project developed and operated under the MH Program.

Program Reservation. A written notification by HUD to an IHA, which is not a legal obligation, but which expresses HUD's determination, subject to fulfillment by an IHA of all legal and administrative requirements within a stated time, to enter into a new or amended Preliminary Loan Contract or ACC covering the stated number of housing units, or such lesser number as is consistent with the amount of contract and budget authority reserved by HUD under the Program Reservation.

Project. The entire undertaking to provide housing as identified in the ACC involved, including all real or personal property, funds and reserves, rights, interests and obligations, and activities related thereto to be developed and operated by an IHA.

Total Development Cost. The sum of all HUD-approved costs for a Project incurred by an IHA in any and all undertakings necessary for planning, site acquisition, demolition, construction or equipment and their necessary financing (including the payment of carrying charges), and in otherwise carrying out the development of the Project.

Tribe. An Indian tribe, band, pueblo, group or community of Indians or Alaska Natives.

§ 805.103 Types of low income housing projects.

IHAs may develop the following types of Projects:

(a) **Rental.** In a Rental Project, the occupants are month-to-month tenants of the IHA. Projects may be developed with single family detached, duplex, row house, walk-up, garden

type, or elevator structures. Projects for the elderly and the handicapped may include congregate housing.

(b) **Mutual Help Homeownership Opportunity.** This program (see Subpart D) is available only for use by IHAs eligible for assistance under this Part. Under this program, a Homebuyer enters into an MHO Agreement under which the Homebuyer agrees to (1) contribute cash, work, land, materials, or equipment, or a combination thereof, for development of the Project; (2) make monthly payments based on income; and (3) provide all maintenance of the Home. In return, the initial purchase price of the Home is reduced each month in accordance with a predetermined purchase price schedule, and the Homebuyer is given the right to buy the Home by payment of the remaining balance of the purchase price at the time of the purchase. The credit for the Homebuyer's contribution is available for maintenance of the Home, and any balance is applied against the purchase price of the Home.

(c) **Section 8 Housing Assistance Payments.** The regulations for this program are set forth in Parts 880, 881, 882, and 883 of this Chapter. Under this program, a low income family leases a dwelling unit in newly constructed, substantially rehabilitated or existing housing. Housing assistance payments are made on behalf of the family to cover the difference between the contract rent of the unit and the amount payable by the family, as determined in accordance with schedules and criteria established by HUD. This program may include rental and cooperative projects, including housing for the elderly or handicapped and congregate housing, and homeownership opportunity housing (see Section 8(c)(8) of the Act.)

§ 805.104 Assistance from Indian Health Service and Bureau of Indian Affairs.

Projects undertaken by IHAs of Federally Recognized Tribes shall be developed and operated in accordance with the provisions of the Interdepartmental Agreement. "Federally Recognized Tribe" means a tribe recognized as eligible for services from BIA or IHS. Since HUD assistance under this Part is not limited to IHAs of Federally Recognized Tribes, provisions in this Part relating to assistance from BIA or IHS, or to required approvals, actions or determinations by these agencies in connection with such assistance, shall be construed as applicable only to Projects undertaken by IHAs of Federally Recognized Tribes.

§ 805.105 Applicability of civil rights statutes.

(a) **Indian Civil Rights Act.** The Indian Civil Rights Act (Title II of the

Civil Rights Act of 1968, 25 U.S.C. 1301-03) provides, among other things, that no Indian tribe in exercising power of self-government shall deny due process or the equal protection of its laws to any person within its jurisdiction. The Indian Civil Rights Act applies to tribes which exercise powers of self-government. Thus, it is applicable in all cases when an IHA has been established by exercise of such powers. In the case of an IHA established pursuant to state law, the capacity of the tribe to exercise powers of self-government and the applicability of the Indian Civil Rights Act shall be determined by HUD on a case-by-case basis. Projects of IHAs subject to the Indian Civil Rights Act shall be developed and operated in compliance with its provisions and all HUD requirements thereunder.

(b) **Non-applicability of Title VI and Title VIII.** Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and Title VIII of the Civil Rights Act of 1968 as amended (42 U.S.C. 3601 et seq.), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing, do not apply to IHAs established by exercise of a tribe's powers of self-government. HUD regulations implementing Title VI and Title VIII shall not be applicable to development or operation of Projects by such IHAs. In the case of an IHA established pursuant to state law, the question of applicability of Title VI and Title VIII shall be determined by HUD on a case-by-case basis.

§ 805.106 Preferences, opportunities, and nondiscrimination in employment and contracting.

(a) **Indian Self-Determination and Education Assistance Act (preference for Indians).** HUD has determined that the Projects under this Part are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), which requires that, to the greatest extent feasible: (1) Preference and opportunities for training and employment shall be given to Indians, and (2) preference in the award of contracts and subcontracts shall be given to Indian Organizations and Indian-owned Economic Enterprises. "Indian Organizations and Indian-owned Economic Enterprises" include both: (1) Any "economic enterprise" as defined in Section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-262); that is "any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit: Provided, that such Indian ownership shall constitute not less than 51 per-

cent of the enterprise, and (2) any "tribal organization" as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638); that is: "the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian Community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities * * *."

(b) *Executive Order 11246 (equal employment opportunity)*. (1) Contracts for construction work in connection with Projects under this Part are subject to Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303), and applicable implementing regulations (24 CFR, Part 130; 41 CFR, Chapter 60), rules, and orders of HUD and the Office of Federal Contract Compliance Programs of the Department of Labor. Executive Order 11246 prohibits discrimination and requires affirmative action to ensure that employees or applicants for employment are treated without regard to their race, color, religion, sex, or national origin.

(2) Compliance with Executive Order 11246, and related regulations, orders and requirements shall be to the maximum extent consistent with, but not in derogation of, compliance with Section 7(b) of the Indian Self-Determination and Education Assistance Act.

(c) *IHA's Own Employment Practices*. Each IHA shall adopt and promulgate regulations with respect to the IHA's own employment practices which shall be in compliance with its obligations under Section 7(b) of the Indian Self-Determination and Education Assistance Act, and Executive Order 11246, where applicable. A copy of these regulations shall be posted in the IHA office, and a copy shall be submitted to HUD promptly after adoption by the IHA. (Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), as amended, which prohibits discrimination in employment by making it unlawful for employers to engage in certain discriminatory practices, excludes Indian tribes from the nondiscrimination requirements of Title VII.)

§ 805.107 Compliance with other Federal requirements.

(a) *National Environmental Policy Act*. Projects shall be developed in compliance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and all requirements thereunder.

(b) *Clean Air Act and Federal Water Pollution Control Act*. Projects shall be developed in compliance with the

Clean Air Act (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1151 et seq.) and all requirements thereunder.

(c) *Davis-Bacon Wage Rates for Laborers and Mechanics*. Not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a through 276a-5), shall be paid to all laborers and mechanics employed in the development of a Project.

(d) *Professional and Technical Wage Rates*. Not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable state or local law) by HUD, shall be paid to all architects, technical engineers, draftsmen and technicians employed in the development of a Project.

(e) *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and Expenses of Temporary Relocation*. (1) When a Project is developed by an IHA established in accordance with § 805.108(a), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Uniform Act") (42 U.S.C. 4601 et seq.) does not apply, because such an IHA is not a "State agency" covered by the Uniform Act.

(2) When a Project is developed by an IHA established in accordance with § 805.108(b), the Project shall be developed in compliance with the Uniform Act and HUD policies and requirements thereunder (24 CFR, Part 42).

(3) In the case of both (1) and (2), Development Cost may include the reasonable moving costs for a family which is moved from a Project site during construction and is returned to the site after completion.

§ 805.108 Establishment of IHAs pursuant to Tribal law or State law.

An IHA may be established either:

(a) By a tribal ordinance enacted by exercise of a tribe's powers of self-government independent of state law, creating an IHA with all necessary legal powers to carry out low income housing projects for Indians, which IHA shall be established in accordance with § 805.109; or

(b) Pursuant to a state law which provides for the establishment of IHAs with all necessary legal powers to carry out low income housing projects for Indians.

§ 805.109 Procedures for establishment of IHAs by Tribal ordinance.

(a) *Applicability*. This section shall be applicable only when an IHA is established by exercise of a tribe's powers as described in § 805.108(a).

(b) *Legal Capacity of Tribe to Establish IHA*. Where an Indian tribe has governmental police power to promote

the general welfare, including the power to create a housing authority, an IHA may be established by tribal ordinance enacted by the governing body of the tribe.

(c) *Approval or Review of Ordinance by the Department of the Interior*. HUD shall not enter into an undertaking for assistance to an IHA formed by tribal ordinance unless such ordinance has been submitted to HUD, accompanied by evidence that the tribe's enactment of the ordinance either has been approved by the Department of the Interior or has been reviewed and not objected to by that Department.

(d) *Form of Ordinance*. The form of tribal ordinance shown as Appendix I to this Subpart A shall be used for the establishment of IHAs by tribal ordinance on and after March 9, 1976, the effective date of this Part. No substantive change may be made in the form of tribal ordinance except as indicated by footnotes in Appendix I or with specific written approval from HUD.

(e) *Amendment of Ordinance Previously Enacted*. Tribal ordinances enacted prior to the effective date of this part, which do not conform to the required provisions of the form of ordinance set out as Appendix I, shall be amended to conform thereto as soon as possible. Beginning January 1, 1977, no contract or amendment providing any additional commitment for HUD financial assistance shall be entered into unless such conforming amendments have been enacted.

(f) *Submission to HUD of Documents Establishing IHA*. The tribal ordinance, evidence of Department of the Interior approval or review, and the following documentation relating to the initial organization of the IHA, in the form prescribed by HUD, shall be submitted to HUD prior to or with any application for financial assistance:

(1) Certificate of appointment of Commissioners.

(2) Commissioner's oath of office.

(3) Notice of organization meeting.

(4) Consent to meeting.

(5) Minutes of meeting.

(6) Resolutions establishing the IHA, adopting the by laws, adopting a seal, designating a regular place of meeting, and designating officers.

(7) Bylaws.

(8) Certificate of Secretary as to authenticity of documents.

(9) General Certificate of Housing Authority.

§ 805.110 IHA Commissioners who are tenants or homebuyers.

(a) *Tenant or Homebuyer Commissioners*. No person shall be barred from serving on an IHA's Board of Commissioners because he is a tenant or Homebuyer in a housing Project of the IHA. A commissioner who is a

tenant or Homebuyer shall be entitled to participate fully in all meetings concerning matters that affect all of the tenants or Homebuyers, even though such matters affect him as well. However, no such Commissioner shall be entitled or permitted to participate in or be present at any meeting (except in his capacity as a tenant or Homebuyer), or be counted or treated as a member of the Board, concerning any matter involving his individual rights, obligations or status as a tenant or Homebuyer.

(b) *Commissioner as IHA Employee.* A member of the IHA's Board of Commissioners shall not be eligible for employment by the IHA except under unusual circumstances and with HUD approval.

APPENDIX I—TRIBAL ORDINANCE

Pursuant to the authority vested in the _____ Tribe by its Constitution, and particularly by Article _____, Sections _____ thereof, and its authority to provide for the health, safety, morals and welfare of the Tribe, the Tribal Council of the _____ Tribe hereby establishes a public body known as the _____ Housing Authority (hereinafter referred to as the Authority), and enacts this ordinance which shall establish the purposes, powers and duties of the Authority.

In any suit, action or proceeding involving the validity or enforcement of or relating to any of its contracts, the Authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this ordinance. A copy of the ordinance duly certified by the Secretary of the Council shall be admissible in evidence in any suit, action or proceeding.

ARTICLE I

DECLARATION OF NEED

It is hereby declared:

1. That there exist on the _____ Reservation insanitary, unsafe, and overcrowded dwelling accommodations; that there is a shortage of decent, safe and sanitary dwelling accommodations available at rents or prices which persons of low income can afford; and that such shortage forces such persons to occupy insanitary, unsafe and overcrowded dwelling accommodations;

2. That these conditions cause an increase in and spread of disease and crime and constitute a menace to health, safety, morals and welfare; and that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety protection, fire and accident prevention, and other public services and facilities;

3. That the shortage of decent, safe and sanitary dwellings for persons of low income cannot be relieved through the operation of private enterprise;

4. That the providing of decent, safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which money may be spent and private property acquired and are governmental functions of Tribal concern;

5. That residential construction activity and a supply of acceptable housing are important factors to general economic activity,

and that the undertakings authorized by this ordinance to aid the production of better housing and more desirable neighborhood and community development at lower costs will make possible a more stable and larger volume of residential construction and housing supply which will assist materially in achieving full employment; and

6. That the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

ARTICLE II

PURPOSES

The Authority shall be organized and operated for the purposes of:

1. Remedying unsafe and insanitary housing conditions that are injurious to the public health, safety and morals;

2. Alleviating the acute shortage of decent, safe and sanitary dwellings for persons of low income; and

3. Providing employment opportunities through the construction, reconstruction, improvement, extension, alteration or repair and operation of low income dwellings.

ARTICLES III

DEFINITIONS

The following terms, wherever used or referred to in this ordinance, shall have the following respective meanings, unless a different meaning clearly appears from the context:

"Area of Operation" means all areas within the jurisdiction of the tribe.

"Board" means the Board of Commissioners of the Authority.

"Council" means The _____ Tribal Council.

"Federal government" includes the United States of America, the Department of Housing and Urban Development, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

"Homebuyer" means a person(s) who has executed a lease-purchase agreement with the Authority, and who has not yet achieved homeownership.

"Housing project" or "project" means any work or undertaking to provide or assist in providing (by any suitable method, including but not limited to: rental; sale of individual units in single or multifamily structures under conventional condominium, or cooperative sales contracts or lease-purchase agreements; loans; or subsidizing of rentals or charges) decent, safe and sanitary dwellings, apartments, or other living accommodations for persons of low income. Such work or undertaking may include buildings, land, leaseholds, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, for streets, sewers, water service, utilities, parks, site preparation or landscaping, and for administrative, community, health, recreational, welfare, or other purposes. The term "housing project" or "project" also may be applied to the planning of the buildings and improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration or repair of the improvements or other property and all other work in connection therewith, and the term shall include all other real and personal property

and all tangible or intangible assets held or used in connection with the housing project.

"Obligations" means any notes, bonds, interim certificates, debentures, or other forms of obligation issued by the Authority pursuant to this ordinance.

"Obligee" includes any holder of an obligation, agent or trustee for any holder of an obligation, or lessor demising to the Authority property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the Federal government when it is a party to any contract with the Authority in respect to a housing project.

"Persons of low income" means persons or families who cannot afford to pay enough to cause private enterprise in their locality to build an adequate supply of decent, safe, and sanitary dwellings for their use.

ARTICLE IV

BOARD OF COMMISSIONERS

1. (a)¹ The affairs of the Authority shall be managed by a Board of Commissioners composed of five persons.

(2) The Board members shall be appointed, and may be reappointed, by the Council. A certificate of the Secretary of the Council as to the appointment or reappointment of any commissioner shall be conclusive evidence of the due and proper appointment of the commissioner.

(3) A commissioner may be a member or non-member of the Tribe, and may be a member or non-member of the Tribal Council.

(4) No person shall be barred from serving on the Board because he is a tenant or homebuyer in a housing project of the Authority; and such commissioner shall be entitled to fully participate in all meetings concerning matters that affect all of the tenants or homebuyers, even though such matters affect him as well. However, no such commissioner shall be entitled or permitted to participate in or be present at any meeting (except in his capacity as a tenant or homebuyer), or to be counted or treated as a member of the Board, concerning any matter involving his individual rights, obligations or status as a tenant or homebuyer.

(b)² The term of office shall be four years and staggered. When the Board is first established, one member's term shall be designated to expire in one year, another to expire in two years, a third to expire in three years, and the last two in four years. Thereafter, all appointments shall be for four years, except that in the case of a prior vacancy, an appointment shall be only for the length of the unexpired term. Each member of the Board shall hold office until his successor has been appointed and has qualified.

(c)³ The Council shall name one of the Commissioners as Chairman of the Board. The Board shall elect from among its members a Vice-Chairman, a Secretary, and a Treasurer; and any member may hold two of these positions. In the absence of the Chairman, the Vice-Chairman shall preside; and in the absence of both the Chairman and Vice-Chairman, the Secretary shall preside.

(d)⁴ A member of the Board may be removed by the appointing power for serious inefficiency or neglect of duty or for misconduct in office, but only after a hearing before the appointing power and only after the member has been given a written notice

of the specific charges against him at least 10 days prior to the hearing. At any such hearing, the member shall have the opportunity to be heard in person or by counsel and to present witnesses in his behalf. In the event of removal of any Board member, a record of the proceedings, together with the charges and findings thereon, shall be filed with the appointing power and a copy thereof sent to the appropriate office of the Department of Housing and Urban Development.

(e) The Commissioners shall not receive compensation for their services but shall be entitled to compensation for expenses, including travel expenses, incurred in the discharge of their duties.

(f) A majority of the full Board (i.e., notwithstanding the existence of any vacancies) shall constitute a quorum for the transaction of business, but no Board action shall be taken by a vote of less than a majority of such full Board.

(g) The Secretary shall keep complete and accurate records of all meetings and actions taken by the Board.

(h) The Treasurer shall keep full and accurate financial records, make periodic reports to the Board, and submit a complete annual report, in written form, to the Council as required by article VII, Section 1, of this ordinance.

2. Meetings of the Board shall be held at regular intervals as provided in the bylaws. Emergency meetings may be held upon 24 hours actual notice and business transacted, provided that not less than a majority of the full Board concurs in the proposed action.

ARTICLE V

POWERS

1. The Authority shall have perpetual succession in its corporate name.

2. The Council hereby gives its irrevocable consent to allowing the Authority to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activities under this ordinance and hereby authorizes the Authority to agree by contract to waive any immunity from suit which it might otherwise have; but the Tribe shall not be liable for the debts or obligations of the Authority.

3. The Authority shall have the following powers which it may exercise consistent with the purposes for which it is established:

(a) To adopt and use a corporate seal.

(b) To enter into agreements, contracts and understandings with any governmental agency, Federal, state or local (including the Council) or with any person, partnership, corporation or Indian tribe; and to agree to any conditions attached to Federal financial assistance.

(c) To agree, notwithstanding anything to the contrary contained in this ordinance or in any other provision of law, to any conditions attached to Federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or operation of projects; and the Authority may include in any contract let in connection with a project stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any condi-

tions which the Federal government may have attached to its financial aid to the project.

(d) To obligate itself, in any contract with the Federal government for annual contributions to the Authority, to convey to the Federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the Authority is subject; and such contract may further provide that in case of such conveyance, the Federal government may complete, operate, manage, lease, convey or otherwise deal with the project and funds in accordance with the terms of such contract: *Provided*, That the contract requires that, as soon as practicable after the Federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the Federal government shall reconvey to the Authority the project as then constituted.

(e) To lease property from the Tribe and others for such periods as are authorized by law, and to hold and manage or to sublease the same.

(f) To borrow or lend money, to issue temporary or long term evidence of indebtedness, and to repay the same. Obligations shall be issued and repaid in accordance with the provisions of Article VI of this ordinance.

(g) To pledge the assets and receipts of the Authority as security for debts; and to acquire, sell, lease, exchange, transfer or assign personal property or interests therein.

(h) To purchase land or interests in land or take the same by gift; to lease land or interests in land to the extent provided by law.

(i) To undertake and carry out studies and analyses of housing needs, to prepare housing plans, to execute the same, to operate projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof.

(j) With respect to any dwellings, accommodations, lands, buildings or facilities embraced within any project (including individual cooperative or condominium units): to lease or rent, sell, enter into lease-purchase agreements or leases with option to purchase; to establish and revise rents or required monthly payments; to make rules and regulations concerning the selection of tenants or homebuyers, including the establishment of priorities, and concerning the occupancy, rental, care and management of housing units; and to make such further rules and regulations as the Board may deem necessary and desirable to effectuate the powers granted by this ordinance.

(k) To finance purchase of a home by an eligible homebuyer in accordance with regulations and requirements of the Department of Housing and Urban Development.

(l) To terminate any lease or rental agreement or lease-purchase agreement when the tenant or homebuyer has violated the terms of such agreement, or failed to meet any of its obligations thereunder, or when such termination is otherwise authorized under the provisions of such agreement; and to bring action for eviction against such tenant or homebuyer.

(m) To establish income limits for admission that insure that dwelling accommodations in a housing project shall be made available only to persons of low income.

(n) To purchase insurance for any stock or mutual company for any property or against any risk or hazards.

(o) To invest such funds as are not required for immediate disbursement.

(p) To establish and maintain such bank accounts as may be necessary or convenient.

(q) To employ an executive director, technical and maintenance personnel and such other officers and employees, permanent or temporary, as the Authority may require; and to delegate to such officers and employees such powers or duties as the Board shall deem proper.

(r) To take such further actions as are commonly engaged in by public bodies of this character as the Board may deem necessary and desirable to effectuate the purposes of the Authority.

(s) To join or cooperate with any other public housing agency or agencies operating under the laws or ordinances of a State or another tribe in the exercise, either jointly or otherwise, of any or all of the powers of the Authority and such other public housing agency or agencies for the purpose of financing (including but not limited to the issuance of notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating, or contracting with respect to a housing project or projects of the Authority or such other public housing agency or agencies. For such purpose, the Authority may by resolution prescribe and authorize any other public housing agency or agencies, so joining or cooperating with the Authority, to act on the Authority's behalf with respect to any or all powers, as the Authority's agent or otherwise, in the name of the Authority or in the name of such agency or agencies.

(t) To adopt such bylaws as the Board deems necessary and appropriate.

4. It is the purpose and intent of this ordinance to authorize the Authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal government in the undertaking, construction, maintenance or operation of any project by the Authority.

5. No ordinance or other enactment of the Tribe with respect to the acquisition, operation, or disposition of Tribal property shall be applicable to the Authority in its operations pursuant to this ordinance.

ARTICLE VI

OBLIGATIONS

1. The Authority may issue obligations from time to time in its discretion for any of its purposes and may also issue refunding obligations for the purpose of paying or retiring obligations previously issued by it. The Authority may issue such types of obligations as it may determine, including obligations on which the principal and interest are payable: (a) exclusively from the income and revenues of the project financed with the proceeds of such obligations; or with such income and revenues together with a grant from the Federal government in aid of such project; (b) exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such obligations; or (c) from its revenues

ARTICLE VII

MISCELLANEOUS

generally. Any of such obligations may be additionally secured by a pledge of any revenues of any project or other property of the Authority.

2. Neither the commissioners of the Authority nor any person executing the obligations shall be liable personally on the obligations by reason of issuance thereof.

3. The notes and other obligations of the Authority shall not be a debt of the Tribe and the obligations shall so state on their face.

4. Obligations of the Authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes imposed by the Tribe. The tax exemption provisions of this ordinance shall be considered part of the security for the repayment of obligations and shall constitute, by virtue of this ordinance and without necessity of being restated in the obligations, a contract between (a) the Authority and the Tribe, and (b) the holders of obligations and each of them, including all transferees of the obligations from time to time.

5. Obligations shall be issued and sold in the following manner:

(a) Obligations of the Authority shall be authorized by a resolution adopted by the vote of a majority of the full Board and may be issued in one or more series.

(b) The obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as such resolution may provide.

(c) The obligations may be sold at public or private sale at not less than par.

(d) In case any of the commissioners of the Authority whose signatures appear on any obligations cease to be commissioners before the delivery of such obligations, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the commissioners had remained in office until delivery.

6. Obligations of the Authority shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any obligation of the Authority or the security therefor, any such obligation reciting in substance that it has been issued by the Authority to aid in financing a project pursuant to this ordinance shall be conclusively deemed to have been issued for such purpose, and the project for which such obligation was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this ordinance.

7. In connection with the issuance of obligations or incurring of obligations under leases and to secure the payment of such obligations, the Authority, subject to the limitations in this ordinance, may:

(a) Pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.

(b) Provide for the powers and duties of obligees and limit their liabilities; and provide the terms and conditions on which such

obligees may enforce any covenant or rights securing or relating to the obligations.

(c) Covenant against pledging all or any part of its rents, fees and revenues or against mortgaging any or all of its real or personal property to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property.

(d) Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof.

(e) Covenant as to what other or additional debts or obligations may be incurred by it.

(f) Covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(g) Provide for the replacement of lost, destroyed or mutilated obligations.

(h) Covenant against extending the time for the payment of its obligations or interest thereon.

(i) Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof.

(j) Covenant concerning the rents and fees to be charged in the operation of a project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof.

(k) Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserves or other purposes, and covenant as to the use and disposition of the monies held in such funds.

(l) Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the proportion of outstanding obligations the holders of which must consent thereto, and the manner in which such consent may be given.

(m) Covenant as to the use, maintenance and replacement of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance monies.

(n) Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation.

(o) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(p) Vest in any obligees or any proportion of them the right to enforce the payment of the obligations or any covenants securing or relating to the obligations.

(q) Exercise all or any part or combination of the powers granted in this section.

(r) Make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character.

(s) Make any covenants and do any acts and things necessary or convenient or desirable in order to secure its obligations, or, in the absolute discretion of the Authority, tending to make the obligations more marketable although the covenants, acts or things are not enumerated in this section.

1. The Authority shall submit an annual report, signed by the Chairman of the Board, to the Council showing (a) a summary of the year's activities, (b) the financial condition of the Authority, (c) the condition of the properties, (d) the number of units and vacancies, (e) any significant problems and accomplishments, (f) plans for the future, and (g) such other information as the Authority or the Council shall deem pertinent.

2. During his tenure and for one year thereafter, no commissioner, officer or employee of the Authority, or any member of any governing body of the Tribe, or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any project, unless prior to such acquisition, he discloses his interest in writing to the Authority and such disclosure is entered upon the minutes of the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest. If any commissioner, officer or employee of the Authority involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as a commissioner, officer or employee, the commissioner, officer or employee, in any such event, shall immediately disclose his interest in writing to the Authority, and such disclosure shall be entered upon the minutes of the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest. Any violation of the foregoing provisions of this section shall constitute misconduct in office. This section shall not be applicable to the acquisition of any interest in obligations of the Authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency, or to membership on the Board as provided in Article IV, Section 1(a)(4).

3. Each project developed or operated under a contract providing for Federal financial assistance shall be developed and operated in compliance with all requirements of such contract and applicable Federal legislation, and with all regulations and requirements prescribed from time to time by the Federal government in connection with such assistance.

4. The Authority shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

5. The Authority shall not construct or operate any project for profit.

6. The property of the Authority is declared to be public property used for essential public and governmental purposes and such property and the Authority are exempt from all taxes and special assessments of the Tribe.

7. All property including funds acquired or held by the Authority pursuant to this ordinance shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Authority be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its rents, fees or revenues or the right of the Federal government to pursue any remedies conferred upon it pursuant to the provisions of this ordinance or the right of the Authority to bring eviction actions in accordance with Article V, Section 3(1).

ARTICLE VIII

COOPERATION IN CONNECTION WITH PROJECTS

1. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of projects, the Tribe hereby agrees that:

(a) It will not levy or impose any real or personal property taxes or special assessments upon the Authority or any project of the Authority.

(b) It will furnish or cause to be furnished to the Authority and the occupants of projects all services and facilities of the same character and to the same extent as the Tribe furnishes from time to time without cost or charge to other dwellings and inhabitants.

(c) Insofar as it may lawfully do so, it will grant such deviations from any present or future building or housing codes of the Tribe as are reasonable and necessary to promote economy and efficiency in the development and operation of any project, and at the same time safeguard health and safety, and make such changes in any zoning of the site and surrounding territory of any project as are reasonable and necessary for the development and protection of such project, and the surrounding territory.

(d) It will do any and all things, within its lawful powers, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of projects.

(e) The Tribal Government hereby declares that the powers of the Tribal Government shall be vigorously utilized to enforce eviction of a tenant or homebuyer for nonpayment or other contract violations including action through the appropriate courts.

(f) The Tribal Courts shall have jurisdiction to hear and determine an action for eviction of a tenant or homebuyer. The Tribal Government hereby declares that the powers of the Tribal Courts shall be vigorously utilized to enforce eviction of a tenant or homebuyer for nonpayment or other contract violations.

2. The provisions of this Article shall remain in effect with respect to any project, and said provisions shall not be abrogated, changed, or modified without the consent of the Department of Housing and Urban Development, so long as (a) the project is owned by a public body or governmental agency and is used for low income housing purposes, (b) any contract between the Authority and the Department of Housing and Urban Development for loans or annual contributions, or both, in connection with such project, remains in force and effect, or (c) any obligations issued in connection with

such project or any monies due to the Department of Housing and Urban Development in connection with such project remain unpaid, whichever period ends the latest. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development or operation of low income housing including the Federal government, the provisions of this section shall inure to the benefit of and be enforced by such public body or governmental agency.

ARTICLE IX

APPROVAL BY SECRETARY OF THE INTERIOR

With respect to any financial assistance contract between the Authority and the Federal government, the Authority shall obtain the approval of the Secretary of the Interior or his designee.

FOOTNOTES

Article I may be modified as deemed appropriate.

Article IV, section 1(a), paragraphs (1), (2) and (3) may be modified. For example the number of board members may be more or less than five; the appointments may be made by the elected head of the tribal government, rather than the Council, the IHA may be made a department or division of the tribal government, membership on the Board may be limited to those who are members of the tribe, or to those who are members of the Council, or to those who are nonmembers of the Council, or to a certain number of any category.

Article IV, section 1(b) may be modified to conform to changes in Article IV, section 1(a), and as to the length of the term of membership.

Article IV, Section 1(c) may be modified as to the manner of appointment of the Chairman. For example, it may provide for appointment by the Board members or by the elected head of the tribal government. This paragraph may also be modified as to the manner of appointment of the other officials.

Article IV, Section 1(d) may be modified, but adequate safeguards against arbitrary removal shall be included.

Article IV, Section 1(f) may be modified if deemed appropriate, where the full Board consists of more than 5 members.

Article VIII, Section 1(f) may be modified to insert the name of the appropriate court, or it may be deleted where it is demonstrated to HUD that the jurisdiction for evictions is vested in other than tribal courts (e.g., State courts or Courts of Indian Offenses).

Subpart B—Development

§ 805.201 Definitions.

See §§ 805.102 and 805.430.

§ 805.202 Roles and responsibilities of Federal agencies.

HUD, IHS and BIA shall coordinate functions and funding in accordance with the Interdepartmental Agreement. HUD assistance shall not include items or services which either BIA or IHS has agreed to provide or fund under the Interdepartmental Agreement, or items or services other-

wise provided by other Government agencies.

§ 805.203 Production methods and requirements.

(a) *Justification for Production Method.* The IHA's application for a Project shall state which of the production methods described in this section it prefers to use supported by a justification for the use of the proposed method, such as economy, quality, design, expeditious completion and maximum competition. The method to be used shall be approved by HUD in the agreement entered into as a result of the Project Coordination Meeting (see § 805.208).

Turnkey Method. Under the Turnkey method, the IHA advertises for developers to submit proposals to build a Project described in the IHA's Invitation for proposals. The Invitation for Proposals may, when approved by HUD, prescribe the sites to be used. The IHA selects, subject to HUD approval, the best of the proposals received, taking into consideration price, design, the developer's experience and other evidence of the developer's ability to complete the Project. After HUD approval of the proposal selected by the IHA, the working drawings and specifications are agreed to by the developer, the IHA, and HUD, and the developer and the IHA enter into a Contract of Sale. Upon completion of the Project in accordance with the Contract of Sale, the IHA purchases the Project from the developer. The IHA may employ an architect to assist in evaluating proposals and negotiating the working drawings and specifications. The IHA provides inspection services by an architect, engineer or other qualified person. The developer shall not be required by the IHA or HUD to post a bond for performance or payment.

(c) *Modified Turnkey Method.* (1) Before advertising for Turnkey proposals: (i) The site or sites for the housing shall have been selected in accordance with § 805.217, (ii) the working drawings and specifications for the housing shall have been prepared by the IHA and approved by HUD, and (iii) on the basis of those drawings and specifications, HUD shall have approved an estimate of the Total Development Cost and separate statements of the estimated total construction contract price, which HUD has determined to be reasonable and within the applicable prototype cost and other limitations.

(2) The invitation for Turnkey Proposals shall be based upon a developer's packet which includes a description of the preselected sites and the working drawings and specifications as described above. Accordingly, each developer shall be required to submit a

firm price for purposes of a Contract of Sale. The developer shall not be required by the IHA or HUD to post a bond for performance or payment.

(3) When the developer has been selected by the IHA and approved by HUD, the Development Program shall be prepared and submitted to HUD for approval. After execution of the ACC, the Contract of Sale shall be executed.

(4) Upon completion of the Project in accordance with the Contract of Sale, the IHA purchases the Project from the developer.

(d) *Conventional Method.* Under the Conventional Method, the IHA, after HUD approval of the plans and specifications, shall advertise for contractors to build the project. The contractor shall be required to provide assurance in the form of 100 percent performance and payment bonds, or other security approved by HUD. The contractor receives progress payments during construction, and a final HUD approved payment upon completion in accordance with the contract.

(e) *Acquisition of Existing Housing (with or without rehabilitation).* Under the Acquisition method, the IHA acquires existing housing which may need only minor repairs or may require substantial rehabilitation. Repair or rehabilitation may be accomplished prior to acquisition using Turnkey procedures or after acquisition, as authorized by HUD.

(f) *Force Account Method.* (1) Under the Force Account method an IHA performs construction or rehabilitation in a manner similar to a contractor, using a work force entirely employed by and under the supervisions of the IHA, or in combination with contracts for those portions of the work which can be better or more economically performed by an independent contractor. Force Account work shall be subject to Davis-Bacon wage rates.

(2) The Force Account method may be used for development of a new construction Project only (i) in exceptional cases, (ii) with the approval of the HUD Assistant Secretary for Housing, and (iii) if the tribe agrees in writing to cover any costs in excess of the HUD-approved Development Cost, including contingencies, and demonstrates that it has the financial resources to meet the excess costs up to a specified amount.

(3) The HUD Field Office may approve use of the Force Account method. (i) For repair and rehabilitation of existing housing acquired by the IHA. (ii) for correction of deficiencies in design, construction or equipment (where allowed under § 805.223(b)(1), and (iii) for completion of units where the original contractor does not complete.

(4) In any case, whether under paragraph (2) or (3), the IHA must justify use of the Force Account method and demonstrate the capabilities of the IHA to achieve timely completion of the work within the Total Development Cost, and with the additional assurances provided by the tribe.

(g) *Public Advertisement.* Contracts for development of a Project may be awarded, to Indian Organizations and Indian-owned Economic Enterprises or to other construction contractors, only after public advertisement for competitive proposals. The advertisement shall inform all prospective contractors of the amount of the applicable prototype cost limit and of the maximum total contract price which has been determined to be reasonable (see § 805.212(b)).

§ 805.204 Indian preference in contracting.

(a) *Preference in the Award of Contracts.* (1) An IHA shall to the greatest extent feasible under this Part give preference in the award of contracts in connection with a Project to Indian Organizations and Indian-owned Economic Enterprises.

(2) With HUD approval, an IHA may publish an advertisement limited to qualified Indian Organizations and Indian-owned Economic Enterprises. If the IHA publishes an advertisement open to all qualified contractors, Indian or non-Indian, preference over a non-Indian enterprise shall be given to a qualified Indian enterprise whose price does not exceed the lowest price by more than one percent.

(3) If the advertisement for proposals is to be limited to qualified Indian enterprises, the IHA with HUD approval, may publish a prior invitation for Indian enterprises to submit a Statement of Intent to respond to such an advertisement when published, and to furnish with the Statement of Intent, or within a specified period of time, evidence sufficient to establish their qualifications in accordance with paragraph (a)(4) of this Section.

(4) A prospective contractor seeking to qualify as an Indian Organization of Indian-owned Enterprise shall submit with or prior to submission of his bid or proposal:

(i) Evidence showing fully the extent of Indian ownership and interest.

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; material or equipment supply arrangements; and management, salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest.

(iii) Evidence sufficient to demonstrate to the satisfaction of the IHA

and HUD that the prospective contractor has the technical, administrative and financial capability to perform contract work of the size and type involved and within the time provided under the proposed contract (see § 805.211 (c)).

(b) *Required Contract Clause.* The IHA shall incorporate the following clause (referred to as a Section 7(b) clause) in each contract awarded in connection with a Project:

(1) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e (b)). Section 7(b) requires that to the greatest extent feasible (i) preferences and opportunities for training and employment shall be given to Indians, and (ii) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.

(2) The parties to this contract shall comply with the provisions of said Section 7(b) and all HUD requirements pursuant thereto.

(3) The contractor shall, in connection with this contract, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preferences and opportunities for training and employment to Indians.

(4) The contractor shall include this Section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the IHA, take appropriate action pursuant to the subcontract upon a finding by the IHA or HUD that the subcontractor is in violation of the Section 7(b) clause.

(c) *Additional Indian Preference Requirements.* An IHA may, with HUD approval, provide for Indian preference requirements in addition to those under § 805.204(a) and the Section 7(b) clause required under § 805.204(b), as conditions for the award of, or in the terms of, any contract in connection with a Project if the additional Indian preference requirements are consistent with the objectives of the Section 7(b) clause. Such additional Indian preference requirements may not result in a higher cost or greater risk of non-performance or longer period of performance.

(d) *Inclusion of All Preference Requirements in Information for Prospective Contractors.* With respect to any contract, the information for prospective contractors shall set forth all Indian preference requirements affecting award of, or to be included in the terms of, the contract.

§ 805.205 Allocations of contract authority.

HUD will allocate contract authority for Indian housing in conformance with Section 213(d) of the Housing and Community Development Act of 1974.

§ 805.206 Submission and HUD review of Application for Program Reservation.

(a) *Submission to HUD.* To apply for a Project, an IHA shall submit an application on the form prescribed by HUD. The application shall be accompanied by a resolution of the local governing body approving the application for a preliminary loan, if a preliminary loan is requested. Where the provisions for the necessary local government cooperation (as in Subpart A—Appendix I, Article VIII) are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement, or a showing that a cooperation agreement already exists for the location involved sufficient to cover the number of units in the application.

(b) *Action on Application.* (1) HUD shall begin processing of a complete application as soon as possible after receipt. Within 10 working days of its receipt of the application, HUD shall notify the applicant of the approximate date, which shall be as soon as possible, by which HUD will act on the application.

(2) The application shall designate at least the general locations of the proposed housing. To expedite processing, the application may be accompanied by comments on the application by the Chief Executive Officer on behalf of the local government. (For areas with a Housing Assistance Plan, see § 891.203(b). For other areas, see § 891.304(b).)

(3) OMB Circular A-95 includes the following provisions:

• • • Applications from federally recognized Indian tribes are not subject to the requirements of OMB Circular A-95. However, Indian tribes may voluntarily participate in the Project Notification and Review System and are encouraged to do so. Federal Agencies will notify the appropriate State and areawide clearinghouses of any applications from federally recognized Indian tribes upon their receipt. Where a federally recognized Tribal Government has established a mechanism for coordinating the activities of Tribal departments, divisions, enterprises, and entities, Federal agencies will, upon request of such Tribal Government transmitted through the Office of Management and Budget, require the applications for assistance under programs covered by this Part from such Tribal departments, divisions, enterprises, and entities be subject to review by such Tribal coordinating mechanism as though it were a State or areawide clearinghouse • • •

(4) If the application is approved, a Program Reservation on the form prescribed by HUD shall be issued to the IHA. The Program Reservation shall specify whether the Project is Rental or Mutual Help, the total number of dwelling units, and the number of units for the elderly or handicapped, if any. The Program Reservation shall set a time limit of not to exceed one year within which the IHA must

submit an approvable Development Program. (See § 805.208(d)).

(5) If the application is disapproved, HUD shall give the IHA a written notification of disapproval and of the reasons therefor. If the application is approved for fewer units than requested, HUD shall issue a Program Reservation with respect to the total number of dwelling units approved, and the written notification to the IHA shall include a statement of the reasons for not approving the number of units requested. The notification under this paragraph (b)(5) shall state the time within which any objections to the HUD action may be presented to the field office director.

§ 805.207 Prerequisites for application approval.

(a) *Determination of Administrative Capability.* An application shall not be approved unless HUD determines that the IHA has, or will achieve within a reasonable time prescribed by HUD, the capability to provide adequate administration in compliance with all applicable HUD requirements of the proposed Project and other IHA Projects without an unreasonable need for continuing HUD assistance. Approval of an application shall not be withheld because of minor administrative deficiencies. As a minimum, however, the IHA shall have the capability to comply with all HUD requirements for prompt completion of development, the maintenance of complete and accurate books of accounts and records, the proper handling of funds, the timely preparation and submission of reports, the maintenance of the property, the occupancy of the housing units, determination of rents and required Homebuyer payments, the Prompt collection of rents and required Homebuyer payments, and the prompt processing of evictions in cases of nonpayment or other serious breach of a lease or Homebuyer agreement.

(b) *Action When IHA Lacks Administrative Capability.* (1) If HUD cannot approve an application because the IHA does not have the capability to provide adequate administration of the proposed Project and other IHA Projects, and if the IHA wishes to achieve and maintain such capability, HUD shall assist the IHA to the extent of funds and staff available to HUD for this purpose. In such case, an application will be approvable after:

(i) Adequate administrative capability has been achieved; or

(ii) The IHA has adopted a plan, satisfactory to HUD, to achieve adequate administrative capability within a specified reasonable time, and after the IHA has demonstrated good faith and diligence in carrying out the plan. If achievement of final goals under

such a plan will require an extended period of time, the plan shall include interim goals. The achievement of interim goals may be considered by HUD to be a sufficient demonstration of the IHA's good faith and diligence in carrying out the plan.

(2) If HUD determines that the number of required units is too small for development of adequate administrative capability, the IHA shall be so advised, with a recommendation to combine with other IHAs or to obtain necessary assistance from the tribe, the BIA or other sources.

(c) *Preliminary Feasibility Determination.* An application for a Program Reservation may be approved only if HUD determines that it is likely that the feasibility requirements for approval of the Development Program under § 805.220 or § 805.404(g), as the case may be, can be met.

§ 805.208 Interagency and tribal coordination.

(a) Inasmuch as several agencies (IHA, HUD, BIA and IHS) and the tribal government each have an essential role to play and contribution to make to development of a Project, the process of cooperation and coordination shall begin as soon as prospective sites have been identified and shall thereafter continue throughout the development process.

(b) In the case of IHA's established by tribal ordinance, each Preliminary Site Report which is submitted to HUD for tentative site approval shall be accompanied by written concurrence of the tribal government, in addition to the approvals of BIA and IHS in accordance with § 805.217(a). The concurrence of each party shall constitute a commitment by the party that it will provide the funds, actions and/or services which have been agreed upon, and that this commitment will not be released unless the Program Reservation is cancelled. The final decision as to site approval shall be made by HUD.

(c) The IHA shall submit, with or prior to approval of the Development Program, and agreement between the IHA and the tribal government which shall describe, as specifically as possible, the funds, actions and/or services which are to be provided by the BIA, those which are to be provided by the IHS, and those which are to be provided by the tribal government itself (including block grant or other funds, as applicable). The agreement shall also express the tribal government's commitment to use its best efforts to assure that the funds, actions and/or services so identified will be provided as needed for purposes of prompt development of the project. The tribal government shall have the basic responsibility for agreeing with IHS and

BIA for the necessary participation and/or contribution by the BIA and IHS.

(d) Promptly after issuance of the Program Reservation, a Project Coordination Meeting shall be held in accordance with the procedures stated in paragraph 3 of the Interdepartmental Agreement. The tribal government shall be represented at this meeting. Periodically, the tribal government, the IHA, HUD and the other concerned federal agencies shall consult and evaluate the progress of the Project development, identify any problems which may threaten compliance with the one-year time limit for submission of an approvable Development Program (see § 805.206) and agree upon appropriate corrective action. If it appears at the last such evaluation prior to the end of the one-year period that the time limit will not be met, the parties shall determine whether an approvable Development Program can be submitted in a reasonable time and whether an extension of the time limit should be recommended to HUD. After considering the results of the evaluation, HUD shall determine whether to extend the time limit, or to cancel the Program Reservation and commitment of contract and budget authority thereunder.

(e) After approval of the Development Program, similar periodic meetings shall be continued for purposes of assuring timely completion of construction to the point of occupancy.

(f) In the case of projects for which no financial assistance is to be provided by IHS or BIA, their participation in carrying out the provisions of this section shall be encouraged.

§ 805.209 Preliminary loans.

(a) If an application is approved and a Program Reservation is issued, HUD may approve a Preliminary Loan to pay the cost of preliminary surveys and planning (including the cost of appraisals) in respect to the number of units covered by the Preliminary Loan Contract. Except as provided in paragraph (b) of this section, the amount of the Preliminary Loan may not be more than 3 percent of a Total Development Cost which can be supported by the amount of ACC Contract Authority obligated under the Program Reservation.

(b) HUD may approve Preliminary Loan funds in addition to the 3 percent or for purposes other than preliminary surveys and planning, if it has been shown to the satisfaction of HUD that: (1) Because of unusual circumstances it is essential that Development Costs in such amount or for such purpose be incurred prior to execution of the ACC, (2) the Project will successfully proceed to ACC, and (3) the governing body of the locality

has agreed to provide the local cooperation required by the Act.

(c) Preliminary Loan funds shall in no event be provided or used for purposes, or in amounts, that would not be approvable for inclusion in a Development Cost Budget.

(d) The IHS shall submit for HUD approval, together with the application for a Preliminary Loan, a proposed Preliminary Loan Budget. Preliminary Loan Funds shall not be approved or expended except in accordance with a HUD-approved Preliminary Loan Budget.

(e) Use of development or operating funds of other Projects under ACC to cover costs for a Project which has not reached ACC is strictly prohibited.

§ 805.210 Development program.

The ACC for a Project shall not be executed until the IHA has adopted, and HUD has approved, the Development Program for the Project.

§ 805.211 Contracts in connection with development.

(a) The IHA shall not enter into the Construction Contract for a Project prior to execution of the ACC for the Project.

(b) The IHA shall not, without HUD approval, enter into any contract in connection with the development of a Project, including contracts for work, materials or equipment, or for architectural, engineering, consultant, legal, or other professional services, without HUD approval. This requirement shall not apply to MHO Agreements in the form prescribed by HUD or such other types of contracts as HUD may specify.

(c) The IHA shall not award a Construction Contract for the Project until the prospective contractor has demonstrated the technical, administrative and financial capability to perform contract work of the size and type involved and within the time provided under the contract.

§ 805.212 Design.

(a) The design of the housing shall take into account: (1) The extra durability required for safety and security and economical maintenance of such housing, (2) the provision of amenities designed to guarantee a safe and healthy family life and community environment, (3) the application of good design as an essential component of such housing for safety and security as well as other purposes, (4) the maintenance of quality in architecture to reflect the standards of the community, (5) climatic conditions, and (6) the need for maximizing the conservation of energy for heating, lighting, and other purposes. The Minimum Property Standards (24 CFR Part 200,

Subpart S) shall also be taken into account, but shall not be controlling.

(b) The IHA shall prepare and submit to HUD a basic outline for a minimum acceptable house for its jurisdictional area in accordance with the applicable design standards, and attendant water supply and waste disposal facilities. This shall be done after appropriate consultation with families to be housed. This recommended outline should provide for variations of the interior to suit particular cultural or family needs and for exterior variations such as in type of material, roof design and overhangs. HUD shall approve a basic outline of the housing and facilities which HUD has determined can be constructed within the applicable prototype cost limit, and the maximum total construction contract price which has been determined to be reasonable. These amounts shall be stated in HUD's approval, and shall be included in the advertisement for proposals or bids pursuant to § 805.203(g). Following HUD approval of the basic outline, the IHA shall prepare the drawings and specifications needed for advertisement for proposals or bids (see § 805.203) and shall submit these, together with the remainder of the documents needed for purposes of the advertisement, to HUD for its approval.

§ 805.213 Prototype costs in Indian areas.

(a) *Establishment of Special Separate Prototype Cost Areas.* Where trade conditions and economic influences cause construction costs in an Indian Area or portion thereof to be significantly different from such costs in adjoining areas, HUD shall establish or amend the published portion thereof, as a separate Indian prototype cost area.

(b) *Factors to be Considered in Establishing Prototype Cost for Separate Prototype Cost Areas.* (1) When HUD establishes or amends the published prototype costs for a separate Indian prototype costs area (See Appendix A to 24 CFR, Part 841), consideration shall be given to all relevant factors including pertinent trade conditions and economic influences. The factors to be considered include, where applicable, the following: Local customs; abnormal climatic conditions; the logistical problems associated with projects of remote location, low density and/or scattered sites; availability of skilled labor or acceptable materials; provisions for the use of wood or coal as an alternative heat source; and, with respect to trust or restricted land, the unavailability of the legal protection normally available for enforcement of claims by contractors, laborers and materialmen. In addition, prototype costs shall provide for features, appropriate for the area, designed to

conserve energy, lower utility costs, or utilize indigenous energy sources.

(2) The determination of prototype cost is based on a prototype design. A copy of the prototype design on which a published prototype cost is based shall be supplied to the IHA, for guidance in preparing the basic house design under § 805.212(b).

(c) *Revision of Prototype Cost.* IHAs shall design projects that can be built within the prototype cost limit and the maximum total construction contract price as determined by HUD under § 805.212(b). If an IHA finds that a proposed house design cannot be built within 110 percent of the existing prototype cost because construction costs have increased since the date of the data on which the existing prototype cost was based (but not because the design has more expensive features than the prototype design), the IHA shall so state in its submission to HUD of the basic outline pursuant to § 805.212(b) and request a revision of the prototype cost. The request shall be accompanied by evidence of the cost increase. HUD shall agree to revise the prototype cost only if (1) it determines that the evidence of cost increases supports the request and (2) the design cannot be modified to reduce the cost sufficient to permit construction without a revision of the prototype cost.

§ 805.214 Development cost.

(a) *Total Development Cost.* The IHA shall complete development of each Project at the lowest possible cost, and in no event at a cost in excess of the Total Development Cost approved by HUD.

(b) *Cost Limits—(1) Prototype Cost Limit—New Construction Projects.* Dwelling construction and equipment cost for a new construction Project shall not exceed the sum of the unit prototype costs (as published by HUD for the area) for the homes of various sizes and types comprising the Project; *Provided,* That this limit may be increased to an amount not exceeding 110 percent of such sum, if approved by HUD on the basis of special justification.

(2) *Acquisition Projects.* For a Project developed under the Acquisition method (see § 805.203(d)), Total Development Cost shall not exceed 90 percent (or an appropriately lower percentage if the Project has a projected useful life of less than 40 years in the case of a Rental Project, or of less than 25 years in the case of an MH Project) of the imputed Development Cost of a comparable hypothetical newly constructed low income housing project.

(c) *Streets and Driveways.* The Development Cost of a Project may include the planning, construction and

inspection costs of providing on-site streets, sidewalks, curbing and streetlights for such Project. Where BIA is to assume responsibility for maintenance of streets after the housing development is completed, BIA shall be given the opportunity to review the design and to inspect the construction of the street. The cost of driveways within the boundaries of a multi-unit site, or within the boundaries of the individual homesites, in the case of a scattered site Project, may also be included in Development Cost. The total cost of driveways may not, unless specifically agreed to by HUD, exceed one and one-half percent of the HUD-approved Dwelling Construction and Equipment Cost for the Project. Development Cost shall not include the cost of providing the access roads referred to in § 805.216(b). The cost of obtaining access to the site during construction, or costs due to delays in construction because of inaccessibility of the site, shall not be included in Development Cost.

(d) *Water and Sanitation; Electricity and Fuel Distribution Systems.*

Development Cost may include: (1) The costs of providing water, sewer, electrical and fuel facilities within the boundaries of any multi-unit site, or within the boundaries of the individual homesites in the case of a scattered site Project; hookups to the appropriate distribution systems, if such systems are available to the multi-unit site, or to the homesites of a scattered site Project; or the pro rata cost of a community water and sewer system where required in accordance with section 8h(2) of the Interdepartmental Agreement. Where reasonably short extensions are needed to make the utility distribution system available to the site, such costs may be included in the Development Cost if the cost can be justified on the basis of net savings in the Development Cost or long-term savings based upon utility analysis.

(2) The costs of providing on-site wells, septic tanks, electrical generating and fuel storage facilities and distribution systems.

(e) *Exclusion of Costs for Facilities, Improvements or Services to be Provided by IHS or BIA.* Development Cost shall not include costs of the facilities or improvements described in paragraphs (c) or (d) of this section which are to be provided by the local government or utility company or with respect to an IHA of a Federally Recognized Tribe by IHS or BIA, or of services to be provided by IHS or BIA pursuant to the Interdepartmental Agreement, unless such costs are offset by other parties assuming costs that would otherwise be included in the development cost.

(f) *Non Dwelling Facilities.* Management, maintenance, and community

space and facilities may be approved for inclusion in the Development Cost for a Rental or an MH Project. In addition, where necessary and feasible to achieve adequate fire protection, HUD may approve inclusion of the cost of providing adequate fire warning devices and extinguishing equipment, and also may approve inclusion of all or a part of the reasonable expense of obtaining the required fire-fighting equipment and space for its storage. In areas subject to severe storms, consideration may also be given to the inclusion of the cost of storm shelter space in a Project.

(g) *Contingency Allowance.* HUD may permit a contingency allowance of up to five percent for a Project developed under the Conventional or Force Account method, and up to one percent for a Project developed under the Turnkey method. However, if HUD determines in writing that a higher contingency allowance is necessary because of special circumstances set forth in the determination, a higher contingency allowance may be permitted, not to exceed ten percent for a Project developed under the Conventional or Force Account method, and three percent for a Project developed under the Turnkey method.

(h) *Initial Insurance Premiums.* The insurance premiums for the first three years may be included in Development Cost, with no obligation for reimbursement from operating receipts.

(i) *Training of tenants.* The Development Cost Budget submitted with the Development Program for a Rental Project may include an estimated amount for costs of a HUD-approved tenant counseling program (for counseling of homebuyers in MH projects see § 805.429) not to exceed \$500 per dwelling unit (including follow-up needs during the management stage and counseling in connection with turnover). The approved amount for counseling shall be included in the Contract Award Development Cost Budget.

§ 805.215 Design for economy in fuel consumption.

(a) *Choice Among Feasible Options.* In selecting from among feasible options and in designing installations for heating and cooking, particular attention shall be given to maximum economy in the cost of fuel, adequacy for the purposes intended, maximum economy in maintenance and the long-term reliability of fuel supplies. All options which are feasible in the locality shall be examined, and HUD shall provide technical assistance for this purpose.

(b) *Cost of Alternate Fuel System.* Development Cost may include, where availability and cost of fuel and local preferences indicate, the design, con-

struction and equipment costs of an alternate fuel system, either primary or supplemental, such as coal or wood stoves or fireplaces. Where locally available coal or wood offers a ready supply of fuel at costs less than those of other fuels which might be used, strong consideration should be given to requests for the installation of stoves or fireplaces as a supplemental or primary system for heating and/or cooking. A further possibility is the supplemental installation of stove flues only, which would permit residents to install coal or wood burning stoves at their individual option and expense.

§ 805.216 Site selection.

(a) *Relation to Local and Regional Plans.* Site selection shall be made with due regard for local and regional plans.

(b) *Access Roads.* An access road up to the boundaries of a multi-unit site shall be provided by the BIA, the tribe, or other appropriate agency without cost to the Project. In the case of a scattered site Project, access roads up to the boundaries of the individual homesites shall be provided by the Homebuyer, the tribe, or other appropriate agency without cost to the Project. In all cases, access roads shall provide safe and suitable vehicular access at all times. No site may be approved unless such access roads exist, or a written assurance has been obtained from the responsible entity prior to site approval that they will be provided in time for construction purposes, and that the requisite roads will be constructed in time for occupancy of the proposed Project, and will be maintained for continuous accessibility to the Project.

(c) *Water and Sanitation.* The IHA shall, prior to site approval, obtain a written assurance from the IHS, or from the appropriate local agency, that water and sanitation facilities acceptable to the IHS, or to HUD where the IHS has no jurisdiction, exist or will be provided in time for occupancy of the housing. (See also section 8 of the Interdepartmental Agreement).

(d) *Lighting, Heating and Cooking Sources.* The IHA shall, prior to site approval, obtain a written assurance from the appropriate utility companies, or other entities providing the requisite lighting, heating and cooking sources, that the sources exist or will be provided in time for occupancy of the housing. The statement of assurance shall include the rates currently in effect, and, where possible, information concerning anticipated increases for the next year.

(e) *Physical Characteristics of Site.* The physical characteristics of a site shall be such that the costs of surveys and planning, including but not limit-

ed to test borings and test well drilling, are expected to be reasonable, and the physical characteristics shall facilitate overall economy in site preparation, construction and management.

(f) *Topography.* (1) Sites with dominant grades in excess of ten percent shall be avoided where possible.

(2) Low-lying and flat sites shall not be approved unless practical and economical means of surface drainage can be provided to accommodate the level of rainfall expected.

(3) The topography shall permit an acceptable arrangement for the proposed number and type of units. If the topography of a proposed site raises serious doubt as to the suitability of the site, HUD may require the preparation of site feasibility study in order to establish whether the site can be utilized satisfactorily.

(g) *Subsurface Conditions and Natural Hazards.* (1) Where there is any evidence to suggest that a site may have unsuitable bearing qualities for foundations and/or underground utilities or excessive areas of rock to be excavated, tentative site approval shall not be requested from HUD until a preliminary examination of the adverse conditions has indicated that they can be overcome.

(2) No site shall be selected if the hazard of earthslides exists either on the site or on adjacent or nearby land.

(3) In regions where local experience shows loss of life or damage resulting from earthquakes, or in regions located in zones 1, 2 or 3 as shown on the Seismic Risk Maps provided in the HUD Minimum Property Standards, precautions in design shall be taken in accordance with the requirements of the HUD Minimum Property Standards.

(4) In general, subsurface soil investigations, if required, shall be undertaken as soon as tentative site approval is obtained from HUD. Professional competence in soils and foundation engineering shall be required for both the performance of the subsurface soil investigation and the evaluation of the results.

(5) Final site approval not be given unless HUD technical staff has determined that there is no reasonable risk of natural hazard or that such risk can be avoided through proper design and construction.

(h) *Flooding.* The Project shall not be built in an area that has been identified by HUD as having special flood hazards unless other reasonable sites are not available. Where it is necessary to use a site in such an area, the community must have entered the National Flood Insurance Program under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.), and the Project must be covered by flood insurance under that Program.

(i) *Multi-Unit Sites Versus Scattered Sites.* (1) A Project may consist of a multi-unit site, or scattered sites, or a combination. A "multi-unit site" is a site for a multi-unit structure or structures, or where individual homesites are contiguous. "Scattered sites" are where individual homesites are not contiguous.

(2) Basic considerations to be taken into account in selecting the type of sites are:

(i) Suitability for the type of occupancy intended (e.g. elderly);

(ii) The economical development and operation of the Project.

(j) *Size of Sites.* (1) The size of a multi-unit site shall be no greater than necessary to permit an acceptable arrangement for the proposed number and type of units.

(2) No individual homesite, whether a scattered site or included in a multi-unit site, shall exceed one acre unless HUD approves the use of a larger site for acceptable reasons, such a compliance with local law or BIA regulations for trust or restricted lands or to meet sanitary design requirements; however, the amount to be included in Development Cost for such site shall not exceed the value of a one acre site.

(k) *Individually Owned Trust or Restricted Land.* A site on individually owned trust or restricted land shall not be approved by HUD unless HUD obtains written assurance from the BIA that, in its judgment, a valid lease executed by all necessary parties can be obtained within a reasonable time (3-6 months) after issuance of the tentative site approval. HUD may approve a site requiring a longer period of time if HUD determines that such longer period will not unduly delay the Project.

§ 805.217 Site approval.

(a) *Tentative Site Approval.* (1) The IHA shall request tentative HUD approval for each site by submitting a Preliminary Site Report on a form prescribed by HUD, including all required exhibits, and including the written approval of IHS or BIA when required under the Interdepartmental Agreement, or in connection with services or facilities to be provided by the IHS or the BIA. Tentative site approval shall not be given until the requirements for compliance with section 213 and with A-95 (where applicable) have been met (see § 805.206(b)).

(2) HUD shall notify the IHA as soon as possible of tentative approval, conditional approval, or disapproval of the proposed sites or portions thereof. The notification to the IHA shall specifically state any conditions to be met for final site approval and, in the case of a scattered site Project, whether a sufficient number of sites have been approved for the Project to proceed. If

HUD disapproves any proposed sites, it shall notify the IHA of the reasons for disapproval.

(3) HUD approval of a site is subject to compliance with applicable environmental procedures (see § 805.107).

(b) *Required Site Approval Before ACC.* (1) HUD shall not enter into an ACC before final site approval on all project sites, except in accordance with paragraph (b)(2) of this section.

(2) In the case of donated sites, or of contributed sites for which the MH Contribution Credit is \$750 or less per site, HUD may permit final approval of trust or restricted land sites after ACC under these conditions: (i) All sites on the project have tentative site approval before ACC; (ii) At least 50 percent of the sites have final site approval before ACC; (iii) It is shown to the satisfaction of HUD that the balance of the sites will probably meet the requirements for final site approval no later than one year from execution of the Construction Contract; (iv) The Construction Contract shall provide that if all sites, finally approved and with executed leases, have not been delivered by the IHA to the contractor within one year from execution of the Construction Contract (or HUD-approved extension) the Construction Contract shall be reduced by the amount attributable to the units to be developed on the undelivered sites.

(c) *Time of Acquisition or Leasing.* No site may be acquired or leased and no commitment shall be made to acquire or lease until final site approval by HUD and any required approvals from IHS or BIA, nor shall any such action be taken prior to execution of the ACC unless HUD so authorizes.

§ 805.218 Types of interest in land.

(a) *Sites on Trust or Restricted Land.* (1) Sites on tribally or individually owned trust or restricted land shall be leased to the IHA for a term of not less than 50 years (25 years, automatically renewable for an additional term of 25 years). For sites on trust or restricted land, HUD may accept a Title Status Report furnished by the BIA in lieu of obtaining other title information, opinions, certificates or policies.

(2) "Trust or restricted land" includes "tribal land" or "individually owned land" as defined in 25 CFR 131.1. "Tribal land" under 25 CFR 131.1 means land or any interest therein held by the United States in trust for a tribe, or land or any interest therein held by a tribe subject to federal restrictions against alienation or encumbrance. "Individually owned land" under 25 CFR 131.1 means land or any interest therein held by the United States in trust for an individual Indian, or land or any interest therein

held by an individual Indian subject to federal restrictions against alienation or encumbrance, including allotted land.

(b) *Unrestricted Land.* Sites on unrestricted land may be either conveyed to the IHA in fee, or leased to the IHA for a term of not less than 50 years.

§ 805.219 Appraisals.

(a) *When Appraisals are Required.* If the amount to be charged to Development Cost for the site exceeds \$750 per unit, an appraisal shall be made in accordance with the standards provided in this section, and in the case of an MH Project such amount shall not exceed the limitations stated in §§ 805.404(c) and 805.408(c)(1). If the cost of a site does not exceed \$750 per unit, no appraisal shall be required unless HUD determines that an appraisal is required by law.

(b) *Performance of Appraisals.* The IHA shall submit a formal request for appraisal to HUD or BIA, as appropriate. When BIA appraisal service is available, appraisals shall be provided by the BIA in accordance with paragraph (c) of this section (unless HUD agrees to provide the services in whole or in part), and shall be accepted by HUD. Otherwise, all appraisals shall be provided by HUD.

(c) *Appraisal Standards.* (1) *Conformity with Appraisal Standards.* All appraisals shall be in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Opinions of value shall be based on the best available data properly analyzed and interpreted.

(2) *Nature of Legal Interest in land.* In valuing the property interest to be conveyed to the IHA, appraisals shall give full consideration to the nature of the property interest, including any legal and market restrictions and restraints on alienation that affect market value. It shall be determined whether the interest to be conveyed to the IHA is fee simple title, an easement, a leasehold or another property right. In the case of tribally or individually owned trust or restricted land to be leased to the IHA, the appraiser shall report the value of the leasehold.

(3) *Market Data Comparables.* In the application of the market data approach to valuation, a property shall be compared with properties that have been leased or sold recently in the same or competing market areas. However, value estimates shall not be predicated upon comparable sales or leases that involve the IHA either as seller or purchaser, or lessor or lessee.

(4) *Valuation of Trust or Restricted Land—Market Data Approach.* When the interest to be appraised is a leasehold interest in tribally or individually owned trust or restricted land, and

comparable leasehold transactions are not available, the appraiser shall estimate the value of the land as if alienable in fee, based on a comparison of the land being valued with sales of fee interests in comparable land in the same or competing market areas. The value of the land as if marketable in fee shall be discounted to obtain an estimate of the value of the leasehold interest which is alienable. An acceptable estimate of the value of the leasehold shall not exceed 2/3 of the estimate of the value as if alienable in fee. This limit may be exceeded only with approval of the Assistant Secretary for Housing in exceptional cases where no other suitable sites are available.

§ 805.220 Financial feasibility of rental projects.

The financial feasibility test for a Rental Project, which must be met before a Development Program for the Project can be approved, shall be the test applicable to Projects subject to 24 CFR 890.101 et seq. (Performance Funding System). However, this requirement may be modified with the approval of the HUD Assistant Secretary for Housing in cases involving exceptional circumstances. The financial feasibility test for an MH Project is stated in § 805.404(g).

§ 805.221 Construction inspection.

(a) *IHA Inspections.* (1) Whatever the projection method used, the IHA shall be responsible for providing inspections during construction (and sufficient development funds shall be provided for this purpose) which shall be performed by an architect, engineer or other qualified person. These inspections shall be performed with such frequency and under such procedures as the IHA determines with HUD approval are sufficient to assure completion of quality housing in accordance with the approved contract documents. IHA construction inspectors shall be selected by the IHA and approved by HUD.

(2) The IHA shall promptly forward a copy of each inspection report to HUD with comments on action taken to remedy deficiencies disclosed by the report. Because remote or scattered sites are sometimes used for Indian housing, and inspections at such sites may be more expensive, HUD may approve, where necessary, a larger amount for the cost of IHA inspection than provided under regular program requirements.

(b) *HUD Inspections.* HUD representatives shall make site visits from time to time, and shall make a report to HUD of each of their visits. HUD shall send a copy of each report to the IHA, with HUD's recommendation of the action, if any, to be taken by the IHA. The HUD report shall include its

evaluation of the adequacy of the IHA inspections and the IHA actions with respect thereto.

(c) *Inspection Upon Completion.* (1) The contractor shall notify the IHA in writing as to the date when, in his opinion, the contract work, or stage when applicable, will be completed and ready for final inspection. If the IHA determines that the state of the work is as represented, the IHA shall promptly notify HUD and request HUD's participation in the final inspection. The final inspection shall be made jointly by the representatives of the IHA, HUD and the contractor. In the case of an MH Project, each Homebuyer shall also be invited to participate as an observer in the inspection of his Home, and shall be given a copy of the inspection report, but acceptance shall be by the IHA with HUD approval.

(2) If the inspection discloses no deficiencies other than punch list items, or items awaiting seasonal opportunity to complete, the IHA shall submit for HUD approval an Interim Certificate of Completion, which shall detail the items. The IHA shall also submit for HUD approval a proposed time schedule agreed to by the contractor for completion of the items. Upon HUD approval of the Interim Certificate and schedule for completion, the IHA may release the monies to the contractor less the withholdings required by the Construction Contract. The IHA may permit occupancy prior to IHA sign-off on all punch list items and items awaiting seasonal opportunity.

(3) The contractor shall complete the punch list items, and items awaiting seasonal opportunity to complete, in accordance with the time schedule for completion of the items as approved by HUD. The contractor will be paid for such items only after inspection and acceptance by the IHA and HUD approval; and the IHA shall not accept any item if there is a dispute as to whether such items have been completed. If the IHA is satisfied that the applicable requirements of the Construction Contract have been met, the IHA shall submit for HUD approval a Final Certificate of Completion and release to the contractor the amounts withheld with respect to such items in accordance with the applicable provisions of the Construction Contract.

§ 805.222 Inspections after acceptance and enforcement of warranties.

(a) The Construction Contract shall specify the warranty periods applicable to items completed as of the date of the approved Interim Certificate of Completion and to items completed after the date of the Interim Certificate, and shall also provide for assignment to the IHA of manufacturers'

and suppliers' warranties covering equipment or supplies.

(b) The IHA shall inspect each dwelling unit no less often than every three months during the contractor's warranty period or periods, beginning three months after the date of the approved Interim Certificate of Completion, provided that there shall be a final inspection in time to exercise rights before expiration of the contractor's warranties (for MH Projects see also § 805.417(b)). These inspections shall cover all items under warranty as of the time of the inspection, including the items covered by manufacturers' and suppliers' warranties, as well as those covered by the contractor's warranties. At each inspection, the IHA shall obtain a signed statement from the occupants as to any deficiencies in the structure, equipment, grounds, etc., so that it may enforce any rights under applicable warranties. The costs to the IHA of making the inspections provided for in this paragraph (b) shall be included in Development Cost.

§ 805.223 Cost to correct deficiencies.

(a) *Responsibility for Correction of Deficiencies.* Costs to correct deficiencies which are the responsibility of the contractor or of an MH Homebuyer shall be charged accordingly. Costs which are not chargeable to the contractor or to the Homebuyer can only be met by increasing the Development Cost with an amendment to the development cost budget where necessary, or by charging the costs to Project operating receipts. Such costs shall not be incurred without the specific approval of HUD.

(b) *Amendments.* (1) The Development Program and ACC may be amended to provide amounts needed to correct deficiencies (and damages resulting from the deficiencies) in design, construction or equipment where it is not possible to obtain timely correction or payment by the responsible parties.

(2) In the case of a HM home, the additional development cost for work done under this paragraph (b) shall not result in an increase in the homebuyer's purchase price. However, before approving work on a MH home for correction of deficiencies, the Field Office may review the record of the homebuyer's compliance with the MHO Agreement, and may require the IHA to reach an agreement with the Homebuyer for the correction of significant non-compliances.

APPENDIX I—INTERDEPARTMENTAL AGREEMENT ON INDIAN HOUSING

1. *Introduction.* Most assisted housing in Indian areas is made available under the low-income housing programs authorized by the United States Housing Act of 1937 (USH ACT). For federally recognized tribes, the

Bureau of Indian Affairs (BIA) in the Department of the Interior, and the Indian Health Service (IHS) in the Department of Health, Education and Welfare furnish the principal necessary additional services. The purpose of this Interdepartmental Agreement is to set forth the responsibilities of the signatory agencies, having in mind that the financial and contractual relationships for assisted housing under the USH Act are between HUD and the IHAs and their tribal governments and that this Agreement contemplates promotion of the independent initiative and responsibilities of the IHAs and tribal governments involved. In addition, this Agreement specifies the responsibilities of IHS concerning water supply and sewerage facilities not only for HUD-supported housing but also for the BIA-Housing Improvement Program (HIP).

2. *HUD Responsibilities.* Except as specified in this Agreement, HUD will assume all responsibilities for projects of IHAs of federally recognized tribes under the USH Act that it normally does for any project under the USH Act.

3. *Coordination of Agencies.*

a. Before issuing the Program Reservation,¹ HUD will request the IHA to specify the time and place for a meeting of the IHA with representatives from HUD, BIA, IHS and any other agencies that may be involved. The time and place will be determined by the IHA and furnished to HUD after consultation with all participants. When HUD issues the Program Reservation, it shall send a notice to all the participants of the time and place for the meeting.

b. The purpose of the meeting will be to decide on the production method and to establish a time schedule of all necessary actions to be taken by the IHA and the Federal agencies leading to the start of construction and all subsequent actions to be taken during the total development period. These actions will include but not be limited to: site review, selection and development as they relate to the provision of water, sewer, house placement, access roads and streets where applicable; Homebuyer training program; development program; execution of Annual Contributions Contract; execution of Construction Contract; construction schedule; and inspections during construction and upon completion.

c. The time schedule agreed to at this meeting will be signed by each participant on behalf of his agency and by a representative of the IHA, and each participant agency and the IHA will thereby agree to meet that schedule. Any departure from the schedule must be for good cause and justified in writing by the head of the HUD field office, the Chairman of the IHA, the BIA Area Office Director or the IHS Area Director, as the case may be.

d. Complaints concerning compliance with the time schedule or performance of functions by the participating agencies may be made in writing to the head of the HUD field office and, in that event, it shall be his responsibility to resolve the matter. Complaints and the action taken with respect thereto shall be included in the monthly report required under paragraph e.

e. A monthly production progress reporting system on HUD-assisted projects compatible with the needs of HUD, BIA and IHS will be established by HUD in consultation with the other agencies and implemented within 90 days of the effective date of the HUD Indian Housing Regulations.

¹ See § 805.206(b)(2) of the Regulation.

4. *Related Statutory Requirements.* The Departments of Housing and Urban Development; Health, Education and Welfare and the Interior shall develop memoranda of agreement, which shall be made a part of this Agreement, relating to compliance with the flood Disaster Protection Act of 1973, the National Environmental Policy Act, the 1974 Historic and Archeological Data Preservation Act, the National Historic Preservation Act of 1966, the Act for the Preservation of American Antiquities, and related Executive Orders. Until such time as they are approved, each Department shall be responsible for following its own applicable procedures in such manner as to avoid or minimize delays. Required clearances to comply with these Acts will be included in the time schedule worked out at the interdepartmental coordination meeting (see paragraph 3b).

5. *Homebuyer Training Programs.* An IHA may elect to use, without additional HUD approval, the HUD pre-approved BIA Homebuyer Training Program (HTP). The BIA will assist with this program in accordance with responsibilities enumerated in the Exhibit to this Agreement.

6. *Other BIA Functions.*

a. *Site Selection and Land Acquisition Services.* The BIA will assist an IHA with site selection and land acquisition services, including title evidence and furnishing the site lease forms for both HUD rental and homeownership projects.

b. *Appraisals.* When requested by an IHA, the BIA will perform appraisals of the proposed sites in accordance with the HUD and BIA regulations.

c. *Roads.* The BIA will carry out its responsibilities under applicable regulations of the Department of Interior for providing roads, including access roads, which are not the responsibility of HUD under the HUD regulations.

d. *Management Services.* Although there is no commitment by the BIA for the furnishing of assistance in the management and operation of IHA projects, it is understood under this Agreement that where the BIA has staff or facilities available to provide such assistance and an IHA requests such assistance, the BIA will provide it to the extent feasible.

7. *Audits.*

a. The Office of Audit and Investigation (OAI) in the Department of the Interior, will provide audits of IHAs of federally recognized tribes until federal fiscal year 1977. The scope of these audits will be limited as follows:

(1) As a general rule, the audits will omit confirmation procedures for tenants' accounts receivable. The audit opinion will be qualified or a disclaimer will be made in those instances where receivables are material. Other tests and analyses applicable to receivables will be applied, such as review of billing procedures and aging receivables and evaluation of collection efforts. If results of these tests indicate the possibility of serious error or potential for fraud, OAI will attempt confirmation.

(2) Upon request of OAI, HUD will confirm the balance of outstanding notes for the construction of the projects and of HUD contributions surplus accounts.

b. Audits will be scheduled only upon receipt of required financial statements. HUD procedures will provide that the IHA furnish a copy of its financial statement to OAI at the times it is furnished to HUD.

c. Audits will not be performed at those IHAs, such as in Oklahoma and Alaska, which are not located on Federal Indian reservations.

d. HUD will assume responsibility for the audit of IHAs beginning with fiscal year 1977.

8. *Water Supply and Sewage Facilities.*

a. *General.* The IHS has general responsibility to provide water supply and sewage facilities for those Indians and Alaska Natives who are eligible to receive such benefits under the Indian Sanitation Facilities and Construction Act (Pub. L. 86-121). The IHS will exercise this responsibility with respect to facilities required to serve Indian homes constructed or improved with the support of HUD or BIA to the extent that funds are specifically appropriated by the Congress for such facilities and as agreed upon under the terms of this Agreement.

b. *Planning for Budget Purposes.* Sixteen months prior to the beginning of a fiscal year during which IHS will be required to furnish sanitation facilities, HUD and BIA will, to the extent possible, advise IHS with respect to the number and, where possible, the location of HUD-assisted housing starts and of HIP units of housing improvement to be started during that fiscal year. (If the information cannot be provided at that particular time, HUD and BIA will notify the IHS Director in writing accordingly). IHS will use this information in developing its budget request to assure that adequate funds are included to support construction of all necessary sanitation facilities for HUD-assisted and HIP housing units.

c. *Evaluation of Housing Site and Determination of Type of Facility to be Provided.*

(1) The ability of the IHS to provide needed water supply and waste facilities is dependent on the availability of a water source of suitable quantity and quality and a means of sewage disposal which will conform to acceptable standards and can be developed within reasonable cost limits. Therefore, the IHS shall be consulted with respect to the general site plan for new housing units and shall review and concur in the site selection.

(2) It shall be the responsibility of the IHS to determine, following its review of the site in each case, whether community or individual type facilities of a combination of these, can best serve the housing units concerned.

(3) IHS's review and approval of sites, along with any recommendations and observations concerning water and sanitation facilities, will be furnished the IHA, which shall in turn forward this material to HUD as part of the Preliminary Site Report submission.

d. *Technical Requirements.* To minimize the cost of providing and maintaining water supply and sewage facilities, the following criteria shall apply:

(1) Wherever possible, project sites will be on or adjacent to existing community water and sewer systems.

(2) Economic feasibility of water and sewer installations shall be considered in site selection. Feasibility shall be determined on the basis of initial construction as well as long range costs of operation, maintenance and replacement. Overly expensive and complex utility installation shall be avoided.

(3) Whenever possible and practicable, dwelling units within a multi-unit project

site will be located on both sides of the street.

c. *Test Well Drilling.* Whenever it is determined by the IHS that test drilling is required for wells to provide individual water facilities for housing supported by HUD, tentative site approval may be given subject to the results of the test drilling. Should the test drilling indicate an insufficient supply of potable water, the site shall be disapproved and another selected unless another suitable water source can be provided. All test drilling, including obtaining of necessary permits or authorizations, shall be performed by and at the expense of the HUD program and carried out in accordance with accepted practices in the area concerned, and the data obtained shall be furnished to the IHS. For all community water facilities, including facilities for HUD-assisted projects and for individual wells to be provided for BIA sponsored housing, the IHS will perform at its expense any test drilling required.

f. *Soil Percolation Tests.* Soil percolation tests are necessary to ascertain the suitability of a home site for septic tank and drain-field facilities. The test will be conducted by, or at the expense of, the IHS. The data obtained will be provided to the IHA with IHS's recommendations for accepting or rejecting the site. (IHS's concurrence is required as a condition for use of the site, see paragraph 8c(1) above).

g. *Individual House Facilities.* In those instances where the IHS determines that individual water supply and/or waste disposal facilities are the most feasible and should be provided, the following conditions will apply:

(1) The agency financing the house construction or improvement will be responsible for the installation of all plumbing facilities within the dwelling and the house service lines.

(2) In the case of BIA-HIP homes, the IHS will provide the on-site water supply and waste disposal facilities along with service lines to a point five feet from the house.

(3) In the case of HUD-supported homes, the housing project will include the cost of installing any water supply and/or sewage disposal facilities which are to be located on the individual house sites. These facilities would include individual water supplies, sewage disposal systems or service lines to the house. All such work is to be carried out in accordance with guides and recommendations furnished by the IHS regarding the location and design of the facilities. These guides and recommendations will be provided by the IHS, following site review, to the IHA.

h. *Community Systems.* All community water and sewer systems will be designed on the basis of a total community concept. The following conditions will apply:

(1) The agency financing the house construction or improvement will be responsible for the installation of all plumbing facilities within the house and the house service lines.

(2) Where HUD-financed new houses are interspersed with existing homes, HUD will fund a pro rata share of the system's cost, excluding water source development, treatment and storage, and sewage treatment facility. This share will be based on the ratio of new to existing homes and will not exceed the cost of equivalent individual type facilities.

(3) Where the systems serve only new HUD-financed houses, HUD will fund the total cost of water distribution and sewage collection systems located within the boundaries of the project. The cost of all necessary facilities outside the housing project boundary will be funded by IHS.

(4) Community systems servicing BIA-HIP homes will be provided by IHS.

i. Plan Review and Approval.

(1) In those instances where the housing project includes the cost of installing individual or on-site water and sewer facilities, approval must be obtained from the IHS Area Office on all final plans before advertisement for construction bids. The IHS at its expense will inspect the installation of these facilities during construction and after completion of the work to assure the IHA that the installation has been done in conformance with the plans and specifications and may be accepted.

(2) If connection to a BIA water and/or sewage system is contemplated, a joint feasibility study will be conducted by the BIA and IHS to determine the adequacy of existing facilities to meet the additional requirements, to recommend necessary improvements or additions and to determine points of master or individual metered connections, valving, flushing hydrants, etc., in order to insure compatibility with existing systems. If the system is not adequate, the IHS and BIA will develop a mutually agreed upon program for providing additional capacity.

(3) Responsibility for the acquisition of land or interest therein in connection with the provision of water and sewage facilities for HUD-assisted housing shall not be assumed by the IHS, BIA, or HUD.

Dated: February 7, 1976.

THOMAS S. KLEPPE,
Secretary,
Department of the Interior.

Dated: February 20, 1976.

DAVID MATHEWS,
Secretary, Department of
Health, Education, and Welfare.

Dated: March 2, 1976.

CARLA A. HILLS,
Secretary, Department of
Housing and Urban Development.

EXHIBIT TO THE INTERDEPARTMENTAL
AGREEMENT

BIA HOMEBUYER TRAINING PROGRAM

1. *Scope of Program.* The HUD-approved BIA Homebuyer Training Program (HTP) will provide pre-occupancy and post occupancy training to Homebuyer families in Mutual Help Projects and shall consist of the following:

a. *Training in the Mutual Help Program.* Training will be provided to explain the Mutual Help Program and the rights and obligations of the Homebuyers.

b. *Training in Home and Appliance Maintenance and Care.* Training will be provided to increase the knowledge and understanding of Homebuyers of the methods and means to properly care for and maintain (1) both the interior and exterior structures of the Home including electrical, plumbing (including water heaters and pumps) and heating systems; (2) major appliances, refrigerators, ranges and dishwashers; (3) minor appliances, such as can openers and toasters;

and (4) yards and gardens. In addition, training will be provided to Homebuyers to increase their knowledge about simple repair techniques with regard to the above-mentioned house components and equipment.

c. *Training in Budgeting and Financial Management.* Training will be provided to Homebuyer families on family budgeting, use of credit, and meeting financial obligations, including their responsibility to make the required monthly payments and to allocate funds to various other necessities, such as utilities.

d. *Information and Referral Services.* Homebuyers will be given information on and, where appropriate, will be assisted by referrals to, other local, state and Federal agencies whose programs relate to total family counseling, and social service, including services on problems such as alcoholism, drug abuse, etc.

2. *Implementation of Program.*

a. *General.* The HTP will be implemented according to the schedule established under paragraph 3 of the Agreement in accordance with the following: (1) An IHA will submit a proposal to the BIA which will set forth the specific needs of Homebuyers, the scope of training, methodology and budget to be undertaken within the general guidelines stated above.

(2) The program shall be developed and implemented at the local level by the IHAs employing locally recruited members of the community to the maximum extent possible.

(3) The program may be carried out through individual home visits, demonstration or other group sessions, or by any combination of these deemed appropriate.

(4) The BIA shall assist the IHAs in obtaining the necessary training and instruction for their training staff who will carry out the program. Such training of IHA employees may be undertaken through IHS training centers at universities or other institutions which can provide the needed training.

b. *Progress Reports.* IHAs shall submit quarterly progress reports to BIA and to HUD, which shall include:

(1) A list of expenditures under the program, including salaries, cost of transportation, training materials, office expenses and other justifiable expenditures. All expenditures must be identified and supported by appropriate books and records of the IHA and must be certified as correct by the Executive Director and the Chairman of the IHA.

(2) Names of Homebuyer participants, the number of training sessions, descriptions of training activities, degree of participation, deficiencies noted, and other relevant information or observations.

(3) Efficacy of training as shown by reports, results of tests, reduction in monthly payments delinquencies, reduction in maintenance costs or other factors.

(4) Proposed changes during the next period of training, including program changes to overcome deficiencies described in current or prior report(s) or called to the attention of the IHA previously by BIA and to provide training to any additional or substitute Homebuyers.

c. *BIA Responsibilities.* The BIA will monitor and evaluate the progress and the implementation of the HTP of IHAs and submit semi-annual reports to HUD. Should BIA judge that an IHA is not implementing

the program consistent with these guidelines, it will:

(1) Notify the IHA of the deficiencies in its program implementation and provide the necessary assistance to it to assure proper implementation.

(2) Afford the IHA 90 days from the date of notification to take corrective action, and

(3) Report to HUD whether the program should be continued based on the corrective action or whether the program should be terminated.

d. *HUD Responsibilities.* HUD will be responsible for including in the development cost of a project the funds for the HTP, provided that the BIA will not be reimbursed for utilization of its staff or facilities. HUD will also be responsible for determining whether the program for a particular project shall be terminated on the basis of information provided pursuant to paragraph c above, or otherwise.

Subpart C—Operation

§ 805.301 Definitions.

See §§ 805.102 and 805.430.

§ 805.302 Admission policies.

(a) *Income and Assets Limits.* (1) Subject to approval by HUD, the IHA shall adopt and promulgate regulations establishing schedules of maximum income limits for admission of tenants or homebuyers. An IHA may establish income limits up to the maximum permitted by the Act, which limits admission to families of low income who cannot afford to pay enough to cause private enterprise in the Indian Area to build an adequate supply of decent, safe and sanitary dwellings for their use. In determining the income limits for admission, consideration shall be given to any relevant limitations in the local private housing market (such as an insufficient supply of standard private housing, or the unavailability of mortgage financing on trust or restricted land). HUD shall approve the IHA's schedules of maximum income limits unless it finds that the IHA's determination of such limits is arbitrary or capricious. An IHA may also adopt regulations establishing reasonable assets limits for admission to occupancy. A copy of the IHA's income and assets regulations shall be posted prominently in the IHA's office for examination by prospective tenants or Homebuyers.

(2) Where decent, safe and sanitary housing is not otherwise being provided in the Indian area even for those of relatively high income, the IHA may establish maximum income limits at a sufficiently high level to meet those needs. In submitting such income limits to HUD for approval, the IHA may furnish a certification that private (conventional, FHA or VA) or Farmers Home Administration financing is not available to the prospective tenants or homebuyers along with such other supporting evidence as it deems appropriate. HUD shall

not disapprove such income limits on the ground of their being too high unless it finds that the IHA certification is incorrect.

(b) *Other Admission Policies.* (1) The IHA shall adopt and promulgate regulations establishing the IHA's policies for admission of tenants or Homebuyers. Such regulations shall specify the types of Projects to which they apply (i.e., Rental, MH, or Turnkey III). A copy of the regulations shall be posted prominently in the IHA's office for examination by prospective tenants or homebuyers, and shall be submitted to HUD promptly after adoption by the IHA.

(2) These regulations shall be designed:

(i) To attain at initial occupancy, or within a reasonable period of time for Projects beyond the state of initial occupancy (but without prejudice to contract rights of homebuyers in Turnkey III or MH Projects), a tenant or homebuyer body in each Project composed of families with a broad range of incomes and rent-paying ability which is generally representative of the range of incomes of low income Indian families in the area, as determined by HUD, who would be qualified for admission to the type of project (Rental or Mutual Help).

(ii) To avoid concentrations of the most economically and socially deprived families in any one or all of the IHA's Projects;

(iii) For Rental and Turnkey III Projects, to achieve compliance with the applicable provisions of 24 CFR, Part 860, Subpart D, Minimum and Maximum Rent-Income Ratios, and Minimum Rent Requirements, including, but not limited to, § 860.406 which provides that "at least 20 percent of the dwelling units in any project placed under annual contributions contract in any fiscal year beginning after [September 26, 1975] shall be occupied by very low-income families * * *;" and

(iv) So that at least 20 percent of the dwelling units in any MH Project placed under ACC after September 26, 1975 shall be occupied by very low income families, i.e., families whose incomes do not exceed 50 percent of the median income of Indian families in the area, as determined by HUD, whose incomes would qualify them for admission to a Mutual-Help project.

§ 805.303 Grievance procedures.

The requirements set forth in HUD regulations relating to procedures for the resolution of tenant or homebuyer grievances against Public Housing Agencies (24 CFR, Part 866) are not applicable to Projects under this Part. Each IHA shall adopt and promulgate grievance procedures which are appropriate to local circumstances, provided that such procedures shall afford all

tenants and homebuyers a fair and reasonable opportunity to have their grievances heard and considered by IHA officials, and shall comply with the Indian Civil Rights Act. A copy of the grievance procedures shall be posted prominently in the IHA office, and shall be provided to a tenant or homebuyer upon request.

§ 805.304 Determination of rents and homebuyer payments.

(a) *Rental and Turnkey III Projects.* The amount of rent or homebuyer payment required of a tenant in a Rental Project or a homebuyer in a Turnkey III Project shall be determined in accordance with the provisions of 24 CFR, Part 860, Subpart D.

(b) *MH Projects.* The amount of the Required Monthly Payment for a Homebuyer in an MH Project placed under ACC on or after the effective date of this Part and a Homebuyer admitted to occupancy in an Existing Project on or after the effective date of the conversion of the Project in accordance with § 805.428 shall be determined in accordance with § 805.416 of this Part.

(c) *Examination and Reexamination of Family Income.* For purposes of determining rent and homebuyer payment amounts under paragraphs (a) and (b) of this section, making adjustments in the amounts so determined, and determining whether an MH Homebuyer is required to purchase the Home under § 805.422(e), the IHA shall examine the family's earnings and other income prior to initial occupancy, and shall make periodic reexaminations thereafter at least once a year, except as follows:

(1) The date of the first reexamination may be extended to not more than 18 months after the initial examination, if necessary to fit a reexamination schedule established by the IHA.

(2) For families whose heads (or their spouses) or whose sole members are 62 years of age or over, the reexaminations need not be more often than once every two years.

For each examination or reexamination, the tenant or homebuyer shall furnish to the IHA certification of his family's earnings and other income and family composition, including any information and evidence required by the IHA.

§ 805.305 Rent and homebuyer payment collection policy.

Each IHA shall adopt and promulgate, and shall use its best efforts to obtain compliance with, rules or regulations sufficient to assure the prompt payment and collection of rents and required homebuyer payments. A copy of the rules or regulations shall be posted prominently in the IHA office, and shall be provided to a tenant or

homebuyer upon request. The rules or regulations shall include provisions on at least the following subjects:

(a) The time, place and method for payment.

(b) A statement to the effect that prompt payment is a requirement for continued occupancy.

(c) For tenants or homebuyers whose income is seasonal or otherwise irregular, provisions for special plans or schedules for assuring that the required payments are made when due, e.g., prepayment, or arrangements with public welfare agencies regarding public assistance payments.

(d) Procedures for counseling and assistance to tenants and homebuyers so as to minimize the need for resort to the remedy of eviction.

(e) Procedures for enforcement of tenant and homebuyer obligations to make payment, including procedures for eviction where necessary.

(f) Procedures for collection of amounts remaining due and unpaid from terminated tenants and homebuyers.

(g) Procedures for obtaining assistance from the tribal government.

§ 805.306 Maintenance and improvements.

(a) *General.* Each IHA shall adopt and promulgate, and shall use its best efforts to obtain compliance with, rules or regulations to assure full performance of the respective maintenance responsibilities of the IHA and tenants or homebuyers. A copy of such rules or regulations shall be posted prominently in the IHA office, and shall be provided to a tenant or homebuyer upon request.

(b) *Provisions for Rental Projects.* For Rental Projects, the maintenance rules or regulations shall contain provisions on at least the following subjects:

(1) A statement specifying the responsibilities of tenants for normal care and maintenance, if any, of their dwelling units and common property, if any.

(2) Procedures for handling maintenance service requests from tenants.

(3) Procedures for IHA inspections of dwelling units and common property, if any.

(4) Special arrangements, if any, for obtaining maintenance services from outside workmen or contractors.

(5) Procedures for charging tenants for damages for which they are responsible.

(c) *Provisions for MH and Turnkey III Projects.* For MH and Turnkey III Projects, the maintenance rules or regulations shall contain provisions on at least the following subjects:

(1) A statement specifying the responsibilities of homebuyers for maintenance and care of their dwelling units and common property, if any.

(2) For Turnkey III Projects only, procedures for handling service requests from homebuyers for nonroutine maintenance.

(3) Procedures for providing advice and technical assistance to homebuyers to enable them to meet their maintenance responsibilities.

(4) Procedures for IHA inspections of homes and common property, if any.

(5) Procedures for IHA performance of homebuyer maintenance responsibilities (where homebuyers fail to satisfy such responsibilities) including procedures for charging the homebuyer's proper account for the cost thereof.

(6) Special arrangements, if any, for obtaining maintenance services from outside workmen or contractors.

(7) Procedures for charging homebuyers for damages for which they are responsible.

(d) *IHA Responsibility in MH and Turnkey III Projects.* The IHA shall enforce those provisions of a Homebuyer's agreement under which the homebuyer is responsible for maintenance of the home. The IHA shall have overall responsibility to HUD for assuring that the housing is being kept in decent, safe and sanitary condition, and that the home and grounds are maintained in a manner that will preserve their condition, normal wear and depreciation excepted. Failure of a Homebuyer to meet his obligations for maintenance shall not relieve the IHA of responsibility in this respect. Accordingly, the IHA shall conduct a complete interior and exterior examination of each home at least once a year, and shall furnish a copy of the inspection report to the Homebuyer. The IHA shall take appropriate action, as needed to remedy conditions shown by the inspection, including steps to assure performance of the Homebuyer's obligations under the Homebuyer agreement.

§ 805.307 Procurement and administration of supplies, materials and equipment.

(a) Each IHA shall adopt and promulgate, and shall comply with, rules or regulations for the procurement and administration of supplies, materials and equipment, which shall contain provisions on at least the following subjects:

(1) Procedures for purchasing in cases where competitive bidding is required.

(2) Identification (by position title) of IHA officials authorized to make purchases when competitive bidding is not required, and procedures for making such purchases.

(3) Procedures for inventory control.

(4) Procedures for storage and protection of goods and supplies.

(5) Procedures for issuance or other disposition of supplies and equipment.

A copy of such rules or regulations shall be promptly furnished to HUD.

(b) In the purchasing of equipment, materials and supplies, and in the award of contracts for services or for repairs, maintenance and replacements, the IHA shall comply with all applicable laws, and in any event shall make such purchases and award such contracts only to the lowest responsible bidder after advertising a sufficient time in advance for proposals, except:

(1) When the amount involved does not exceed an amount prescribed from time to time by HUD; or

(2) When the public exigencies require immediate delivery of the articles or performance of the service; or

(3) When only one source of supply is available and the purchasing or contracting officer of the IHA has so certified; or

(4) When the services required are (i) of a technical and professional nature, or (ii) to be performed under the IHA supervision and paid for on a time basis.

§ 805.308 Correction of management deficiencies.

IHA shall promptly take such action as may be required or approved by HUD to remedy management deficiencies. Particular attention shall be given to the correction of serious deficiencies in any of the following: Physical maintenance of the property, occupancy practices, maintenance of accounts and records, cost controls, handling of funds, rent or homebuyer payment collection, required reports to HUD, IHA staffing and staff turnover, and tribal government cooperation. HUD shall provide the maximum feasible assistance to an IHA to remedy management deficiencies.

§ 805.309 Indian preference in contracting.

The provisions of § 805.204 shall apply to contracts in connection with the operation of a Project.

§ 805.310 Contracts for personal services.

The IHA shall not without the prior written approval of HUD enter into, execute or approve any agreement or contract for personal, management, legal or other services with any person or firm (a) where the initial period or term of the agreement or contract (including any renewal) is in excess of two years, or (b) where the amount of the agreement or contract is in excess of the amount included for such purpose in the HUD-approved development cost budget or operating budget or an amount specified from time to time by HUD, as the case may be, or (c) where the agreement or contract is

for legal or other services in connection with litigation.

§ 805.311 Operating subsidy—MH projects.

(a) *Scope.* This section provides for determination of operating subsidy on a uniform basis for all MH Projects, including Existing Projects whether or not converted in accordance with § 805.428.

(b) *Eligible Costs.* Operating subsidy shall be paid to reimburse the IHA for the HUD-approved costs of Independent Public Accountant audits. Operating subsidy may also be paid to cover proposed expenditures approved by HUD for the following purposes.

(1) Administration Charges for vacant units where the IHA shows to HUD's satisfaction that it is making every reasonable effort to fill the vacancies.

(2) Collection losses due to payment delinquencies on the part of Homebuyer families whose MHO Agreements have been terminated, and who have vacated the home, and the actual cost of any maintenance (including repairs and replacements) necessary to put the vacant home in a suitable condition for a substitute Homebuyer family. Operating subsidy may be made available for these purposes only after the IHA has previously utilized all available homebuyer credits.

(3) The costs of HUD-approved Homebuyer counseling but not in duplication of Homebuyer Counseling costs funded under a Development Cost Budget (pursuant to § 805.412 or § 805.429).

(4) HUD-approved costs for training of staff and Commissioners.

(5) Operating costs resulting from other unusual circumstances, as determined by HUD, justifying payment of operating subsidy.

(c) *Ineligible Costs.* No operating subsidy shall be paid for utilities, maintenance or other items for which the Homebuyer is responsible (other than necessary to put a vacant home in condition for a substitute family as provided in paragraph (b)(2) of this section).

§ 805.312 Operating subsidy—other projects.

Operating subsidy for Projects other than MH Projects shall be determined under the applicable regulations.

Subpart D—Mutual Help Homeownership Opportunity Program

§ 805.401 Scope and applicability.

(a) *Scope.* This Subpart sets forth the requirements applicable to the Mutual Help Homeownership Opportunity Program. For any matter not covered in this Subpart see also the provisions of Subparts A, B, and C of this Part.

(b) *Applicability.* The provisions of this Subpart shall be applicable to all MH Projects placed under ACC on or after the effective date of this Part, and any Existing Projects converted in accordance with § 805.428.

§ 805.402 Definitions.

See §§ 805.102 and 805.430.

§ 805.403 Contractual framework.

An MH Project involves three basic contracts: an ACC for an MH Project, an MHO Agreement and an MH Construction Contract, each in the form prescribed by HUD.

§ 805.404 Special provisions for development of an MH Project.

(a) *Application for Project.* An application for an MH Project shall include, in as much detail as possible, a tentative listing of the family size and incomes of the families who will be eligible and willing to participate as MH Homebuyers, and the expected sources, forms and amounts of their MH Contributions. The application shall state that the listing is supported by signed applications of the families.

(b) *Inclusion of MH Contribution in Development Cost.* The total amount of the MH Contributions shall be included in the Development Cost for an MH Project. The development cost budget shall state in total and separately the portion of the Total Development Cost to be attributed to the land, cash, materials, equipment, and MH work to be furnished by or on behalf of the Homebuyers as their MH Contributions.

(c) *Purchase of Sites.* (1) An IHA may purchase a homesite (subject to the limitation stated in paragraph (c)(2) of this section), if neither the tribe nor the Homebuyers can donate or contribute enough sites suitable for Project use.

(2) In the case of purchased homesites, the cost of an unimproved homesite to be charged against the Development Cost Budget shall not exceed 8.75 percent of the estimated Dwelling Construction and Equipment Cost (DC&E Cost) unless it is shown to the satisfaction of HUD that the topographic features of the site are such that the excess cost will be offset by the savings in the cost of site improvements. The cost for purchase of an improved or partially improved homesite may be approved by HUD if the purchase price, together with any cost of further site improvement, is reasonable in relation to the estimated DC&E Cost and is consistent with an acceptable Total Development Cost.

(d) *Availability of Sites for Use by Substitute Homebuyers.* Each homesite shall be legally and practicably available for use by a substitute Homebuyer. If a site is part of other land owned by

the prospective Homebuyer, the lease or other conveyance to the IHA shall include legal right of access to the site by any substitute Homebuyer.

(e) *Substitution of Site.* No substitution of a site shall be permitted after final site approval except with specific HUD approval on the basis of a showing to the satisfaction of HUD that: (1) the change is necessary by reason of special circumstances and (2) the change will not unreasonably delay or unreasonably add to the cost of the Project.

(f) *Time for Acquisition of Contributed or Donated Sites.* Contributed or donated sites shall (with only those exceptions allowed in accordance with § 805.217(b)) be leased or conveyed to the IHA before execution of the Construction Contract.

(g) *Consultation with Homebuyers.* The IHA shall be responsible for determining the extent to which homebuyers or their representatives should be given an opportunity to comment on the planning and design of the homes. Any recommendations resulting from such consultation shall be consistent with HUD standards and cost limitations and shall be subject to IHA and HUD approval.

(h) *Execution of MHO Agreements.* MHO Agreements may be executed prior to ACC. Where MHO Agreement have not been executed prior to ACC, they shall be executed promptly after ACC.

(i) *Cost of Counseling Program.* The Development Cost of an MH Project shall include an amount not in excess of \$500 multiplied by the number of Homes in the Project for a counseling program as required by § 805.429.

(j) *Financial Feasibility.* The Development Program shall include a demonstration by the IHA that there is a sufficient number of selected Homebuyers who are able and willing to pay the Administration Charge and meet the other obligations under MHO Agreements (see § 805.406(b)) and who have signed statements that they are willing to enter into MHO Agreements. However, this requirement may be modified with the approval of the HUD Assistant Secretary for Housing Management in cases involving areas of exceptionally low income or other exceptional circumstances.

(k) *Rights Under MHO Agreement if Project Fails to Proceed.* Any MHO Agreement shall be subject to revocation by the IHA if the IHA or HUD determines not to proceed with the development of the Project in whole or part. In such event any contribution made by the Homebuyer or tribe shall be returned.

§ 805.405 Financing of development cost.

(a) Development Cost shall be financed by issuance of notes, and not by issuance of bonds.

(b) Under the ACC, HUD agrees to advance funds from time to time to the IHA upon a showing by the IHA that the funds requisitioned by the IHA are needed for the development of the Project. This commitment is called the Project Loan, and the IHA note evidencing the borrowing from HUD is called a Project Loan Note.

(c) HUD may at any time require the IHA to obtain loans from sources other than HUD, in lieu of advances from HUD, secured by a pledge of HUD's agreement under the ACC to advance monies to the IHA. The IHA note evidencing such borrowing from non-HUD sources is called a Project Note.

§ 805.406 Selection of MH homebuyers.

(a) *Admission Policies.* In adopting admission regulations in accordance with § 805.302, an IHA may establish admission policies for MH Projects which are different from those for Rental or Turnkey III Projects of the IHA, including different income and assets limits.

(b) *Ability to Meet Homebuyer Obligations.* A family shall not be selected for MH housing unless, in addition to meeting the maximum income limits and other requirements for admission (see § 805.302), the family is able and willing to meet all obligations of an MHO Agreement, including the obligations to perform or provide the necessary maintenance, to provide the required MH Contribution and its own utilities, and to pay the Administration Charge (unless such requirements are modified in exceptional cases in accordance with § 805.404(g)). A family may be selected even if the Administration Charge plus utilities, or the Administration Charge alone, would exceed 25 percent of Family Income, if the family can be expected reasonably to pay the Administration Charge and meet its other obligations under the MHO Agreement (e.g., as demonstrated by the family's income, including public assistance, the family's past history, or the family's ability to supplement its income by providing its own food, fuel or other necessities).

(c) *MH Waiting List.* (1) Families who wish to be considered for selection for MH housing shall apply specifically for such housing. A family on any other IHA waiting list, or a tenant in a Rental Project of the IHA, must also submit an application for selection in order to be considered for MH Projects.

(2) The IHA shall maintain a waiting list, separate from any other IHA waiting lists, of families which have applied for MH housing and which

have been determined to meet the admission requirements.

(3) All applications for selection for MH housing shall be dated as received; except that an application from a family on the waiting list for any other IHA Project shall have the same date of application as the date of its application for such other IHA Projects.

(4) The filing of an application for MH housing by a family which is an applicant for other IHA housing, or is a tenant in such housing, shall not in any way affect its status with regard to such other housing. Such applicant shall not lose its place on another IHA housing waiting list until it has been selected for MH housing and the MHO Agreement has been signed.

(d) *Making the Selections.* Promptly after HUD approval of the application for a Project, the IHA shall proceed with selection of as many Homebuyers as there are Homes in the Project. Selection of Homebuyers shall be made from the MH waiting list in accordance with the date of application and other pertinent factors under the IHA's admissions regulations established in accordance with § 805.302. Selection of a Homebuyer shall be made only after the site for that Homebuyer has received HUD final site approval.

§ 805.407 Notifications to applicant families.

(a) *Notification to Families Not Meeting Admission Requirements.* When an IHA determines that a family does not meet the admission requirements, the IHA shall give the family prompt written notice of this determination. The notice shall state the basis for the determination, and shall state that the family is entitled to an informal hearing by the IHA on the determination if request for such hearing is made within a reasonable time as specified in the notice.

(b) *Notification to Selected Families.* A selected family shall be given a written Notice of Selection including the following information:

(1) A statement that the family has been selected for an MH Project and that the site for the family (identify) has been approved;

(2) A statement that the family shall return the enclosed statement of willingness to execute an MHO Agreement and the name(s) of the person(s) who must sign the statement on behalf of the family;

(3) A statement that the family will be advised at a later date of the time and place for execution of the MHO Agreement and the name(s) of the person(s) who must execute it on behalf of the family;

(4) A statement that after execution of the Construction Contract the family will receive a notice of confir-

mation which will state the estimated date of completion of the unit designated for the Homebuyer, insofar as such date can be reasonably determined; and

(5) A statement that the issuance of the Notice of Selection does not constitute or give rise to any contractual obligation of the part of the IHA or HUD.

(c) *Notification to Families Not Selected for a Project.* If the IHA determines that an applicant meets the admission requirements but is not to be selected for a certain MH Project, the IHA shall so notify the applicant in writing. The notice shall also state that the applicant will remain on the IHA's waiting list for consideration for admission in the event of vacancies or additional MH housing.

§ 805.408 MH contribution.

(a) *Form of Contribution.* MH Contributions toward the Development Cost of a Project may be in the form of (1) land, (2) work, (3) cash, or (4) materials or equipment. Contributions other than work may be made by a tribe on behalf of Homebuyers. The IHA may determine that the MH Contributions to a Project shall consist either wholly of any of these forms of contribution, or of any combination of these forms of contribution. The amount of each form of MH Contribution shall be specified in the Development Program and development cost budget for the Project. Where a tribal contribution is involved, the tribe shall adopt a tribal resolution stating its commitment to the IHA to make the contribution on behalf of Homebuyers, and a copy of this resolution shall be submitted to HUD with the Development Program.

(b) *Amount of MH Contribution to Project.* The minimum aggregate MH Contribution to a Project shall be \$1,500 multiplied by the number of Homes in the Project. If any homesite has been purchased for more than \$1,500 and the excess has not been covered by funds from a source other than Project funds (see § 805.404(c)), the minimum aggregate contribution for the Project shall be increased by the amount of the excess.

(c) *Credit for MH Land Contribution—(1) Sharing of Land Credits.* Whether homesites are contributed by Homebuyers or by the tribe, the total of the MH credits for contributed homesites shall be pooled and shared equally by all the Homebuyers in the Project, including substitute Homebuyers.

(2) *Credit for Contributed Homesite.* The amount to be credited as an MH Contribution for a contributed homesite shall not exceed \$750 or the appraised value determined in accordance with § 805.219, but shall not in

any event be more than an average for the project of \$1,500 per homesite.

(d) *Non-land Contributions.* (1) If the land contributions aggregate less than the minimum for the Project as stated in paragraph (b) of this section, the difference shall be provided by non-land contributions, and this obligation shall be shared equally by all the Homebuyers in the Project.

(2) The foregoing establishes the minimum non-land contribution. An IHA may require an additional non-land contribution in its discretion.

(e) *Total Contribution to be Furnished Before Occupancy.* A Homebuyer shall not be entitled to commence occupancy of the Home until the total non-land MH Contribution on behalf of the Homebuyer as specified in the MHO Agreement (whether to be furnished by the Homebuyer or the tribe), has been furnished, whether or not the items are necessary for occupancy, e.g., exterior painting. (For exception, see § 805.415(a)(2)(ii).)

§ 805.409 MH contributions in event of substitution of homebuyer.

(a) If an MHO Agreement is terminated and a substitute Homebuyer is selected, the amount and kind of MH Contribution to be provided by the substitute Homebuyer shall be determined in accordance with the principles set forth in § 805.408; i.e., the credits for the land contribution shall be divided equally among all the Homebuyers including the substitute Homebuyer and the aggregate MH credit to the Homebuyers for credit for contributions consisting of work, materials or equipment shall not be more than the amount stated in the Construction Contract unless (1) the contractor agrees to reduce the Price Payable to Contractor by an amount equal to the additional MH credit, but without any increase in the Total Contract Price, or (2) the excess is accounted for under paragraph (b) of this section. The distribution among the Homebuyers of the non-land contribution to be provided shall, to the maximum extent possible follow the principles of § 805.408 to achieve an equitable distribution among all the Homebuyers. After consulting the Homebuyers and the contractor, the IHA shall notify each Homebuyer and the contractor, in writing, of the modifications to the MH Contribution requirements, and shall advise them that unless they notify the IHA of any objection within a stated time from receipt of the notification, the modified MH requirements will become effective. In the case of any dispute which cannot be resolved by the IHA, the matter may be referred to HUD for resolution.

(b) Where circumstances so require, the IHA may, provided that the appro-

appropriate development account is credited, permit the substitute Homebuyer to complete his MH Contribution within a specified period of time, not later than the first five years of occupancy, in the form of (1) cash in addition to the Required Monthly Payments, (2) clerical, maintenance, professional or technical work for the IHA or (3) another form of contribution satisfactory to the IHA, as set forth in specific provisions to be included in the MHO Agreement.

§ 805.410 MH work contribution.

(a) *Homebuyer's Work Obligation.* (1) Each Homebuyer shall perform the work obligation under the direction of the contractor in accordance with the terms of the MHO Agreement. The work obligation of a Homebuyer may be performed by members of the family. The work may also be performed by an arrangement for others (relatives or friends, for example) to work on the Homebuyer's behalf, but only with the approval of the IHA and the contractor.

(2) The specific jobs to be performed by Homebuyers, and the value of each job, shall be listed in an appendix to the Construction Contract, which shall be available for inspection by the Homebuyers. The listed jobs shall be essential jobs which the contractor would have to pay for in order to complete the Construction Contract if the work were not provided by the Homebuyers. The listed jobs may relate to work on site improvements or community facilities and may include office or clerical work.

(3) The total value of the jobs actually assigned to the Homebuyers shall not exceed the total value of jobs to be performed by MH work, and the total value of the jobs actually assigned to any Homebuyer may not exceed the value of the MH work the Homebuyer is required to provide.

(b) *Valuation of Jobs.* The jobs listed in the appendix to the Construction Contract shall be valued by the IHA and the contractor as follows:

(1) The jobs to be assigned shall be identified. For example, the jobs could include prefabrication of trusses, wall sections, etc., mixing mortar, cutting and/or nailing lumber, installing lath, exterior and/or interior painting, but in every instance shall be related to a defined quantity or a part of the Home, so that the job can be priced on a per unit basis.

(2) For each of these jobs an estimate shall be made of the time (hours or days) which would be needed if the work were done by journeymen workers.

(3) The amount of time so estimated shall then be multiplied by the journeymen Davis-Bacon wage rate for the type of work involved. The amount so

computed shall constitute the value of the job involved.

(c) *Assignment and Performance of Jobs and Homebuyer Credit.* (1) The Homebuyer may be assigned to any of the listed jobs, and may be reassigned from one job to another during the course of construction.

(2) The Homebuyer shall provide as many hours of work as necessary to complete the assigned jobs regardless of the number of hours used to compute the value of the jobs under paragraph (b) of this section. The credit given the Homebuyer shall be the value of the assigned jobs regardless of the number of hours actually worked to perform the jobs.

(3) As an alternative to paragraph (c)(2) of this section, the contractor may estimate the number of hours of Homebuyer work required to perform the jobs and may make assignments to the Homebuyers in terms of numbers of hours of work. In that event, the Homebuyer shall be credited for the full MH work contribution when the number of hours of work assigned to him has been completed.

(d) *Record of MH Work.* The contractor shall adopt a system (with the approval of the IHA) for keeping a record of MH work.

(e) *Failure to Provide MH Work.* (1) The IHA shall to the extent feasible monitor the performance of MH work so that problems in the performance of MH work can be anticipated and avoided, or effectively dealt with when they occur. The IHA may terminate the MHO Agreement if the Homebuyer is unable or unwilling to provide, or for any other reason fails to provide, the MH work obligation.

(2) If in the judgment of the contractor a Homebuyer is not meeting his MH work obligations, the contractor may request the assistance of the IHA. Where the deficiency cannot otherwise be remedied, the contractor may request the IHA to terminate the Homebuyer's MHO Agreement and select another Homebuyer to provide the MH work.

(3) If the contractor calls upon the IHA to terminate the MHO Agreement and the contractor furnishes to the IHA sufficient proof of the alleged nonperformance by the Homebuyer, the IHA shall then terminate the MHO Agreement in accordance with the procedures stated in § 805.424(b). In the event of such a termination of an MHO Agreement, the IHA shall, to the extent feasible, select a substitute Homebuyer able to provide an MH work contribution equal to the value of the uncompleted work assignment of the terminated Homebuyer. If the IHA finds it is not feasible to select such a substitute, the contractor shall nevertheless not be excused from his obligation to achieve acceptable com-

pletion of all the contract work without an increase in the Total Contract Price or Price Payable to Contractor.

§ 805.411 Cash contribution.

The MHO Agreement may provide for a contribution of cash in a lump sum, or under a planned installment schedule, so long as the full amount of the cash contribution is to be received by the IHA not later than the date the Home is available for occupancy. (For exceptions see § 805.409(b) and § 805.415(a)(2)(ii).) Payments of contributed cash shall be made to the IHA and shall be utilized for the payment of Development Costs.

§ 805.412 Materials or equipment contribution.

If any part of a Homebuyer's MH Contribution is to be provided by furnishing materials or equipment, such contribution shall be provided and accounted for in accordance with the special provisions of the Construction Contract covering such contribution, which provisions shall include a statement of the kind, quality and value of such contributed materials and equipment.

§ 805.413 Special requirements for MH construction contracts.

(a) *Special Provisions to be Included in Advertisements.* The advertisement for an MH Construction Contract shall state that:

(1) The Project is an MH Project;

(2) The contractor may obtain a copy of the proposed MH Construction Contract and form of MHO Agreement;

(3) The contractor may obtain a listing of the Homebuyers whose sites have received HUD tentative site approval, and a specification of the sources, forms and amounts of the MH Contributions to be utilized by the contractor;

(4) The contractor shall be permitted to review information relating to the ability and capacity of each Homebuyer to provide MH work, and to interview the Homebuyers;

(5) By submitting a bid or proposal, the contractor agrees that, except as he may specify in his bid, the selected Homebuyers have the ability and capacity to provide the required MH work; and

(6) Substitution of a Homebuyer shall be subject to the approval of the contractor, but only with respect to the ability and capacity of the substitute Homebuyer to provide MH work.

(b) *Workmen's Compensation Insurance.* The contractor shall provide Workmen's Compensation Insurance for Homebuyers and those authorized to provide work on their behalf. If such insurance is not available, the contractor shall obtain private insur-

ance of substantially comparable coverage.

(c) *Responsibility of Contractor.* The Construction Contract shall provide that the contractor shall be responsible for acceptable completion of all the Homes, including the tasks assigned to Homebuyers for MH work credit.

(d) *Total Contract Price and Price Payable to Contractor.* The Total Contract Price shall include the sum of (1) the values of the MH work to be performed, and (2) the value of any materials and equipment to be provided as an MH Contribution. The Price payable to Contractor shall be the Total Contract Price, less the sum of paragraph (d)(1) and (2) of this section. The Total Contract Price shall not exceed the HUD-approved estimate of the cost of constructing the Project without the use of any MH Contributions.

§ 805.414 Disposition of contributions on termination before date of occupancy.

(a) If an MHO Agreement is terminated by the IHA or the Homebuyer before the Date of Occupancy, the Homebuyer shall not receive any reimbursement or return of property on account of any contribution, unless the IHA makes a determination, subject to HUD approval, that the termination is warranted by reason of unforeseen circumstances beyond the Homebuyer's control, or other unforeseen compelling circumstances. If such a determination is made:

(1) The Homebuyer may be reimbursed for any cash materials or equipment contributed by the Homebuyer.

(2) If the Homebuyer contributed land as a Project site, the site may be returned if (i) construction has not started on the site or construction on the site is minimal, and (ii) if the scope of the Construction Contract is affected, an appropriate reduction in the Total Contract Price and Price Payable to Contractor has been agreed to with the contractor. If the site is not returned and is used in the Project, the terminated Homebuyer shall be reimbursed for the amount specified in the MHO Agreement for the land contribution.

(3) The terminated homebuyer shall have no right to any reimbursement or return of property on account of any tribal contribution, or on account of the value of any MH work contribution.

(b) The amount of any credit for non-land contributions by a terminated Homebuyer, other than a contribution for which reimbursement or return of property was made in accordance with paragraph (a) of this section, shall be credited in equal shares to the Unrefundable MH Re-

serves of all the Homebuyers in the Project, including a substitute Homebuyer (see § 805.421(a)).

(c) The amount of any credit on account of any tribal non-land contribution on behalf of any terminated Homebuyer shall be credited to the Unrefundable MH Reserve maintained for the substituted Homebuyer. (see § 805.421(a)).

(d) The amount of any credit on account of any land contribution for which reimbursement or return of property in accordance with paragraph (a) of this section is not made, and of any credit on account of the terminated Homebuyer's share of the credits for homesites contributed by the tribe, shall be pooled and shared equally by all the Homebuyers in accordance with § 805.408(c)(1).

§ 805.415 Actions upon completion; commencement of occupancy.

(a) *Notice.* (1) Upon acceptance by the IHA from the contractor of the Home as ready for occupancy, the IHA shall determine whether the Homebuyer's full MH Contribution has been provided and, in the event of an affirmative determination, the Homebuyer shall be notified in writing that his Home is available for occupancy as of a date specified in the notice ("Date of Occupancy").

(2) If the IHA determines that the Homebuyer has not fully provided his MH Contribution, the Homebuyer shall be so notified in writing and:

(i) The notice shall specify the time by which the Homebuyer's full MH Contribution shall be provided and shall state that the Homebuyer may not commence occupancy until the Homebuyer's full MH Contribution has been provided, or

(ii) If there is special justification for permitting occupancy prior to completion of the Homebuyer's MH Contribution (such as prevention of vandalism or unacceptable hardship to the family) and there is reasonable assurance that the Homebuyer will complete the MH Contribution within an acceptable time, the notice may contain a Date of Occupancy. In such case the notice shall state that the Home may be occupied on such date: Provided, That a written agreement has been entered into by the Homebuyer, the IHA and the contractor (if MH work is involved) specifying the schedule and other details for completion of the MH Contribution.

(b) *Lease Term Under MHO Agreement.* The term of the Homebuyer's lease under the MHO Agreement shall be as provided in the MHO Agreement.

(c) *Credits to MH Reserves.* Promptly after the Date of Occupancy the IHA shall credit the amount of the MH Contributions to the appropriate

Reserves in accordance with § 805.421(a) and shall provide the Homebuyer and the tribal government with a statement, approved by HUD, of the amounts so credited.

§ 805.416 Required monthly payments.

(a) *Establishment of Schedule.* (1)(i) Each Homebuyer shall be required to make a monthly payment ("Required Monthly Payment") of no less than the Administration Charge.

(ii) Subject to the requirement for payment of at least the Administration Charge, each Homebuyer shall pay an amount of Required Monthly Payment computed by (i) multiplying Family Income by a specified percentage, and (ii) subtracting from that amount the Utility Deduction (as specified in the approved schedule). The specified percentage shall be no less than 15 percent and no more than 25 percent, as determined by the IHA.

(2) The IHA's schedule may provide that the Required Monthly Payment shall not be more than a maximum amount as determined under the regulations, provided that this maximum shall not be less than the sum of:

(i) The Administration Charge, and
(ii) The monthly debt service amount shown on the Homebuyer's Purchase Price Schedule.

(b) *Amount of Required Monthly Payment.* The Homebuyer shall pay to the IHA during the lease term a monthly payment ("Required Monthly Payment") determined in accordance with the IHA's HUD-approved schedule and regulations. If the Required Monthly Payment exceeds the Administration Charge, the amount of the excess shall be credited to the Homebuyer's Monthly Equity Payments Account (see § 805.421(b)(1)).

(c) *Definitions Used in Determining Required Monthly Payment.* For the purpose of determining the amount of the Required Monthly Payment:

(1) The definitions of "Family Income" and "Total Family Income" as stated in 24 CFR, 860.403(f) and 860.403(o), shall be applicable;

(2) "Utility Deduction" shall mean the amount estimated by the IHA, and approved by HUD, for the monthly cost to the Homebuyer for the reasonable use of utilities which he is obligated to provide under the MHO Agreement; and

(3) "Utilities" shall mean water, electricity, gas, other heating, refrigeration and cooking fuels and sewerage services. (Telephone service is not included as a utility.)

(d) *Adjustments in the Amount of the Required Monthly Payment.* After the initial determination of a Homebuyer's Required Monthly Payment, the IHA shall increase or decrease the amount of such payment in accordance with the HUD-approved schedule or regula-

tions to reflect changes in Family Income (pursuant to a reexamination by the IHA), adjustments in the Administration Charge, or in any of the other factors affecting computation of the Homebuyer's Required Monthly Payment.

(2) In order to accommodate wide fluctuations in the burden of making Required Monthly Payments due to seasonal conditions, an IHA may agree with any Homebuyer for payments to be made in accordance with a seasonally adjusted schedule which assures full payment of the required amount for each year.

§ 805.417 Inspections; responsibility for items covered by warranty.

(a) *Inspection Before Move-In and Identification of Warranties.* (1) In order that there shall be a record of the condition of the Home as of the Date of Occupancy, an inspection of the Home by the IHA and the Homebuyer shall be made as close as possible to, but not later than, the Date of Occupancy. This inspection shall be independent of the inspection required by § 805.221(c), but may, if feasible, be combined with such inspection. After the inspection, the IHA inspector shall give the Homebuyer a written statement, signed by the inspector, of the condition of the Home and equipment. If the Homebuyer concurs with the statement, he shall sign a copy of the statement. If the Homebuyer does not concur, he shall state his objections. The inspector shall note all such objections on the statement, and the differences shall be resolved by the IHA.

(2) On or before commencement of occupancy of each Home, the IHA shall furnish the Homebuyer with a list of applicable contractor's, manufacturers' and suppliers' warranties, indicating the items covered and the periods of the warranties.

(b) *Inspections During Contractor's Warranty Periods; Responsibility for Items Covered by Contractor's, Manufacturer's or Suppliers Warranties.* The IHA shall inspect the Home in accordance with the provisions of § 805.222(b) during the contractor's warranty period or periods. Independent of such IHA inspections, and the inspections required under paragraph (a) of this section, it shall be the responsibility of the Homebuyer during the period covered by §§ 805.222(b) and 805.417(a) and subsequently for the duration of the applicable warranties, to promptly inform the IHA in writing of any deficiencies arising during the warranty periods (including manufacturers' and suppliers' warranties) so that the IHA may enforce any rights under the applicable warranties. If a Homebuyer fails to furnish such a written report in time, and the IHA is subsequently unable to obtain redress

under the warranty, correction of the deficiency shall be the responsibility of the Homebuyer.

(c) *Inspection Upon Termination of Agreement.* If the MHO Agreement is terminated for any reason after commencement of occupancy, the IHA shall inspect the Home, after notifying the Homebuyer of the time for the inspection, and shall give the Homebuyer a written statement of the cost of any maintenance work required to put the Home in satisfactory condition for the next occupant (see § 805.424(d)(1)(i)).

(d) *Homebuyer Participation in Inspections.* The Homebuyer shall be notified that he or his representative may join in the inspection made pursuant to this section.

(e) *Permission for Inspections.* The Homebuyer shall permit the IHA to inspect the Home at reasonable hours and intervals during the lease term in accordance with rules established by the IHA.

§ 805.418 Maintenance, utilities, and use of home.

(a) *Maintenance.* (1) Homebuyer's Responsibility for Maintenance. The Homebuyer shall be responsible for maintenance of the Home, including all repairs and replacements (including repairs and replacements necessitated by damage from any cause). The IHA shall not be obligated to pay for or to provide any maintenance of the Home other than the correction of warranty items reported during the applicable warranty period.

(2) *Homebuyer's Failure to Perform Maintenance.* (i) Failure of the Homebuyer to perform his maintenance obligations constitutes a breach of the MHO Agreement. Upon a determination by the IHA that a breach has occurred, the IHA shall require the Homebuyer to agree to a specific plan of action to cure the breach and to assure future compliance. The plan shall provide for maintenance work to be done within a reasonable time by the Homebuyer, or to be done by the IHA and charged to the Homebuyer's MEPA. If the Homebuyer fails to agree to a reasonable plan or fails to carry out the agreed to plan, the MHO Agreement shall be terminated in accordance with §§ 805.424(a) and 805.424(b).

(ii) If the condition of the property creates a hazard to the life, health or safety of the occupants, or if there is an immediate risk of serious damage to the property if the condition is not corrected, the IHA shall have the work done, and charge the cost thereof to the Homebuyer's MEPA in accordance with § 805.421(c).

(iii) Any maintenance work performed by the IHA shall be accounted for through a work order stating the

nature of and charge for the work. The Homebuyer shall receive a copy of all work orders for his Home.

(b) *Homebuyer's Responsibility for Utilities.* The Homebuyer shall furnish his own utilities. The IHA shall have no obligation to do so. However, if the IHA determines that the Homebuyer is unable to provide his utilities, and that this inability creates conditions which are hazardous to life, health or safety of the occupants, or threaten immediate serious damage to the property, the IHA may provide the utilities and charge the Homebuyer's MEPA for doing so (subject, however, to the limitation provided at § 805.421(c)(4)).

(c) *Obligations with Respect to Home and Other Persons and Property.* The Homebuyer shall agree:

(1) To use the Home only as a place to live for (i) himself and the members of his family listed in a schedule appended to the Homebuyer's MHO Agreement, (ii) children born to or adopted by members of such family after the date of the MHO Agreement, and foster children, (iii) persons providing live-in care for a member of the Homebuyer family, and (iv) aged or widowed parents of the Homebuyer or spouse; other family members may live in the Home only with the prior written approval of the IHA;

(2) Not to sublet his Home without the prior written approval of the IHA;

(3) To abide by necessary and reasonable regulations promulgated by the IHA for the benefit and well-being of the Project and the Homebuyers, which shall be prominently posted in the IHA office;

(4) To comply with all obligations imposed upon Homebuyers by applicable provisions of building and housing codes materially affecting health and safety;

(5) To keep the Home and such other areas as may be assigned to him for his exclusive use in a clean and safe condition;

(6) To dispose of all ashes, garbage, rubbish, and other waste from the Home in a sanitary and safe manner;

(7) To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances;

(8) To refrain from, and to cause his household and guests to refrain from, destroying, defacing, damaging, or removing any part of the Home or Project;

(9) To conduct himself and cause other persons who are on the premises with his consent to conduct themselves in a manner which will not disturb the neighbors' peaceful enjoyment of their accommodations and will be conducive to maintaining the

Project in a decent, safe and sanitary condition; and

(10) To refrain from illegal or other activity which impairs the physical or social environment of the Project.

(d) *Structural Changes.* A Homebuyer shall not on his own initiative make any structural changes in or additions to his Home unless the IHA has first determined in writing that such change would not (1) impair the value of the Home, the surrounding Homes, or the Project as a whole; or (2) affect the use of the Home for residential purposes; or (3) violate HUD requirements as to construction and design. Any changes made in accordance with this section shall be at the Homebuyer's expense (and not from any Reserve or Account created under the MHO Agreement), and in the event of termination of the MHO Agreement the Homebuyer shall not be entitled to any compensation for such changes or additions.

§ 805.419 Administration charge and operating expense.

(a) *Administration Charge.* The term "Administration Charge" means the amount budgeted per unit month for operating expense exclusive of the costs of Independent Public Accountant audits.

(b) *Components of Operating Expense.* The term "operating expense" means the amount budgeted for the following operating expense categories, and any other operating expense categories included in the IHA's HUD-approved operating budget for a fiscal year or other budget period:

(1) *Administration.* Administrative salaries; travel; legal expenses; postage; telephone and telegraph; office supplies, space, maintenance, and utilities; accounting services; and Independent Public Accountant audits approved by HUD (the costs of which shall be reimbursed by HUD).

(2) *General Expense.* The cost of premiums for fire and other insurance; payments in lieu of taxes, if any; payroll taxes; etc.

(3) *Contribution to Operating Reserve.* An estimate of the amount required to accumulate an Operating Reserve for the Project as provided in § 805.420.

§ 805.420 Operating reserve.

(a) The IHA shall maintain an Operating Reserve for the Project in an amount sufficient for working capital purposes, for estimated future non-routine requirements for IHA-owned administrative facilities and common property, and for unanticipated project requirements approved by HUD. The contribution for this reserve pursuant to § 805.419(b)(3) shall be determined by the IHA with the approval of HUD. The minimum amount of

such contribution during the first budget period following the end of the Initial Operating Period, as defined in the ACC, shall be \$2.00 per unit per month. The subsequent amount of this contribution and the proper amount of this contribution and the proper amount in this reserve shall be increased or decreased annually by the IHA, and these amounts shall be included in the Operating Budget submitted to HUD for approval.

(b) At the end of each fiscal year or other budget period the Project Operating Reserve shall be (1) credited with the amount by which operating receipts exceed operating expenses of the Project for the budget period, or (2) charged with the amount by which operating expenses exceed operating receipts of the Project for the budget period to the extent of the balance in the Operating Reserve.

§ 805.421 Homebuyer reserves and accounts.

(a) *Refundable and Unrefundable MH Reserves ("Reserves").* (1) The IHA shall establish as of the Date of Occupancy separate Refundable and Unrefundable MH Reserves for each Homebuyer.

(2) The Refundable MH Reserve shall be credited with the amount of the Homebuyer's non-land MH Contribution.

(3) The Unrefundable MH Reserve shall be credited (i) with the amount of the Homebuyer's share of any credits for land contributed to the Project, as determined in accordance with § 805.408 (c)(2), (ii) the Homebuyer's share of any tribal non-land contribution to the Project, and (iii) the Homebuyer's share pursuant to § 805.414(b) of any credit for non-land contributions by a terminated Homebuyer.

(4) When it becomes necessary to draw against either the Refundable MH Reserve or the Unrefundable MH Reserve, the IHA shall requisition the funds from HUD as an advance against the Project Loan pursuant to the ACC. The amount of these borrowings, along with other Development Costs, are repaid by HUD annual contributions payments made pursuant to the ACC.

(b) *Equity Accounts ("Accounts").*

(1) *Monthly Equity Payments Account ("MEPA").* The IHA shall maintain a separate MEPA for each Homebuyer. The IHA shall, as provided in § 805.416 (a), credit this account with the amount by which each Required Monthly Payment exceeds the Administration Charge.

(2) *Voluntary Equity Payments Account.* The IHA shall maintain a separate Voluntary Equity Payments Account for each Homebuyer. The IHA shall credit this account with the amounts of any periodic or occasional

voluntary payments (over and above the Required Monthly Payments) the Homebuyer may desire to make to acquire ownership of the Home within a shorter period of time.

(3) *Investment of Excess.* When the aggregate amount of funds held by the IHA in the MEPAs and Voluntary Equity Payments Accounts of all the Homebuyers in the Project exceeds the estimated expenditure requirements for 90 days, the IHA shall invest the excess in federally insured savings accounts, in federally insured credit unions, or in securities approved by HUD. Income earned on the investment of such funds shall periodically, but at least annually, be prorated and credited to each Homebuyer's MEPA and Voluntary Equity Payments Account, in proportion to the amount in each such account on the date of proration.

(c) *Charges for Maintenance.* (1) If the IHA has maintenance work done in accordance with § 805.418(a)(2), the cost thereof shall be charged to the Homebuyer's MEPA.

(2) At the end of each fiscal year, the debit balance, if any, in the MEPA shall be charged, first, to the Voluntary Equity Payments Account, second, to the Refundable MH Reserve and, Third, to the Unrefundable MH Reserve, to the extent of the credit balances in such Account and Reserves.

(3) In lieu of charging the debit balance in the MEPA to the Homebuyer's Refundable MH Reserve and/or Unrefundable MH Reserve (but not in lieu of charging his Voluntary Equity Payments Account), the IHA may allow the debit balance to remain in the MEPA pending replenishment from subsequent credits to the Homebuyer's MEPA.

(4) The IHA shall at no time permit the accumulation of a debit balance in the MEPA in excess of the sum of the credit balances in the Homebuyer's Refundable and Unrefundable MH Reserves unless the expenditure is required to alleviate a hazard to the life, health or safety of the occupants, or to alleviate an immediate risk of serious damage to the property, and the source of funds for reimbursement to the IHA is specifically approved by HUD.

(d) *Disposition of Reserves and Accounts Upon Acquisition of Ownership.* When the Homebuyer purchases his Home, the balances in the Homebuyer's Reserves and Accounts shall be disposed of in accordance with § 805.422(d)(3).

(e) *Disposition of Reserves and Accounts Upon Termination of the Agreement.* If the MHO Agreement is terminated by the Homebuyer or the IHA, the balances in the Homebuyer's Re-

serves and Accounts shall be disposed of in accordance with § 805.424(d).

(f) *Use of Reserves and Accounts; Nonassignability.* The Homebuyer shall have no right to receive or use the funds in any Reserve or Account except as provided in the MHO Agreement, and the Homebuyer shall not, without approval of the IHA and HUD, assign, mortgage or pledge any rights in the MHO Agreement or to any Reserve or Account.

§ 805.422 Purchase of home.

(a) *When Home May Be Purchased.* A Homebuyer may at his option purchase his Home on or after the Date of Occupancy, but only if the Homebuyer has met all of his obligations under the MHO Agreement.

(b) *Purchase Price and Purchase Price Schedule.* (1) *Determination of Initial Purchase Price.* The IHA shall determine the Initial Purchase Price of a Home for the Homebuyer who first occupies the Home pursuant to an MHO Agreement as follows:

Step 1: From the estimated Total Development Cost (including the MH Contributions and the full amount for contingencies as authorized by HUD) of the Project as shown in the development cost budget in effect at the time of execution of the Construction Contract, deduct the amounts, if any, attributable to (i) relocation costs, (ii) counseling costs, and (iii) the cost of any community, administration or management facilities, including the land, equipment and furnishings attributable to such facilities as set forth in the Development Program for the Project.

Step 2: Deduct the total amount attributable to land for the Project (including MH Contribution credits for land, but not including land attributable to community, administration or management facilities) from the amount determined in Step 1.

Step 3: Multiply the amount determined in Step 2 by a fraction of which the numerator is the prototype cost for the size and type of Home being constructed for the Homebuyer and the denominator is the sum of the unit prototype costs for the Homes of various sizes and types comprising the Project.

Step 4: Determine the amount chargeable to Development Cost for acquisition of the homesite (the assigned value of the homesite in accordance with section 805.408(c)(1) or the actual cost of the homesite, and not the Homebuyer's share of the aggregate credit for all the contributed homesites.)

Step 5: Add the amount determined in Step 4 to the amount determined in Step 3. The sum determined under this step shall be the Initial Purchase Price of the Home.

(2) *Purchase Price Schedule.* As promptly as possible after execution of the Construction Contract, the IHA shall furnish to the Homebuyer a statement of the Initial Purchase Price of the Home and a Purchase Price Schedule. The Purchase Price Schedule shall (i) show the monthly amortization of the Initial Purchase Price over a 25-year period, (ii) state

the monthly debt service amount upon which the schedule is based, and (iii) state that such amortization shall commence with the first day of the month following the Date of Occupancy. The schedule shall be computed on the basis of a rate of interest equal to the Minimum Loan Interest Rate for the Project as stated in the ACC.

(c) *Initial Purchase Price and Purchase Price Schedule for Subsequent Homebuyer.* (1) *Subsequent Homebuyer.* "Subsequent Homebuyer" means a Homebuyer other than the Homebuyer who first occupies a Home pursuant to an MHO Agreement.

(2) *Determination of Initial Purchase Price.* The Initial Purchase Price for a Subsequent Homebuyer shall be the lower of the current appraised value or the current replacement cost of the Home, both as determined or approved by HUD.

(3) *Purchase Price Schedule.* Each Subsequent Homebuyer shall be provided with a Purchase Price Schedule showing (1) the monthly declining purchase price over a 25 year period commencing with the first day of the month following the effective date of the Homebuyers Ownership Opportunity Agreement of the Subsequent Homebuyer and (2) the level monthly debt service amount necessary to complete amortization of the initial purchase price over such period at the interest rate used to compute the Purchase Price Schedule for the first homebuyer.

(d) *Conveyance of Home, (1) Amounts To Be Paid.* The purchase price shall be the amount shown on the Purchase Price Schedule for the month in which the settlement date falls.

(2) *Settlement Costs.* Settlement Costs are the costs incidental to acquiring ownership, including, e.g., the cost and fees for credit report, field survey, title examination, title insurance, inspections, attorneys other than the IHA's attorney, closing, recording, transfer taxes, financing fees and mortgage loan discounts. Settlement Costs shall be paid by the Homebuyer, who may use any Reserves or Accounts available for this purpose in accordance with paragraph (d) (3) of this section.

(3) *Disposition of Homebuyer Reserves and Accounts.* When the Homebuyer purchases the Home the net credit balances in the Homebuyer's Reserves and Accounts under § 805.421 shall be applied in the following order:

(i) If the IHA finances purchase of the Home in accordance with § 805.423, the MEPA and the Voluntary Equity Payments Account shall be charged, to the extent of the net credit balance of these Accounts, first, for the initial payment for fire and extended coverage insurance on the

Home after conveyance and, second, for establishment of a Homeowner's maintenance reserve. Any further amounts necessary for these purposes shall then be charged against the MH Reserves;

(ii) For application to Settlement Costs if the Homebuyer so directs;

(iii) To payment of the purchase price; and

(iv) For refund to the Homebuyer.

(4) *Settlement.* A Home shall not be conveyed until the Homebuyer has met all his obligations under the MHO Agreement. The settlement date shall be mutually agreed upon by the parties. On the settlement date the Homebuyer shall receive the documents necessary to convey to the Homebuyer the IHA's right, title and interest in the Home, subject to any applicable restrictions of covenants as expressed in such documents. The required documents shall be approved by the attorneys representing the IHA and HUD, and by the Homebuyer or his attorney.

(5) *IHA Investment of Purchase Price Payments, and Remittance to HUD.* After conveyance, all funds held or received by the IHA which are applied to payment of the purchase price of a Home by a Homebuyer or Homeowner shall be held separate from other Project funds, shall not be used for development or operating expenses of any Project, and shall be invested in accordance with HUD requirements. Such funds include the amount applied to payment of the purchase price from the MEPA and the Voluntary Equity Payments Account; any cash paid in by the Homebuyer for application to the purchase price; and, if the IHA finances purchase of the Home in accordance with § 805.423, any portion of the mortgage payments by the Homeowner attributable to payment of the debt service (principal and interest) on the mortgage. At such intervals as HUD may direct, the IHA shall remit to HUD all such funds, and all income earned on the investment of such funds.

(e) *Notice of Eligibility for Financing.* (1) The IHA shall at the time of each examination or reexamination of the family's earnings and other income determine among other things whether the Homebuyer is eligible for IHA Homeownership Financing under § 805.423. If the IHA determines that the Homebuyer is eligible, it shall notify the Homebuyer in writing and shall state that it will make available IHA Homeownership Financing to enable the Homebuyer to purchase the home, and until the Homebuyer purchases the home, his or her status will be as provided in § 804.422(e)(2), the text of which, appropriately modified, shall be set forth in the letter of notification.

(2) After the IHA has given notice in accordance with paragraph (e)(1) of this section that the Homebuyer is eligible for IHA Homeownership Financing, and until the Homebuyer purchases his Home, he shall have all the rights of a Homebuyer (including the right to continue accumulating credits in the MEPA and Voluntary Equity Payments Account) and shall be subject to all the obligations under the MHO Agreement (including the obligation to make monthly payments based on income). However, during this period there shall be no reduction in the purchase price pursuant to the Purchase Price Schedule, and the purchase price at the time the Homebuyer purchases his Home shall be the amount shown on the Purchase Price Schedule for the month the IHA gave the notice in accordance with paragraph (e) (1) of this section.

§ 805.423 IHA homeownership financing.

(a) *Eligibility.* The Homebuyer shall be eligible for IHA Homeownership Financing when the IHA determines that:

(1) he can pay: (i) The amount necessary for Settlement Costs, (ii) the initial payment for fire and extended coverage insurance carried on the Home after conveyance, and (iii) \$1,500 for the Homeowner's maintenance reserve (these amounts may be paid by application of balances in the Homebuyer's Reserves or Accounts, or from other Homebuyer sources); and

(2) The Homebuyer's income has reached the level, and is likely to continue at such level, at which 25 percent of monthly Family Income is at least equal to the sum of the monthly debt service amount shown on the Homebuyer's Purchase Price Schedule and the IHA's estimates, approved by HUD, of the following monthly payments and allowances:

(A) Payment for fire and extended coverage insurance;

(B) Payment for taxes and special assessments, if any;

(C) The IHA mortgage servicing charge;

(D) Amount necessary for maintenance of the Home; and

(E) Amount necessary for utilities for the Home.

(b) *Promissory Note, Mortgage, and Mortgage Amortization Schedule.* (1)

When IHA Homeownership Financing is utilized the Homebuyer shall execute and deliver a Promissory Note and Mortgage. The Mortgage shall be a first lien on the property, shall be in form approved by HUD, shall be recorded by the IHA, and shall secure performance of all the terms and conditions of the Promissory Note. The principal amount of the Promissory Note shall be equal to the unpaid balance of the purchase price of the

Home as determined in accordance with § 805.422. The Promissory Note and/or Mortgage shall contain provisions required by HUD which, among other things, will provide for adjustment of monthly mortgage payments in the event of a reduction in income, and for a maintenance reserve of \$1,500 to be used if the Homeowner has no other funds reasonably available to pay for expenses such as maintenance, insurance, and taxes.

(2) The IHA shall furnish the Homebuyer a Mortgage Amortization Schedule based on the amount of the Promissory Note. This schedule shall provide for monthly reductions in and complete amortization of the principal amount of the Promissory Note, and shall show the level monthly debt service amount needed to complete the amortization. The amortization period shall commence on the first day of the month following the date of settlement and shall end on the first day after the end of the period covered by the Homebuyer's Purchase Price Schedule. The rate of interest shall be the FHA maximum interest rate for home mortgages in effect at the time of settlement.

(c) *Insurance.* Fire and extended coverage insurance in an amount and on terms acceptable to HUD shall be obtained by the IHA prior to settlement and shall be maintained until termination of the obligation under the Mortgage. The Homeowner shall make payments to the IHA to cover the cost of the insurance.

(d) *Disposition of Servicing Fees and Mortgage Debt Service Payments.* The amount of the mortgage servicing fees collected from the Homeowner under Promissory Note may be retained by the IHA, and utilized as Project operating receipts. The total amount of the mortgage payments collected which are attributable to payment of debt service (principal and interest) on the mortgage shall be remitted to HUD in accordance with § 805.422 (d)(5).

(e) *Occupancy, Care and Use of Home.* The IHA shall promulgate rules and regulations which are consistent with the provisions of § 805.418(c) concerning occupancy, care and use of their Homes by Homeowners.

§ 805.424 Termination of MHO agreement.

(a) *Termination Upon Breach.* In the event the Homebuyer fails to comply with any of his obligations under the MHO Agreement, the IHA may terminate the MHO Agreement. Misrepresentation or withholding of material information in applying for admission or in connection with any subsequent reexamination of income and family composition constitutes a breach of the Homebuyer's obligations

under the MHO Agreement. "Termination" as used in the MHO Agreement does not include acquisition of ownership by the Homebuyer.

(b) *Notice of Termination of MHO Agreement by the IHA; Right of Homebuyer to Respond.* Termination of the MHO Agreement by the IHA for any reason shall be by written Notice of Termination. Such notice shall state (1) the reason for termination; (2) that the Homebuyer may respond to the IHA in writing or in person, within a specified reasonable period of time regarding the reason for termination; (3) that in such response he may be represented or accompanied by a person of his choice, including a representative of the tribal government; (4) that the IHA will advise the tribal government concerning the termination; (5) that if, within 30 days after the date of receipt of the Notice of Termination, the Homebuyer presents to the IHA evidence or assurances satisfactory to the IHA that he will cure the breach and continue to carry out his MHO obligations, the IHA may rescind or extend the Notice of Termination; and (6) that unless there is such rescission or extension, the lease term and MHO Agreement shall terminate on the 30th day after the date of receipt of the Notice of Termination. The IHA may, with HUD approval, modify the provisions of the Notice of Termination relating to the procedures for presentation and consideration of the Homebuyer's response. In all cases the IHA's procedures for the termination of an MHO Agreement shall afford a fair and reasonable opportunity to have the Homebuyer's response heard and considered by the IHA. Such procedures shall comply with the Indian Civil Rights Act.

(c) *Termination of MHO Agreement by Homebuyer.* The Homebuyer may terminate the MHO Agreement by giving the IHA written notice, and the lease term and MHO Agreement shall terminate on the 30th day after the date of receipt of such notice. If the Homebuyer vacates the Home without notice to the IHA the Homebuyer shall remain subject to the obligations of the MHO Agreement including the obligation to make monthly payments until the IHA terminates the MHO Agreement in writing. Notice of the termination shall be communicated by the IHA to the Homebuyer to the extent feasible and the termination shall be effective on the date stated in the notice.

(d) *Disposition of Funds Upon Termination of the MHO Agreement.* If the MHO Agreement is terminated by the Homebuyer or the IHA the balances in the Homebuyer's Reserves and Accounts shall be disposed of as follows:

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(1) The MEPA shall be charged with:

(i) Any maintenance cost incurred by the IHA to put the Home in satisfactory condition for the next occupant;

(ii) Any amounts the Homebuyer owes the IHA including Required Monthly Payments; and

(iii) The Required Monthly Payment for the period the Home is vacant not to exceed 30 days from the date of receipt of the Notice of Termination, or if the Homebuyer vacates the Home without notice to the IHA, for the period ending with the effective date of termination by the IHA.

(2) If after making the charges in accordance with paragraph (d)(1) of this section there is a debit balance in the MEPA, the IHA shall charge that debit balance, first, to the Voluntary Equity Payments Account, second, to the Refundable MH Reserve and, third, to the Unrefundable MH Reserve, to the extent of the credit balances in such Reserves and Account. If the debit balance in the MEPA exceeds the sum of the credit balances in the Voluntary Equity Payments Account and the Refundable and Unrefundable MH Reserves the Homebuyer shall be required to pay to the IHA the amount of such excess.

(3) If, after making the charges in accordance with paragraph (d)(1) of this section there is a credit balance in the MEPA, this amount shall be refunded to the Homebuyer.

(4) Any credit balance remaining in the Voluntary Equity Payments Account after making the charges described in paragraph (d)(2) of this section shall be refunded to the Homebuyer.

(5) Any credit balance remaining in the Refundable MH Reserve after making the charges described in paragraph (d)(2) of this section shall be refunded to the Homebuyer.

(6) Any credit balance remaining in the Unrefundable MH Reserve after making the charges described in paragraph (d)(2) of this section is not refundable to the Homebuyer and shall be retained by the IHA on behalf of a Subsequent Homebuyer.

(e) *Settlement upon Termination.* (1) *Time for Settlement.* Settlement with the Homebuyer following a termination shall be made as promptly as possible after all charges provided in paragraph (d) of this section have been determined and the IHA has given the Homebuyer a statement of such charges. The Homebuyer may obtain a settlement before the actual cost of any maintenance required to put the Home in satisfactory condition for the next occupant has been determined if the Homebuyer is willing to accept the IHA's estimate of the amount of such cost. In such case, the

amounts to be charged for such maintenance shall be based on the IHA's estimate of the cost thereof.

(2) *Disposition of personal property.* Upon termination, the IHA may dispose of in any lawful manner deemed suitable by the IHA any item of personal property abandoned by the Homebuyer in the Home. Proceeds, if any, after such disposition, may be applied to the payment of amounts owned by the Homebuyer to the IHA.

(f) *Responsibility of IHA to Terminate.* (1) The IHA is responsible for taking appropriate action with respect to any non-compliance with the MHO Agreement by the Homebuyer. In cases of non-compliance which are not corrected as provided further in this paragraph, it is the responsibility of the IHA to terminate the MHO Agreement to evict the occupant in accordance with the provisions of this section.

(2) As promptly as possible, after a non-compliance comes to the attention of the IHA, the IHA shall discuss the matter with the Homebuyer and give him an opportunity to state any extenuating circumstances or complaints which he may have. A specific plan of action shall be agreed upon which will indicate specifically how the Homebuyer will come into compliance as well as any actions by the IHA which may be appropriate. This plan shall be put in writing and shall be signed by both parties.

(3) Compliance with the plan shall be checked by the IHA not later than 30 days from the date thereof. In the event of refusal by the Homebuyer to agree to such a plan or failure by the Homebuyer to comply with the plan, the IHA shall issue a Notice of Termination of the MHO Agreement and evict the Homebuyer in accordance with the provisions of this section.

(4) A record of meetings with Homebuyers, written plans of action agreed upon, and all other related steps taken pursuant to this paragraph (f) shall be maintained by the IHA for inspection by HUD.

§ 805.125 Succession upon death, mental incapacity or abandonment.

(a) *Definition of "Event."* "Event" means the death of, or mental incapacity of, or abandonment of the Home by, all of the persons who have executed the MHO Agreement as Homebuyers.

(b) *Designation of Successor by Homebuyer.* A Homebuyer may designate as a successor only a person who, at the time of the designation, is a member of the Homebuyer's family and is an authorized occupant of the Home in accordance with the MHO Agreement, or if the designation is made before completion of the Home, is a member of the Homebuyer's

family and is scheduled to be an occupant within the Home is completed. The designation shall be made at the time of execution of the MHO Agreement and the Homebuyer may, at any subsequent time, change the designation by written notice to the IHA, and designate another successor who meets the qualifications of this paragraph. The designated successor shall be entitled to succeed only if, at the time of the Event, he meets the conditions stated in paragraph (c) of this section.

(c) *Succession by Persons Designated by Homebuyer.* Upon occurrence of an Event, the person designated as the successor shall succeed to the former Homebuyer's rights and responsibilities under the MHO Agreement if the designated successor meets the following conditions:

(1) At the time of the Event, (i) the successor is a member of the Homebuyer's family who is entitled to live in the Home pursuant to the IHA's written approval, and (ii) in the case of an Event occurring after commencement of occupancy by the Homebuyer, the successor is living in the Home;

(2) The successor is willing and able to pay the Administration Charge and to perform the obligations of a Homebuyer under an MHO Agreement; and

(3) The successor executes an assumption of the former Homebuyer's obligations under the MHO Agreement.

(d) *Designation of Successor by IHA.* If at the time of the Event there is no successor designated by the Homebuyer, or if any of the conditions in paragraph (c) of this section are not met by the designated successor, the IHA may designate as successor any family member who meets all of the conditions of paragraph (c) of this section.

(e) *Occupancy by Appointed Guardian.* If at the time of the Event there is no qualified successor designated by the Homebuyer or by the IHA in accordance with the foregoing paragraphs of this section, and a minor child or children of the Homebuyer are living in the Home, the IHA may, in order to protect their continued occupancy and opportunity for acquiring ownership of the Home, approve as occupant of the Home an appropriate adult who has been appointed legal guardian of the children with a duty to perform the obligations of the MHO Agreement in their interest and behalf.

(f) *Succession and Occupancy on Restricted Indian Land.* In the case of a Home on Indian land subject to restrictions on alienation under federal or state law (including federal trust or restricted land as defined in § 805.218(a)(2) and land subject to trust or restriction under state law), a

person who is prohibited by law from succeeding to the IHA's interest in such land may, nevertheless, continue in occupancy with all the rights, obligations and benefits of the MHO Agreement, modified to conform to these restrictions on succession to the land.

(g) *Termination in Absence of Qualified Successor or Occupant.* If there is no qualified successor in accordance with any of the foregoing paragraphs of this section, the IHA shall terminate the MHO Agreement.

§ 805.426 Miscellaneous.

(a) *Annual Statement to Homebuyer.* The IHA shall provide an annual statement to the Homebuyer which will set forth, at the end of the IHA fiscal year, the amount in each of the following: (1) The Voluntary Equity Payments Account, (2) the MEPA, (3) the Refundable MH Reserve, and (4) the Unrefundable MH Reserve. The statement shall also set forth the remaining balance of the purchase price.

(b) *Insurance Prior to Transfer of Ownership; Repair or Rebuilding.* (1) *Insurance.* The IHA shall carry all insurance prescribed by HUD including fire and extended coverage insurance upon the Home.

(2) *Repair or Rebuilding.* In the event the Home is damaged or destroyed by fire or other casualty the IHA shall consult with the Homebuyer as to whether the Home shall be repaired or rebuilt. If the IHA determines that the Home should not be repaired or rebuilt, but the Homebuyer disagrees, the matter shall be submitted to HUD for final determination. If the final determination is that the Home should not be repaired or rebuilt, the IHA shall terminate the MHO Agreement, and the Homebuyer's obligation to make Required Monthly Payments shall be deemed to have terminated as of the date of the damage or destruction. The Homebuyer shall in no event be entitled to any portion of the insurance proceeds upon such damage or destruction.

(3) *Suspension of Payments.* In the event of termination of an MHO Agreement because of damage or destruction of the Home, or if the Home must be vacated during the repair period, the IHA will use its best efforts to assist in relocating the Homebuyer. If the Home must be vacated during the repair period, Required Monthly Payments shall be suspended during the vacancy period.

(c) *Notices.* Any notice by the IHA to the Homebuyer required under the MHO Agreement or by law shall be delivered in writing to the Homebuyer personally or to any adult member of his family residing in the Home, or shall be sent by certified mail, return receipt requested, properly addressed,

postage prepaid. Notice to the IHA shall be in writing, and either delivered to an IHA employee at the office of the IHA or sent to the IHA by certified mail, return receipt requested, properly addressed, postage prepaid.

§ 805.427 Annual contributions contract.

(a) The ACC for MH Projects placed under ACC on or after the effective date of this Part and for MH Projects converted in accordance with section 805.428 shall be in the form prescribed by HUD for such Projects. Projects under this form of ACC shall not be consolidated with Projects under other forms of ACC.

(b) The Minimum Loan Interest Rate shall be a rate specified by HUD in accordance with the Act.

§ 805.428 Conversion of existing projects.

(a) *Applicability.* This § 805.428 shall govern the conversion of an Existing Project to development and operation, or to operation only, under this Subpart. Any such conversion shall become effective upon the date agreed to by the IHA and HUD.

(b) *Obtaining Consent of Homebuyers to Conversion.* (1) Each Existing Project shall be converted as soon as the consent of all the Homebuyers in the Project can be obtained. An IHA shall counsel all Homebuyers concerning the effects of the conversion, and shall obtain from each Homebuyer who consents to conversion of the Project a written commitment in the form prescribed in paragraph (b)(3) of this section. After conversion the Homebuyers will be entitled to all the benefits of the new MHO Agreement including IHA Homeownership Financing.

(2) Pending conversion, Existing Projects shall be operated in accordance with the ACC and MHO Agreements applicable prior to the effective date of this Part, but any MHO Agreements executed prior to conversion shall be modified to include a commitment in the form prescribed in paragraph (b)(3) of this section.

(3) The commitments required under paragraph (b)(1) or paragraph (b)(2) shall contain the following language: "The Participant hereby agrees that when the project is converted in accordance with 24 CFR 805.428, he shall execute the form of Mutual Help and Occupancy Agreement applicable for such converted Project."

(c) *Changes not Required for Conversion.* (1) A Project may be converted without any change in the previously approved Development Program or previously executed Construction Contract or previously approved value or form of the MH Contribution.

(2) A Project may be converted without requiring Homebuyers admitted to occupancy prior to the effective date

of conversion to make Required Monthly Payments computed on the basis of a higher percentage of Family Income than the HUD-approved schedule in effect at the time of conversion.

(3) Use of the 25-year purchase price amortization period shall not be required as a condition for conversion. Instead the IHA and HUD shall estimate when the shorter amortization period under the existing MHO Agreement would end, and shall provide a Purchase Price Schedule ending at that time.

(d) *Purchase Price.* The purchase price of a Home on the date of conversion shall be (1) the balance of debt attributable to the Home, plus (2) the balance of the MH contribution not previously funded.

(e) *Transfer of Credits.* The balances in a Homebuyer's accounts shall be credited as of the date of conversion to the appropriate accounts under the new form of MHO Agreement in accordance with the following:

(1) *Unrefundable MH Reserve.* This reserve shall be credited with the balance, if any, of the MH Contribution furnished by the tribe.

(2) *Refundable MH Reserve.* This reserve shall be credited with the balance, if any, of the MH Contribution furnished by the Homebuyer.

(3) *MEPA.* This account shall be credited with the balance in the Homebuyer's individual operating reserve not previously applied to reduce Project debt.

§ 805.429 Counseling of homebuyers.

(a) *General.* The IHA shall provide counseling to Homebuyers in accordance with this section. The purpose of the counseling program shall be to develop (1) a full understanding by Homebuyers of their responsibilities as participants in the MH Project, (2) ability on their part to carry out these responsibilities, and (3) a cooperative relationship with the other Homebuyers and the IHA. Each Homebuyer shall be required to participate in and cooperate fully in all official pre-occupancy and post-occupancy counseling activities. Failure without good cause to participate in the program shall constitute a breach of the MHO Agreement.

(b) *Contents of the Program.* The counseling program shall consist of a pre-occupancy phase and a post-occupancy phase. While some elements of the program lend themselves more to one phase than the other, counseling in the two phases shall be coordinated and interrelated. The counseling program shall include, but not be limited to, the following areas:

(1) *Explanation of the MH Program.* The Homebuyers should be given a full explanation of the MH Program

and how each Homebuyer relates to the program. Each Homebuyer should be made aware of his financial and legal responsibilities and those of the IHA.

(2) *MH Contribution.* Each Homebuyer should be given counseling necessary to assure that he has a full understanding of and will be able to provide the particular form or forms of contribution he is obligated to make under his MHO Agreement, as well as an understanding of his rights in connection therewith.

(3) *Property Care and Maintenance.* Each Homebuyer should be made familiar with the overall operation of the Home, and its equipment (e.g., basic systems of the Home such as electrical, plumbing, heating systems; major appliances such as refrigerators, ranges, dishwashers; minor appliances such as openers, toasters; the surroundings of the Home, i.e. yards and gardens); the care and maintenance to be provided by the Homebuyer; the basic provisions of all applicable warranties; and the Homebuyer's responsibilities in connection with the warranties.

(4) *Budgeting and Money Management.* Each Homebuyer should be counseled in the importance of family budgeting and meeting financial obligations, methods for allocating funds for utilities and other necessities, the use of credit, and consumer matters.

(5) *Information on Community Resources and Services.* Each Homebuyer should be supplied with information relating to resources available in the community to provide services in areas such as educational opportunities, upgrading employment skills, legal services, dental and health care, child care for working mothers, counseling on family problems such as marital problems, alcoholism or drug problems.

(c) *Planning.* (1) The counseling program shall be carefully designed to meet the special needs of the MH Project, and shall be flexible and responsive to the needs of each Homebuyer. While many subjects lend themselves to group sessions, provision should be made for individual instruction as needed. Individuals should not be required to attend classes on material with which they are familiar unless they can actively participate in the instruction process.

(2) Special attention shall be directed to the needs of working members of the family for sessions to be held during a time when they can attend. There shall be recognition of the communication and value systems of the participants and an understanding and respect for their background and experience. Maximum possible use shall be made of local trainers to insure good communication and rapport.

(3) The program may be provided by the IHA staff, or by contract with another organization, but in either case with voluntary cooperation and assistance of groups and individuals within the community. It is essential that the training entity be completely knowledgeable concerning the MH Program. Where contractors are utilized, there shall be a close working relationship with the IHA, and there shall be a program for phasing in the IHA staff who will have the ongoing responsibility for counseling.

(4) In planning the program and use of the counseling funds (see section (e) below), the IHA shall recognize that for a number of years after the initial counseling there are likely to be followup counseling needs. There may also be need for counseling in connection with turnover. Therefore, the IHA shall limit the amounts for the initial counseling, and shall reserve a reasonable amount for future counseling needs.

(d) *Submissions of Program for Approval.* (1) The IHA shall submit to HUD an application for approval of a counseling program and approval of funds therefor. The application shall be submitted at the time of the submission of the Development Program or as soon thereafter as possible but no later than the submission of the working drawings and specifications.

(2) If the IHA intends to use the HUD-approved BIA Homebuyer Training Program (see Exhibit to Interdepartmental Agreement, Subpart B—Appendix I), the IHA shall submit, in lieu of an application for approval of the counseling program, a statement that the IHA intends to use the BIA program and an application for approval of the funds therefor.

(3) The application pursuant to paragraph (d)(1) of this section shall include a narrative statement outlining the counseling program, and copies of any proposed contract and other pertinent documents. This statement shall include the following:

(i) A showing that the training entity has the necessary knowledge and capability for effectively carrying out the proposed program, including a statement of the experience and qualifications of the organization and of personnel who will directly provide the counseling.

(ii) A description of the method and instruments to be used to determine individual counseling needs.

(iii) A description of the scope and content of the proposed program, including a detailed breakdown of tasks to be performed, products to be produced, and a time schedule, including provision for progress payments for specific tasks.

(iv) A description of the methods and instruments to be used.

(v) A statement of the local community resources to be used.

(vi) The estimated cost and methods of payment for the task and products to be performed or produced, including separate estimates of costs for the pre-occupancy and post-occupancy phases of the program, and a description of services and funds to be obtained from non-HUD sources, if any.

(4) No counseling costs shall be incurred until HUD has approved the counseling program (or the submission of proposed costs in the case of the BIA Homebuyer Training Program).

(e) *Funding.* The development cost budget submitted with the Development Program shall include an estimated amount for costs of the counseling program not to exceed \$500 multiplied by the number of Homes in the Project (including follow-up needs during the management stage, and counseling in connection with turnover). The approved amount for counseling shall be included in the Contract Award Development Cost Budget. If the approved amount is less than \$500 per Home, the Amount may, if necessary, be amended up to the \$500 per Home limitation with HUD approval, but not later than the Final Development Cost Budget.

(f) *Progress Reports.* IHAs shall submit quarterly progress reports to HUD (and to BIA in the case of the BIA Homebuyer Training Program), which shall include the following:

(1) A list of expenditures under the program, including salaries, costs of transportation, training materials, office expenses and other justifiable expenditures. All expenditures must be identified and supported by appropriate books and records of the IHA and must be certified as correct by the Executive Director and the Chairman of the IHA.

(2) Names of Homebuyers, the number of training sessions, descriptions of training activities, degree of participation, deficiencies noted, and other relevant information or observations.

(3) Efficacy of training as shown by reports, results of tests, reduction in Required Monthly Payment delinquencies, reduction in maintenance costs or other factors.

(4) Proposed changes during the next period of training, including program changes to overcome deficiencies, and to provide training to any additional or substitute Homebuyers.

(g) *Termination of Counseling Program.* If HUD determines that an IHA's counseling is not being properly implemented in accordance with the approved program, the program may be terminated after notice to the IHA stating the deficiencies in program implementation, and giving the IHA 90 days from the date of notification to

take corrective action, and in the event of termination the amount included in the development cost budget for the program shall be reduced so as not to exceed expenses already incurred at the time of termination.

§ 805.430 Cross references to defined terms.

ACC. § 805.102.
 Act. § 805.102.
 Administration Charge. § 805.419(a).
 Annual Contributions Contract. § 805.102.
 BIA. § 805.102.
 Construction Contract. § 805.102.
 Conventional (Production) method. § 805.203(c).
 Conversion. §§ 805.102, 805.428.
 Date of Occupancy. § 805.415(a)(1).
 Development Program. § 805.102.
 Event. § 805.425(a).
 Existing Project. § 805.102.
 Family Income. § 805.416(b).
 Federally Recognized Tribe. § 805.104.
 Foree Account (production) method. § 805.203(e).
 Home. § 805.102.
 Homebuyer. § 805.102.
 Homeowner. § 805.102.
 Housing Assistance Plan (HAP). § 805.102.
 HUD. § 805.102.
 IHA. § 805.102.
 IHA Homeownership Financing. §§ 805.102, 805.423.
 IHS. § 805.102.
 Indian. § 805.102.

Indian Area. § 805.102.
 Indian Housing Authority. § 805.102.
 Housing Organizations and Indian-owned Economic Enterprises. § 805.106(a).
 Individually owned land. § 805.218(a)(2).
 Initial Purchase Price. § 805.422(b).
 Interdepartmental Agreement. § 805.102.
 Maintenance Credit. § 805.418(a)(3).
 MEPA. §§ 805.102, 805.421(b)(1).
 MH § 805.102.
 MII Construction Contract. § 805.102.
 MH Contribution. § 805.102.
 MHO Agreement. § 805.102.
 MII Program. § 805.102.
 MII Project. § 805.102.
 Mortgage. § 805.423(b).
 Mortgage Amortization Schedule. § 805.423(b)(2).
 Multi-unit site. § 805.216(i)(1).
 Notice of Selection. § 805.407(b).
 Notice of Termination. § 805.424(b).
 Operating expense. § 805.419(b).
 Operating Reserve. § 805.420.
 Preliminary Loan. § 805.209.
 Preliminary Loan Contract. § 805.209(a).
 Preliminary Site Report. § 805.217(a).
 Price Payable to Contractor. § 805.413(d).
 Program Reservation. § 805.102.
 Project. § 805.102.
 Project Coordination Meeting. § 805.208.
 Project Loan. § 805.405(b).
 Project Loan Note. § 805.405(b).
 Project Note. § 805.405(c).
 Promissory Note. § 805.423(b).
 Purchase Price Schedule. § 805.422(b)(2).
 Refundable MII Reserve Account. § 805.421(a).
 Required Monthly Payment. § 805.416.

Scattered sites. § 805.216(i)(1).
 Settlement Costs. § 805.422(d)(2).
 Subsequent Homebuyer. § 805.422(e)(1).
 Termination. § 805.424(a).
 Total Contract Price. § 805.413(d).
 Total Development Cost. § 805.102.
 Total Family Income. § 805.416(b).
 Tribal land. § 805.218(a)(2).
 Tribe. § 805.102.
 Trust or restricted land. § 805.218(a)(2).
 Turkey (production) method. § 805.203(b).
 Unrefundable MH Reserve Account. § 805.421(a).
 Utilities. § 805.416(b).
 Utility Deduction. § 805.416(b).
 Voluntary Equity Payments Account. § 805.421(b)(2).
 Work order. § 805.418(a)(2)(iii).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., November 7, 1978.

LAWRENCE B. SIMONS,
 Assistant Secretary for Housing,
 Federal Housing Commission-
 er.

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