

# THE NAHASDA DEVELOPMENT MODEL SERIES

## New Opportunities in Indian Housing



**SPONSORED BY:**

U.S. Department of Housing and Urban Development  
Office of Native American Programs

**UNDER CONTRACT WITH:**

ICF Consulting

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July 26, 1999

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## INTRODUCTION TO THE NAHASDA DEVELOPMENT MODEL PROGRAMS

The Native American Housing and Self Determination Act (NAHASDA) of 1996 streamlines federal housing assistance to Native Americans by replacing a range of separate programs with a single block grant program. The purpose of NAHASDA is to provide federal assistance for Indian tribes in a manner that recognizes Indian self-determination and tribal self-governance. More than in past programs, the NAHASDA regulations encourage tribes to act as primary agents in shaping their own housing programs.

NAHASDA provides funds to tribes or tribally designated housing entities (TDHEs) on a formula basis to support locally designed affordable housing activities. By providing assistance directly to tribes, NAHASDA is designed to:

- Promote activities to develop, maintain, and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families;
- Increase tribal access to private mortgage markets;
- Coordinate tribal housing activities with Federal, state, and local activities to expand economic and community development for Indian tribes and their members;
- Plan for and integrate infrastructure resources for Indian tribes with housing development for tribes; and
- Promote the development of private capital markets in Indian country and encourage market operation and growth.

NAHASDA offers increased flexibility in the ways in which tribes or TDHEs use federal funds on tribal lands. The NAHASDA Development Model series

was crafted to help tribes and TDHEs design eligible programs using NAHASDA funds. The objective of the models is to enhance the professional skills and abilities of tribes and TDHEs to meet tribal housing needs by developing and implementing programs that maximize use of NAHASDA funds.

Each model publication includes, where appropriate, an outline of new regulations and detailed guidance on program design and implementation strategies. Tribes and TDHEs can use the models to supplement the NAHASDA regulations. Models include examples that showcase effective approaches. Many of the models include sample forms that may be used for program assessment, development, management and ongoing operation.

The NAHASDA Development Model series includes the following.

### PLANNING AND PROGRAM DESIGN

The Planning Program and Design model describes planning activities that result in the preparation of an Indian Housing Plan (IHP) to access Indian Housing Block Grant (IHBG) funds. From initial needs assessments to program marketing, the model offers guidance on effective housing designs and provides a comparison of potential forms a TDHE may assume. The model includes a glossary of common terms.

### HOMEOWNERSHIP

The Homeownership model describes homeownership program design options on tribal lands. This model summarizes benefits and barriers to homeownership and regulatory issues that include income and payment guidelines. The model offers guidance on estimating construction costs and obtaining financing, with a section on leveraging program funds. The model also addresses appropriate homebuyer selection and education.



## RENTAL HOUSING DEVELOPMENT

The Rental Housing Development model describes expanded rental programs eligible for funding under NAHASDA. The model explains regulatory issues, such as the low income eligibility requirement, and offers guidance on eligible costs, rent thresholds and occupancy procedures. The model describes rental projects from concept to construction to management, and details specific programs, such as supportive housing for special needs populations.

## FINANCE

The Finance model describes options for financing projects under NAHASDA, which include homeownership and rental housing programs, construction projects, and rehabilitation for homeowners. The model explains use of revolving loan funds, leveraged funding, and conventional mortgage lending.

## CONSTRUCTION ISSUES

The Construction Issues model helps a tribe or TDHE plan, manage and monitor construction projects. The model describes key steps in the construction management process, which includes procuring services and products, and conducting on-site inspections. The model highlights the federal labor standards and requirements that apply to NAHASDA projects, with a section on Indian preference requirements.

## ASSET AND PROPERTY MANAGEMENT

The Asset and Property Management model describes how to maximize tribal assets by ensuring maintenance and financial stability of tribal properties, including rental housing. The model explains how to analyze existing conditions of the properties and how to prepare a budget to maintain and operate tribal housing. The model includes detailed steps for ongoing management of rental and owner-occupied housing.

## OWNER-OCCUPIED REHABILITATION

The Owner-Occupied Rehabilitation model describes the increased flexibility available under NAHASDA to develop rehabilitation programs. The model explains the regulations governing owner occupied rehabilitation that include housing quality standards, property inspections, homeowner income guidelines, eligible rehabilitation costs and activities. Finally, the model describes how to determine program feasibility and offers guidance on how to implement an owner-occupied rehabilitation program.

## TENANT-BASED RENTAL ASSISTANCE

The Tenant-Based Rental Assistance (TBRA) model explains the appropriate laws that govern this program providing assistance to low-income renters. The model includes chapters identifying how to calculate tribal and renter subsidies; how to design and implement a TBRA program; and how to comply with ongoing TBRA activities required by the tribe. The model includes sample forms used to help select tenants, calculate rents, inspect rental properties and document rental, tribal and owner participation in the program.

# ***THE NAHASDA DEVELOPMENT MODEL SERIES***

## ***Planning and Program Design***



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## INTRODUCTION

Creating an effective tribal housing program requires an understanding of the housing stock and needs in the area to be served, as well as an understanding of the tribe's housing priorities and preferences. The process of gathering, analyzing and using information to make informed decisions is called planning. Good planning will help ensure that your tribe produces an effective response to current and future housing needs. To provide tribes with a framework for this planning process, Congress enacted certain planning requirements as a part of the Native American Housing Assistance and Self Determination Act (NAHASDA). In order to receive its Indian Housing Block Grant (IHBG), each tribe or tribally designated housing entity (TDHE) must periodically submit an Indian Housing Plan (IHP) to HUD. In addition to the IHP, many tribes undertake other types of planning, including creating comprehensive plans or plans for infrastructure or economic development.

Program design is the process of developing the tribe's housing assistance programs and is strongly founded upon the choices made during the planning

process. During the design phase, the tribe develops the specifics of the programs it will offer, including the:

- Types of assistance;
- Levels of assistance;
- Qualifications for assistance;
- Waiting list and selection procedures; and
- Procedures for administration, such as rent collection.

This model describes good practices for planning and program design. Chapter One describes the IHP requirements and highlights good techniques for analyzing your housing market. Chapter Two describes how you move from the basic planning process into the details of program design. Finally, Chapter Three highlights some of the options for how tribes can operate and implement these programs.



# Chapter One

## PLANNING BASICS

### WHY PLAN?

Planning is the first, and perhaps most important, step in the housing development process. It helps to assure that the housing your tribe creates matches the needs of tribal member families. It also offers housing staff guidance in the day to day operation of programs, including providing assistance in selecting and implementing projects.

Tribes may implement a number of plans to guide housing and community development operations. Perhaps the most important of these plans is the Indian Housing Plan (IHP). Under the NAHASDA statute and IHBG regulations, tribes must submit an IHP in order to receive their Indian Housing Block Grant (IHBG). The IHP has two key components – a Five Year Plan and a One Year Plan. The One Year Plan must be submitted (on an annual basis) for HUD to review and find in compliance. The Five Year Plan is submitted once every five years. The following sections of this chapter describe the IHP requirements.

### OVERVIEW OF THE INDIAN HOUSING PLAN

The IHP is intended to be a “forward looking” planning document as well as the means for HUD to provide funding to recipients under NAHASDA. It is a combination of forms and narrative in which a tribe articulates its current and future housing needs and resources in order to access IHBG funds. The plan is HUD’s format for submission of information resulting from planning activities already completed by the tribe or the TDHE. Tribes are strongly encouraged to take a comprehensive approach to planning and not limit their planning process only to those housing efforts and activities funded under NAHASDA.

Under NAHASDA regulations, a tribe must designate a TDHE to receive block grant funds and operate IHBG activities. A tribe may designate an existing Indian Housing Authority (IHA) to serve as the TDHE. An IHA that is not designated as the TDHE may conduct housing activities that do not use IHBG funds.

The TDHE may, with the consent of the tribe, prepare and submit an IHP on behalf of the tribe. The tribe may choose to (1) review the plan and authorize the TDHE to submit the reviewed plan or (2) authorize the TDHE to submit the plan without prior review by the tribe. In each case, the tribe must include certification with the IHP indicating either tribal review or delegation of review to the TDHE.

### THE IHP REQUIREMENTS

The Indian Housing Plan submission consists of a Five Year Plan and a One Year Plan. The Five Year Plan is basically a narrative on the tribe’s long range housing goals. The One Year Plan includes the activities to be undertaken using a given year’s funding and is based on the data collection and analysis conducted during the planning process.

The following is a summary of the components of the plan. It can serve as a guide to finding the information needed to plan for development activities.

#### Five Year Plan

The Five Year Plan contains the following elements:

- Mission Statement.** A general statement of how the tribe will serve the housing needs of low income families.
- Goals and Objectives.** A description of how the mission will be carried out, including long range goals or strategies.





- ❑ **Activities Plan.** A general overview of the activities to be undertaken in the next five years and an analysis of how the activities will enable the tribe to achieve its mission and accomplish the stated goals and objectives.

General Guidance for the Five Year Plan	
<b>Mission Statement</b>	Although this is a very concise and general statement, it may be helpful to present the comprehensive approach to meeting housing needs by distinguishing development activities from other types of housing assistance in the mission statement.
<b>Goals and Objectives</b>	The IHP addresses housing in a comprehensive manner. Use the goals and objectives section of the Five Year Plan to specifically state what the tribe hopes to achieve over the long term. Development activities may take longer than five years; indicate this in the plan and discuss only the goals to be achieved in the next five years.
<b>Activities Plan</b>	The activities plan is the place to discuss the who, what, when and where. Here you can discuss the specific development activities that will take place over the next five years.

**One Year Plan**

- ❑ **Goals and Objectives.** Specific goals and objectives, related to five year goals, but for the one year's grant allocation.
- ❑ **Statement of Needs.** A description of housing needs of low income Indian families compared to the needs of all Indian families. A statement of the ways in which the housing needs will be addressed during the one year period and how the geographical distribution of assistance is consistent with geographical needs.
  - This section includes a data table to report population and demographic information for the Indian area. This table is a concise way to identify various categories of the Indian population, determine what housing resources presently exist, and define the housing needs of the people that will be served. The categories include:
    - Total Indian population;
    - Number of Indian families;

- Number of elderly and near elderly Indian families;
- Number of Indian families living in substandard and overcrowded housing conditions;
- Any additional categories as desired (e.g., disabled persons or youth ages five and under);
- Existing housing stock by rental, homeownership and transitional;
- Housing, homeless housing, college housing and supportive services housing; and
- Any additional categories as desired (e.g., elderly housing).
- ❑ **Financial Resources.** A description of the financial resources that will be available to carry out IHBG activities and a description of what type of activities will be funded and how additional resources will be leveraged. This section includes a financial resources table.



- The first part of the table is where the amount of funds anticipated from various sources is broken down by HUD resources, existing HUD program resources, other federal or state resources, private resources, and other resources.
- The second part of the table is where the resources listed in the first part of the table are divided among IHBG activities and the number of units and families that will be assisted is estimated for each category.

❑ **Affordable Housing Resources.** This section requires information on the following eleven subsections:

1. The significant characteristics of the housing market.
2. The structure/coordination/cooperation with other entities in the development of the plan.
3. The manner in which housing needs will be addressed.
4. The manner in which 1937 Act housing will be protected/maintained.
5. Existing/anticipated homeownership/rental programs.

6. Existing/anticipated housing rehabilitation programs.
7. All other existing/anticipated housing assistance.
8. 1937 Act housing to be demolished or disposed of.
9. Coordination with tribal and state welfare agencies.
10. The manner in which safety and resident involvement will be promoted.
11. The organizational capacity and key personnel that will carry out IHP activities.

- This section also has a housing profile table in which to compile a list of the number of Mutual Help, Low Rent, and Turnkey III units under management as of the end of the federal fiscal year. It also records the number of units intended for demolition, disposition or conveyance during the next federal fiscal year and how many units are in the development pipeline.

❑ **Other submission items.** This section includes useful life, performance objectives, model housing activities, demolition/disposition, and tribal and other Indian preference.



Tips for the One Year Plan	
<b>Goals and Objectives</b>	Use the goals and objectives section here to specifically state what the tribe hopes to achieve with the one year's grant allocation. The One Year Plan goals and objectives require quantifiable statements such as "develop 10 new homes."
<b>Statement of Need</b>	Describe the specific needs that development will alleviate and who will be served.
<b>Financial Resources</b>	What IHBG resources will be allocated to which activities and what other resources might be available.
<b>Affordable Housing Resources</b>	This section of the plan requires a description of the resources available for development including how cooperation with other entities will be achieved. This section also requires a description of the types of homeownership and rental programs that will be offered and requirements for participation.
<b>Other Submission Items</b>	Use this section to discuss how your development program will comply with NAHASDA's useful life requirements and remain affordable. This section of the IHP also includes a discussion of performance objectives. Here you describe performance objectives specifically for the next 12 month period (program year).

## BEYOND THE IHP: ADDITIONAL DOCUMENTATION FOR DEVELOPMENT PLANNING

There are some issues related specifically to development that may not be covered in the tribe's IHP. This section discusses areas where there may be a need to expand on the IHP data collection requirements in order to comprehensively inform HUD of the tribe's development process.

### Analyzing Housing Market Conditions

Housing market conditions must be analyzed before a tribe can determine the type and scope of development needed. To analyze an area's housing market conditions, a tribe will need to determine:

- Housing rehabilitation needs.** This includes the number of lower income households that need assistance, the cost to rehabilitate the

housing stock and the ability/desire to pay. These data can best be obtained through household surveys, census reports and waiting lists.

- New construction needs.** Determining the need for new units is the crux of your development plan. New construction is required when there is a gap between existing and projected affordable housing stock and housing needs. Vacancy rates in rental housing of less than 4 to 5 percent indicate the need for new construction. Other signs of need include little or no pending construction of affordable homes and substandard conditions in existing stock.
- Cost burdens of renters and owners.** Cost burdens are usually measured in terms of the number of low income and very low income families who pay more than 30 percent of their income for housing. Survey and census data are the best sources for information on this issue.



## Assessing Local Private Lending Practices and Availability of Credit

The financial resources section of the One Year Plan requires a description of the available outside funding sources. However, assessing the availability of credit specifically for development is also important. Loans for development are typically longer, require higher credit, and are therefore riskier than smaller rehabilitation loans.

## Evaluating the Local Economy

- ❑ **Turnover rates.** How quickly do units rent or sell? Is there a scarcity of housing for sale or rent or do units sit vacant for many months?
- ❑ **Recent sales.** What have comparable units sold for? Are units holding value, losing value or rapidly appreciating compared to previous years?
- ❑ **Construction costs.** Are the costs of building or rehabilitating units higher than other nearby regions or lower? What is the impact of building code requirements? What is the construction labor market like – are contractors scarce or readily available?
- ❑ **Location of services and economic opportunities.** Are services such as schools or healthcare available nearby or far away? What employment opportunities are available—will tribal members have to worry about employers moving away or can they look forward to new opportunities?

## DATA SOURCES AND COLLECTION METHODS

A tribe may need to consult a variety of data sources to obtain the information it needs for the IHP. Good sources of data include your IHA and your tribe. Other sources might include the U.S. Census Bureau, Bureau of Indian Affairs (BIA), Indian Health Services (IHS) and other local, state, or nonprofit agencies.

To gather specific information for development program design, consider conducting surveys. Surveys are good tools to obtain current and accurate information. Depending on tribal needs and

circumstances, surveys may include the total population or be based upon a partial sample, and can be conducted in person, by telephone, or by mail. Mail surveys, however, generally have the lowest response rates. For the purpose of collecting data, surveys can generally be divided into two broad categories: written, mail in or drop off surveys (surveys that the respondent completes with pencil and paper); or in person/telephone interviews (surveys that the respondent completes by talking with an interviewer).

- ❑ **Mail survey.** This is the simplest form of questionnaire. The advantages are that it is low cost, reaches many people and it can be completed in private at the respondents' convenience. The disadvantages are a typically low response rate and difficulty in obtaining detailed responses.
- ❑ **Group administered questionnaire.** This method brings residents together to answer a structured set of questions. The advantages are a high response rate and the ability to clarify questions if they are unclear. The disadvantages are that it requires a high level of staff time to organize and may produce a small sample size due to low turnout.
- ❑ **Household drop off survey.** This method blends elements of the mail and group administered questionnaire. A survey is dropped off and picked up at a later time. The advantages are that it involves personal contact, questions can be clarified and it produces a higher response rate than mail surveys. The disadvantages are that it is difficult to obtain a detailed response and produces a lower response rate than interviews or group administered questionnaires.
- ❑ **Personal interviews.** The advantages of conducting a personal interview are that the interviewer can ask follow up questions or probe specific issues, questions can be clarified, opinions and impressions are easy to obtain and personal contact is made. The disadvantages are that it requires large amounts of time and staff and the interviewers must be well trained.



- ❑ **Telephone interviews.** The advantages of telephone interviews are that information is gathered rapidly, there is some level of personal contact with the respondent and follow up questions can be asked. The disadvantages are that some residents may not have a telephone, some may not like the intrusion and it requires a moderate amount of staff time and resources.

The most inclusive method of obtaining “soft” data and personal input from residents is holding a community meeting on the tribe’s housing needs and preferences. The advantages of a community meeting are that it offers maximum input from the community, full community representation, exchange of views and ideas and strong community interaction.

**CAUTION:** Organizing community meetings is hard work. The disadvantages are that it requires significant staff time and a facility, it must be managed effectively or it can be unproductive and allow people to drift to unrelated issues and it may not get a strong turnout. Organizing is the key to success of a community meeting. Remember the following steps when planning a community meeting:

- ❑ **Develop a strategy.** Determine the data that needs to be collected, design a tentative agenda and brainstorm issues that residents will want to discuss.
- ❑ **Get the word out.** Post a notice in the tribal newspaper, mail notices, and call residents directly.

## CONSTRAINTS TO IMPLEMENTING HOUSING PLANS

Historically, Native Americans have faced enormous constraints in developing affordable housing. In spite of this, many tribes have forged housing strategies and made hard won progress. The flexibility of NAHASDA can prove to be a great benefit in addressing many of the traditional barriers to affordable housing.

Among the constraints faced by tribes in implementing the programs outlined in their IHP are a lack of water and sewer systems, inadequate roads, homes situated on remote sites, preferences for traditional housing forms and status of trust lands.

- ❑ **Lack of Water and Sewer Systems.** Lack of federal funding or tribal resources for new water and sewer systems is perhaps the most serious constraint to larger scale development on tribal lands. Indian Community Development Block Grant (ICDBG) funds can be used for this purpose. An alternative strategy is to limit development to sites where wells and onsite septic systems can be placed. Site improvement and development of utilities and utility services are eligible activities under NAHASDA.
- ❑ **Lack of Adequate Roads.** Funding for the construction of roads and road access has to come from tribal resources, the BIA or ICDBG. This should be the basis of a longer term housing development strategy. For shorter term planning, new construction strategies should focus on locations with adequate road access.
- ❑ **Remote Sites.** Many substandard homes that need replacement are sited in remote locations, and many Native Americans prefer these homesteads for reasons of livelihood or family heritage. Federal Indian housing programs have had difficulty replacing or building housing on remote sites because construction related costs are generally much higher than similar costs for building or replacing clustered housing situated near more populated areas. NAHASDA does not prohibit building on remote sites. Funding for projects at sites that are economically infeasible for water wells or electric service would, however, require that alternative technologies such as cisterns and generators be employed to meet Section 8 Housing Quality Standards (HQS), or waivers could possibly be obtained from HUD. (See the Construction Issues model for a discussion of construction standards).



- ❑ **Housing Preferences.** It is relatively easy to document the need for decent, affordable housing. The IHP does this by counting people who have no permanent housing or live in unsafe, overcrowded or unaffordable housing. Determining and documenting the demand for affordable housing and the type of housing are more difficult tasks. The demand for affordable housing hinges on whether people are willing to buy a product at a specific price. Some people, for example, would rather live in a substandard house they own than pay rent for a home or apartment owned by someone else. Others would prefer to live in a substandard dwelling with lots of open space rather than in a clustered housing development. Others prefer traditional housing forms, such as hogans or adobe pueblo construction, which may differ from modern housing construction design techniques. NAHASDA has no restrictions on location or type of housing design.
- ❑ **Status of Trust Land.** Much (but not all) Native American tribal land is held in trust by the U.S. Government and cannot be sold. Although long term leases are possible, the issue of land title has discouraged private lenders from making loans on trust land because of the difficulties associated with foreclosing on a property if the loan is defaulted. This is a major barrier to new homeownership strategies that require conventional loans. The Section 184 Indian Housing Loan Guarantee Program may be helpful in this instance. Other means for overcoming this problem include working with secondary market lenders, obtaining private mortgage insurance, and securing subordinated financing to provide alternative collateral or guarantees.





## Chapter Two

### DESIGNING A HOUSING PROGRAM

NAHASDA provides a block grant for housing needs which includes development activities. The creation of the IHP is an important short term tool and long range planning exercise that can be a road map for the implementation of a successful development program. Once the needs and resources are documented and constraints have been assessed through the IHP process, you can design a program. Typical components of a program design include:

- Product specification.** What exact types of housing will be developed? What will be their design and cost?
- Location.** Where will the units be located?
- Clients.** Who will the housing serve?
- Level of assistance.** How much assistance will be offered?
- Procedures.** How will projects move from application to completion?
- Construction standards.** What policies and procedures will govern the construction process? What tribal or other building codes will apply?
- Administration.** How will the development process be staffed?
- Timetable.** How quickly will the housing be developed and occupied?
- Operating budget.** What are the management and overhead costs?
- Capital budget.** What is the budget for loans, grants, and construction?
- Risk analysis.** What are factors for success?
- Marketing.** What strategies will be used for attracting tenants or owners?

#### PRODUCT SPECIFICATION

As a part of your IHP process and of designing your program, you must determine what the tribe will develop. This decision is based on the assessment of needs and the resulting program products we described in the Affordable Housing Resources section of the IHP.

- For example, if the needs assessment identifies very low vacancy rates and the population is primarily very low income, the development choice might be to build rental properties. Conversely, if the market is primarily low income renters with good credit and some discretionary income, the tribe may opt to develop more single family homes and offer a first time homebuyer program. The program could provide deferred payment loans (DPLs) for downpayments and closing costs, and a loan for the actual purchase.
- The needs assessment may have also uncovered that there is a large elderly population that is expected to increase. In this case, a development option might be to construct special needs housing.

Once the type of program has been identified, the tribe must make additional decisions regarding eligible participants, and forms and levels of assistance. IHBG funds can be used for the acquisition, new construction, and reconstruction of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related housing activities.

Determining products is also about determining the scope of development. The following chart shows development method considerations for determining your product.



Development Method Considerations	
<b>Size of Development</b>	Whether you choose small or large scale developments depends on your budget and capacity.
<b>Concentration</b>	Developing clustered housing versus scattered site depends on the availability of land, needs and preferences of the community, infrastructure, construction security, logistics costs and land costs.
<b>Housing Type</b>	Issues that arise when deciding whether to develop single family homes versus multifamily buildings are needs and preferences of the community, availability of land and incomes.

In determining your products you will also need to make choices regarding construction types. Below is a list of options. The choices will depend on tribal preferences, incomes, availability of land, location of services and economic opportunities and available funds for development.

- Manufactured housing,
- Modular/Panelized housing,
- Stick built, wood frame construction,
- Masonry construction, and
- Adobe construction.

### LOCATION

Some tribes will have more options for development sites than others. Whatever the options are, it is critical to find a site that will, at a minimum, meet certain standards and will ultimately provide the best and most cost efficient location for the housing.

Site selection is a process that involves many considerations and takes time. Generally, the choice of a site is determined by a combination of the following considerations:

- Type of housing to be built (rental, homeownership);
- Community preferences;
- Estimated development and operating costs;
- Availability of land;

- Physical characteristics of the site;
- Road or street access to the site;
- Available infrastructure, facilities and utility services; and
- Tribal codes for zoning and environmental standards.

### CLIENTS TO BE SERVED

The next step in the process is careful consideration of who will receive assistance. First, consider who may be assisted with IHBG funds:

- Low income families on a reservation or Indian area;
- Non low income Indian families under certain circumstances; and
- Non Indian families if it is determined that they cannot meet their housing need and that their presence on the reservation or Indian area is essential to the well being of Indian families.

From this eligible pool you will need to determine additional eligibility criteria. The following questions should be addressed in determining client eligibility:

- Based on the needs assessment, will priority be given to a particular type of household – small families, large families, the elderly, or disabled people?
- Are federal Indian preferences, fair housing, and other requirements included in tenant selection policies for rental projects?





## LEVEL OF ASSISTANCE

Unfortunately Indian Housing Block Grant (IHBG) funds are limited. Thus, the tribe will not be able to offer unlimited assistance to all clients who qualify for the program. This means that difficult decisions about the level of assistance will have to be made. The question of what level of assistance to provide will largely be answered by two factors:

- ❑ The needs of clients – do clients need large amounts of assistance or are only small subsidies needed? Are a few families to be assisted or an extensive portion of the tribe?
- ❑ The sources of financing available – will IHBG funds comprise the entire financing package or will they leverage other financing sources? Are other subsidy sources available? What payment burden can clients manage?

## PROCEDURES

Once the basic program design is in place, operating procedures that spell out the operational framework of the program should be developed.

- ❑ **Eligibility/Selection.** The first step is called intake or screening. The types of information collected during this step will depend on the eligibility requirements established by the tribe. If an applicant meets the preliminary eligibility criteria, a more complete application is needed. To obtain this information, the application processor provides the applicant with a list of the additional documents that are needed to process the application. Such a list might include recent paycheck stubs and other employment information, other forms of income documentation, and account numbers for savings and checking accounts, if applicable. The tribe should develop a written policy specifying which kinds of information will be required as well as procedures for selecting beneficiaries if more qualified applicants exist than the program can serve.
- ❑ **Occupancy and Collections.** The tribe needs to have in place standards that specify the terms under which clients may occupy properties and

the responsibilities entailed with occupancy. These standards should be reflected in lease documents/homebuyer agreements. The tribe should also establish rules about the process for collecting rents and procedures and penalties for late payment and, in extreme cases, eviction.

- ❑ **Maintenance.** Maintenance procedures should specify how the tribe will maintain the units that it manages. What are resident maintenance responsibilities? How do residents request maintenance services (work orders)? What are the timelines for preventive maintenance, unit inspections, and vacant unit preparation? These procedures should be spelled out in an annual maintenance schedule and monitored for performance.
- ❑ **Administrative/Personnel.** The tribe should develop written procedures that spell out all administrative aspects of program operation. An organizational chart delineating staff roles and responsibilities should be developed and position descriptions should be written for each slot on the organizational chart. In addition, the tribe should develop written personnel policies for issues such as selecting employees, performance expectations and disciplinary options. Existing organizations should already have these in place, and new organizations may be able to model their policies after those of existing organizations.
- ❑ **Financial Management.** The tribe must develop a financial management system that allows it to track all incoming and outgoing disbursements. Policies regarding who may authorize expenditures should be written and procedures for procuring services should also be specified. To protect against mismanagement or fraud, internal controls should be established. Many tribes may determine that the services of an outside accountant are needed to fully implement an effective financial management system.

## CONSTRUCTION STANDARDS

Most tribes establish and enforce their own construction standards and building codes. If a tribe



does not have standards in place, the program design must address steps to establish such standards. There are four issues to consider when developing a plan for the construction process:

- Construction management;
- Property standards;
- Procurement; and
- Inspections.

See the Construction Issues model for more information about these types.

## ADMINISTRATION

The development plan should describe what agency as well as which individuals will administer the program and then explain how the administrative structure will be created to operate the program effectively.

### Personnel Policies and Procedures

Personnel policies and procedures typically describe the organization's approach to hiring, firing, leave time, other benefits, conflict of interest, grievances, etc. Existing organizations should already have these in place. New organizations may be able to model their policies and procedures after those established by other tribal organizations.

- Plan for Staff and Other Implementers.** When a new program is proposed, HUD and other funding organizations need to know who will carry out the program and what their qualifications for the job are before providing financial support. A staffing plan that addresses these issues should, therefore, include:

- **Description of staff positions.** All paid staff positions of the program should be listed, including proposed annual salaries, names of staff persons already identified for the program, and job descriptions. Part time positions should be described in terms of percentage of full time work devoted to the program.

- **Description of contracted services.** Contracted services might include the following: outside legal and accounting services for all programs; construction inspectors, credit reporting services, and appraisers for loan and grant programs; architects, outside rehabilitation specialists, consultants, and building contractors for construction programs; and hired services, such as building and grounds maintenance and janitorial work, for rental programs.

- A completed program design will identify actual providers of these services, their qualifications, and costs for their services. Resumes of key staff and consultants are also essential elements in funding applications.

## TIMETABLE

The form a program timetable takes will depend on the type of program. The tribe's program timetable may track the following:

- Major construction projects.** For major construction projects, elaborate "critical path" or other scheduling techniques should be used. These will usually take two forms:
  - Development schedule – which includes land acquisition, planning steps, funding milestones, bidding, contracting, construction time, and lease ups or sales.
  - Construction schedule – which will break construction phases down into small steps that can be monitored for timely performance.
- Environmental review.** Allow sufficient time for the environmental review, which must be conducted before housing activities begin. The tribe may assume responsibility for the environmental review or may request that HUD perform the review.

## PROGRAM OPERATING BUDGET

Program operating budgets should be presented on a cash flow basis; that is, revenues and disbursements



forecast on a year to year, quarter to quarter, or month to month basis (usually in line with the program timetable).

For programs with ongoing staff, the budget should include staff costs, fringe benefits, office overhead, contract services costs, and other administrative costs. If the program staff is part of a larger organization and the new program is distinctly different from other programs, the operating costs of the program should be prorated.

**CAPITAL BUDGETS**

For housing development projects, capital budgets are often called “project pro formas” or “development pro formas.” They are generally calculated on a

month by month, cash flow basis that corresponds to development and construction timetables.

Financial institutions make credit decisions based upon what they believe is the operating cash flow available to pay debt service. Cash flow from operations, which is called “Net Operating Income” (NOI), is the difference between the rent collected and the cash operating expenses. It represents the cash flow that is available to repay debt and to provide the owners with a return on their investment.

For first time homeownership programs, costs and proceeds of sales should be included in the development pro forma.

Income and Expense Schedule for Rental Housing	
Gross Rent	Rent collected as though fully occupied
- Vacancy Factor	Rent not collected due to vacancy
Effective Gross Rent	Amount of rent actually collected
- Operating Expenses	Cash expenses borne by the owner
Net Operating Income	Cash flow available to pay lenders
- Debt Service	Cash flow return on and of investment demanded by lender
Cash Flow	Cash flow available to owner

**RISK ANALYSIS**

Many housing program design documents fail to include an analysis of the risks of construction and rehabilitation programs. A risk analysis is, however, a standard component of a business plan in for profit ventures. Such an analysis should be included in the program design because it can help avoid pitfalls and adds credibility to the funding proposal.

The analysis lists potential risks such as construction cost overruns, failure to rent or sell homes at projected rates, and unpredictable construction cost delays. The analysis discusses these potential risks in terms of mitigation and drop dead scenarios.

Mitigations are strategies to overcome problems and risks. For example, if homes sell at a slower rate than expected, marketing can be stepped up or the construction contract can be structured so that the

project comes to a halt after a predesignated phase of construction. Adequate contingency funds can be budgeted to accommodate construction cost overruns or costs resulting from construction delays – site security costs, for example.

**MARKETING STRATEGY**

Many affordable housing program managers mistakenly believe that product and service marketing will take care of itself; if housing is affordable, people will want it. In reality, however, lower income families (like all other families) have very particular wants, needs, and their own idea of what is affordable and desirable.

A good marketing strategy starts with the design of the products and services. Potential clients should be consulted, either individually or in groups, to determine if they want what is proposed. Good



surveys are necessary to determine actual demand for products and services. If you conducted a thorough needs assessment this should have been accomplished early in the planning phase.

Once the program has begun, marketing can take many forms, including:

- One on one "selling" to clients;

- A clear, simple brochure describing the program; and

- Advertisements, radio spots, and notices.

To be effective, marketing plans must be carefully focused. Radio spots or widely circulated newspaper advertisements may not be appropriate if the tribe is attempting to reach a particular, limited geographic area.



# Chapter Three

## OPERATIONAL MODELS

Eligible recipients of IHBG funds include the tribe or a tribally designated housing entity (TDHE) when authorized by one or more Indian tribes. The TDHE

can take many operational forms. The following is a discussion of how development might happen in each model.

Comparison of Operational Models <sup>1</sup>		
Operational Model	Advantages	Disadvantages
<p><b>Tribe.</b> A tribe can choose to develop a housing development plan, oversee the development and manage the properties. In this case, a tribal council or other elected official usually serves as the housing program's oversight board and they are responsible for the day to day operations of the housing program from design to management.</p>	<p>The benefit to this model is that the tribe can take credit for the program's success or accept responsibility in failure. In addition, the program will be treated as any tribal program and considered in the oversight activities and overhead of the tribal government.</p>	<p>The tribe will be forced to intervene in difficult situations involving resident issues and contractor's disputes. Additionally, housing administration is time consuming and doesn't fit well with traditional government functions and responsibilities.</p>
<p><b>TDHE.</b> Under NAHASDA, the tribe can designate a separate entity with a separate oversight board under the purview of the tribal government to manage housing activities. Sometimes this entity is the housing authority.</p>	<p>The advantage of designating a separate entity or TDHE is that the TDHE is not involved in tribal politics. The tribal government can refer program resident issues back to the housing board. If the board shares the vision of the tribal government in carrying out the goals and objectives of the tribal housing program, the tribal government is further insulated from everyday housing issues. In addition to handling contractor disputes, administrative duties and resident issues, the TDHE has the power to file and respond to lawsuits, which can be an incentive to off-reservation, non-Indian contractors who may seek legal action to resolve disputes.</p>	<p>The danger in this model is that the tribe can lose control of the housing program and not meet its goals and objectives. If this model is used, the tribal government should continue some form of formal liaison with the housing program and require regular periodic briefings on program accomplishments and progress.</p>

<sup>1</sup> Source: The Enterprise Foundation; Columbia, MD.



<p><b>Consortium TDHE.</b> A tribe can join forces with other tribal governments in the same geographic vicinity and form a consortium that empowers a TDHE to act on their behalf. In this situation, each tribe makes a financial commitment to the TDHE and owns a share of that organization, typically in a similar ratio to the number of units being managed. A consortium TDHE would probably have an oversight board with representation from each tribe. That representation could be equally divided or prorated in relation to the number of units.</p>	<p>The advantage of this model is that it centralizes management responsibilities, rather than having several small TDHEs. By pooling resources the member tribes may also be able to conduct activities on a scale large enough to attract additional resources and private lenders. A consortium also allows tribes to share and expand expertise.</p>	<p>Bridging the housing needs of several tribes can be difficult and gaining consensus on policies can be particularly troubling.</p>
<p><b>Free Standing TDHE.</b> A tribe can utilize the services of a TDHE without an up front agreement with other tribal governments. In this case, the TDHE is a free standing organization that doesn't belong to any tribal government. The organization's physical assets (non housing related) accumulated by the TDHE remain with the TDHE even if a tribe discontinues their relationship. The TDHE can charge a management fee for its services and even manage non tribal housing developments to increase organizational revenues.</p>	<p>Similar to those of a standard TDHE but with the added advantage of organizational revenue from management of non tribal housing.</p>	<p>The tribe has even less autonomy over the housing program. Carefully structured management contracts with the TDHE can help ensure that the program is operated in a manner that best serves the tribe.</p>
<p><b>Property Management Firm.</b> In this situation, the tribe may elect to develop its own housing and turn over the management to a property management company or they may decide to have the private entity develop and manage the housing.</p>	<p>This model allows the tribe the flexibility to interview and choose the company that is right for them.</p>	<p>It may be difficult to generate enough fees to attract property management firms, and few firms are experienced in operating in Indian country.</p>



## GLOSSARY

### AFFORDABLE HOUSING FINANCE TERMS

**Amortizing Loan.** A loan for which principal and interest are due on a regular monthly basis (as opposed to nonamortizing loan equal installments on the deferred payment loan).

**Affordable Housing Program (AHP).** A competitive subsidy program of the Federal HOME Loan Bank Systems.

**Buydown.** A term for a subsidy that reduces the monthly debt service on a home or multiunit project.

**Capitalization.** Has several meanings with regard to low income housing. The most common is "capitalizing a loan fund," i.e., raising grants or low interest loans for a fund from which loans are made to third parties. Capitalization often refers to converting present value into a series of future installments of net income by discounting them into a present worth using a specific desired rate of earnings.

**Community Development.** A term broadly used to describe any efforts to improve housing, infrastructure, education, services, and employment for communities with primarily low income residents.

**Community Development Corporation (CDC).** A loosely defined term for a nonprofit organization that undertakes commercial or residential real estate development. It usually, but not always, indicates some targeting of efforts to a low income neighborhood.

**Community Reinvestment Act (CRA).** A federal law that encourages private lending institutions to make loans to low income and minority households in low income areas.

**Conventional Financing.** In low income housing terms, almost any non federal loan or federally insured loan made by a conventional lending institution.

**Debt Service.** The money paid each month by a borrower to repay a loan.

**Default.** The failure of a borrower to abide by the terms of a loan agreement (usually, failing to pay monthly payments on time). When a borrower has defaulted, the lender has a right to foreclose on the loan. The lender may, however, choose to negotiate with the borrower to get the payments caught up.

**Deed of Trust.** See Mortgage Loan.

**Deferred Payment Loan.** A nonamortizing loan, usually at 0 percent interest, on which no repayments are due until sale or some other point in the future. They are usually made by a public or nonprofit agency to a low income homebuyer or a developer of low income housing.

**Downpayment Assistance.** Grants or low interest loans given to low income homebuyers to help fund downpayment and/or closing costs.

**Federal Home Loan Mortgage Corporation (Freddie Mac).** A federally chartered corporation, established in 1970, that buys and packages residential mortgage loans from private lending institutions and other loan originators.

**Federal National Mortgage Association (Fannie Mae).** A federally chartered corporation, founded in 1938, that buys Federal Housing Administration, Veterans Administration and conventional residential mortgage loans from private lending institutions and other loan originators.

**First Mortgage Loan.** Also called "first deed of trust" loan in some areas. For a NAHASDA purchase or a real estate project, usually the largest loan and one that gives the lender the most security. In case of foreclosure and sale, the first mortgage lender gets its money before other lenders are paid off.





**Foreclosure.** The legal proceedings by which a mortgage loan is foreclosed, meaning that the lender may take possession of the mortgaged property. In most states, foreclosed property is subject to a public auction and sold to the highest bidder. Lenders and other lienholders are paid off, to the extent the sale proceeds allow.

**Native American Housing Assistance and Self Determination Act (NAHASDA).** A new HUD program that provides block grants in support of affordable housing on a formula basis to Indian tribes.

**HOPE.** A series of HUD programs that provide a HUD grant to a local government or nonprofit group to convert unused or HUD owned rental properties to homeownership opportunities. Properties must be public housing, government foreclosed, or assisted housing. The grant pays for some administration, but requires a local match.

**Housing Trust Fund.** A loosely defined term covering various types of public and nonprofit controlled funds from which loans and grants are made for affordable housing. These trust funds are capitalized variously with public revenue, dedicated taxes, grants, and contributions from high end real estate developers rather than with direct federal funding.

**HUD.** The U.S. Department of Housing and Urban Development. See Indian Community Development Block Grants, NAHASDA, HOPE, Low Income Public Housing, Section 8 and Section 202.

**Indian Community Development Block Grant (ICBG).** This is a HUD program that provides grants to Indian tribes to undertake community development efforts that will assist low income households, eliminate blighted conditions, or meet other urgent local needs.

**Indian Housing Area.** The area within which an Indian tribe operates affordable housing programs or the area in which a tribally designated housing entity (TDHE) is authorized by one or more Indian tribes to operate affordable housing programs.

**Indian Housing Authority (IHA).** An entity authorized by an Indian tribe or by state law that assists in the development or operation of low-income housing for Indians under the 1937 Act.

**Indian Tribe.** Any Indian tribe, band, nation or other organized group or community of Indians that is recognized by the federal or state government as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**Layered Financing.** Federal funding at less than market rates that is used for an affordable housing project. The term is used when funding comes from more than one source (for example, NAHASDA, ICDBG, and Tax Credits used in one project). When two or more federal sources are used, a "layering review" must be completed to ensure that no excess subsidy was granted.

**Lien.** A legal right to foreclose on a property for the repayment of a debt. A mortgage deed is a lien. Unpaid property taxes, where applicable, can, in time, become a lien. Most states allow building contractors to place liens on real estate if they are not paid for work. See Foreclosure.

**Lienholder.** A lender or other party that has a lien on a property.

**Leveraged Financing.** In low income housing, this means using one source of funds, typically a public source, in a project to encourage investment by one or more other sources, thus permitting public funds to assist more households.

**Loan to Value ratio (LTV).** The ratio between a prospective borrower's proposed loan amount and the appraised value of a property he or she wishes to purchase. For instance, if a proposed loan is 80 percent of the appraised value, the loan to value ratio is 80 percent. See Mortgage Insurance.

**Mortgage Deed.** A legal document in which a borrower (for example, a homebuyer) pledges to give the deeded real estate to a lender in the event a loan is not repaid in a timely manner.





**Mortgage Insurance.** FHA (part of HUD) and private companies provide NAHASDA mortgage lenders with mortgage insurance. Lenders will often require this if the downpayment is less than 20 percent of the purchase price. The homebuyer pays an insurance premium, usually with the monthly house payment, to the insuring company. In exchange for the premium, the insuring company guarantees a portion of the loan if the buyer defaults on the loan.

**Mortgage Loan.** A loan secured by a mortgage deed, meaning the property owner has agreed to give the property to the lender if monthly payments are not made, so the property can be sold to pay off the loan. A first deed of trust loan functions in the same way.

**Nonamortizing Loan.** See deferred payment loan.

**Origination.** The act of processing a loan through closing, providing the loan funds, and setting the loan up for servicing once a loan has been underwritten.

**Participation Loan.** Usually, a first mortgage loan made on a larger real estate project such as an apartment acquisition, where two or more lenders provide the funds. In proportion to the funds provided, they share risk, repayments, and any proceeds of sale in the event of a default. A common way to get lenders to finance multifamily deals that cannot immediately be sold to the secondary market.

**Prequalification.** The act of assisting a homebuyer in determining if they qualify for conventional and/or subsidy loans. Involves a credit check and verifying income and asset information.

**Promissory Note.** A legal document in which a borrower promises to repay a loan. The borrower pledges assets as security.

**Purchase/Rehab Program.** A program that purchases abandoned or substandard properties, rehabilitates them, and sells them to low income homebuyers.

**Rent Subsidies.** Programs that subsidize the rent of low income tenants in privately owned apartments. The primary HUD program is called Section 8. Generally, tenants pay 30 percent of their income for rent and utilities and HUD pays the remainder directly to the landlord. This program is presently in a state of change.

**Section 8.** See Rent Subsidies.

**Section 202/811.** A federal program under which HUD provides a nonprofit sponsor with what amounts to a grant to build very low rent housing for the elderly or disabled. A long term HUD commitment for operating subsidies comes with it – making low occupancy rents possible.

**Secondary Market.** All the private companies and government institutions that buy mortgage loans from loan originators (lenders and mortgage companies). A large percent of mortgage loans are sold to the secondary market, even though originators may still service many of the loans.

**Security (for a loan).** Regarding a loan, assurances that the loan will be repaid. A mortgage deed, a promissory note, or pledged collateral are forms of loan security.

**Servicer or Loan Servicer.** A company that collects mortgage payments from borrowers.

**Servicing.** The act of collecting loan payments, accounting for them, making reports, managing escrowed funds for taxes and insurance, and related loan management duties.

**Soft Costs.** The non bricks and mortar costs of a rental estate development project. Includes architectural costs, surveys, appraisals, credit reports, loan document preparation fees, and related costs. IHBG soft costs also include financing and site utilities [24 CFR 1000.156].



**Subordinated Loan.** Any loan that has less security than the loan “in front” of it; often called a “junior” loan. For example, a second mortgage loan is subordinated to a first mortgage loan that was made before it. In the event of a foreclosure and sale of property, subordinated loans are paid off last.

**Subsidy.** In housing, money put into a deal to lower the monthly debt service on an individual affordable housing project. Low interest second mortgage loans are the most common source of subsidy.

**Tax Credits.** Most common name for the Federal Low Income Housing Tax Credit, administered by the Internal Revenue Service. Gives up to 90 percent income tax credits over 10 years for qualified affordable rental housing projects. Generally, rents must be affordable to families with incomes that fall below 60 percent of the local median. Properties must remain affordable for 15 or more years.

**Tribal Area.** See Indian Housing Area.

**Tribally Designated Housing Entity (TDHE).** An entity other than the tribal government that is authorized by the Indian tribe to receive grant amounts and provide assistance under NAHASDA for affordable housing for Indians. An existing Indian Housing Authority (IHA) may be designated as a TDHE.

**Underwriting.** The act of determining if the personal and real estate information provided by a prospective borrower meets the pre established loan qualifying criteria for a loan or grant. Includes looking at credit, assets, income, surveys, appraisal, etc.

# ***THE NAHASDA DEVELOPMENT MODEL SERIES***

## ***Homeownership***



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# Chapter One

## HOMEOWNERSHIP AND PROGRAM DESIGN

Although most Native American families would like to own their own homes, many are unable to achieve this dream because of extreme housing shortages in Indian country. The Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) offers great potential for ameliorating this situation and expanding homeownership opportunities for low income Native American families. Under NAHASDA, tribes receive an Indian Housing Block Grant (IHBG), an extremely flexible grant that can support a variety of affordable housing activities. This model focuses on one eligible NAHASDA activity – homeownership.

### HOMEOWNERSHIP

Who is a “homeowner”? A homeowner is an individual who owns the housing unit, whether or not that person owns the land on which the house stands. By contrast, rental housing belongs to someone else – another Native American, the tribe, the Indian Housing Authority (IHA), or a private business.

### Benefits of Homeownership

Homeownership can be a rewarding experience for families who achieve it, and the promotion of homeownership can have many important benefits for tribes as well. For families, homeownership provides control over their living environment. It also fosters a sense of independence and self sufficiency; subject to tribal laws/lease restrictions homeowners may sell their homes and can leave their homes to their children or other heirs, thus allowing the transfer of wealth and opportunity from one generation to the next.

As individual members become homeowners the tribe will also benefit. Homeownership brings a sense of control over one’s environment, and people who develop this sense, who own and maintain their homes, can use it to improve their skills and self

esteem. These families may see a decrease in the social problems caused by overcrowding, and they subsequently can share their skills to help other tribal members achieve the same results. Finally, the improvements in property maintenance fostered by individual homeownership may reduce the time, energy, and resources the tribe must devote to home repairs so that the tribe will be able to concentrate on other affordable housing projects.

### Barriers to Homeownership

The housing shortages and overcrowding on Indian reservations are a result of the historically insufficient level of public and private resources that have been devoted to housing. Federal housing programs for Native Americans have never been funded at a level sufficient to meet the total need for new units. Furthermore, private financing has been almost nonexistent due to the factors stated below.

#### *Low Incomes*

With limited economic opportunities in many Indian areas, most Indian families do not have the resources to borrow money at market interest rates (or even subsidized rates) to finance the purchase or construction of a home. In addition, because some Indian families depend on seasonal work, their irregular incomes make credit qualifying difficult.

#### *Trust Ownership of Land*

The U.S. Federal Government holds title to a total of 56.2 million acres of Indian lands in trust for various tribes. The rights to use trust lands are generally held communally by tribal members, and individual Indians may receive, from their tribe, an “assignment,” or license, to use a plot of land for a particular purpose, such as building a home. Trust land may *not* be conveyed to non Indians. This ownership structure prevents the loss of Indian lands to non Indians, but also may inhibit private housing development. Indian



families can face bureaucratic difficulties in obtaining rights to a plot of land to build a house if there are many claimants to the land.

Trust ownership also discourages private mortgage lending. Private lenders usually require that borrowers put up *collateral* – generally the house and plot of land – as a condition for receiving a mortgage loan. Because trust ownership prevents the lender from taking title to the land if the borrower defaults on the loan, such land is often not used as collateral. Lenders, therefore, may be reluctant to provide mortgages on reservations.

### ***Tribal Judicial Systems***

Private lenders also may avoid operations on reservations where tribal courts operate because they may not be familiar with tribal laws, and they fear that legal contracts will not be upheld in the tribal courts.

### ***Scarcity of Financial Institutions***

Finally, even families with sufficient income to support mortgage payments may have difficulty locating a financial institution. Few reservations have local credit unions or private lenders that can make appropriate housing loans. Moreover, the reservations might be geographically isolated from non Indian financial institutions.

## **PROGRAM DESIGN OPTIONS**

Beyond the NAHASDA regulatory constraints discussed in Chapter Two, tribes have a great deal of flexibility in designing a program that overcomes the barriers to homeownership and takes advantage of the benefits. This section examines several common program design options that tribes may consider during the program design phase. The approaches that tribes choose in answering these questions should be directly related to specific housing goals that are articulated in the Indian Housing Plan (IHP).

### **Target Population**

As described in Chapter Two, Indian Housing Block Grant (IHBG) funds must, for the most part, be used to assist low income households. However, tribes may wish to define their target population further.

Targeting could be based on geographic location, family size, current housing situation, or on some other nondiscriminatory criterion. For example, in terms of income levels, a program could target either those of very low income or those of low income. This choice of target populations has very meaningful implications; focusing on those of very low income (below 50 percent of median income) will target the most needy, but these families may not have the financial capacity to maintain their properties and succeed as homeowners. Focusing on families with incomes of between 50 percent and 80 percent of the median income may permit more families to be served because these families will have a greater capacity than those of very low income to help pay for their homes.

### **Housing Needs**

As the tribe answers the first question, it should also see whether there is a particular housing stock problem that the tribe as a whole needs to solve. Many homes might be overcrowded, suggesting that there is a shortage of housing and that new homes should be built near the existing ones to keep families together. The tribe might see a need to build more houses closer to centers of employment. Perhaps the tribe needs new housing that can better stand up to harsh climates, or the existing stock might simply be too dilapidated to repair. The tribe should assess current housing stock and use the homebuyer program as a means for planning for future housing needs.

### **Property Types**

The tribe should seek to match the type of housing stock eligible for assistance with the needs of its members. The type of housing most commonly associated with homeownership is the single family unit. While this type of housing offers the greatest sense of independence and control, it also tends to be relatively more expensive to produce than other types of properties. For tribes whose members are currently overcrowded but wish to keep extended family structures intact, duplexes or triplexes may present a promising alternative. Manufactured housing units, homes which are delivered completely pre assembled and simply attached to a foundation



on site, offer a low cost alternative to the construction of new housing units.

### Providing Units

Depending on the condition of existing housing stock, tribes may simply acquire existing housing units, acquire and rehabilitate existing units, or construct new units. If a supply of vacant and affordable units exists, the tribe's program may simply involve the acquisition of, or facilitating individual tribal members' acquisition of these units. In other instances, existing rental units may be converted to ownership. An intermediate option involves the acquisition of existing substandard housing which is then rehabilitated and sold to a homebuying family. A third option is the construction of new housing units which, given the shortage of existing housing stock on most Indian lands, may be the most commonly used technique.

If a tribe decides on new construction, it must determine how the new housing units will be built. One option is the turnkey method in which the tribe solicits bids from private developers to construct the new units and then sells these units to its members. Some tribes may wish to maintain more control over the development process by developing project plans and designs and then contracting out tasks to architects, contractors and other skilled laborers. In some cases, tribal members may actually participate in the development of the new units – this option can sometimes reduce construction costs and help tribal members gain valuable construction skills. At the far end of this spectrum is the sweat equity option, in which the homebuying family actually builds or helps to build the home in which they will live. The labor they spend constructing their home is credited to them in the form of equity.

### Forms of Ownership

NAHASDA allows the tribe to select the form of ownership that best suits its needs. A possible form of ownership is called fee simple title, in which the family owns the home and the non-trust land and there are no restrictions on the ownership of the land. This option is uncommon in Indian country since much of the land is held in trust by the Bureau of Indian Affairs (BIA) for the benefit of the tribe. A more common variation is for the tribe to permit a long term leasehold interest be given to the family – the BIA leases the land to the family for a long period of time (e.g. 25-50 years), but the title for the land ultimately rests with the U.S. government on behalf of the tribe. Another common land ownership type – allotted for individual trust land – may be associated with homeownership. Under this land tenure type, BIA holds the land in trust for the family and the family owns their home on this land.

In instances where families lack sufficient savings to cover the upfront costs of purchasing a home, a lease purchase might offer a viable option. Lease purchase programs such as the old Mutual Help Program allow families to reside in properties as renters with a certain percentage of their rent credited towards their payment on the home. When sufficient funds have accumulated from these rent credits, the family can assume ownership of the home and begin making monthly mortgage payments. Finally, for multi unit structures, families can own shares in cooperatives or condominiums.

Consideration of the above options will help the tribe define goals, and, ultimately, design an effective productive homeownership program.





# Chapter Two

## REGULATORY ISSUES

IHBG funds are extremely flexible grant dollars which are provided to tribes with far fewer “strings attached” than typical federal grant programs. In deciding how to administer a homebuyer program there are a few common regulatory requirements that tribes must follow regardless of which development options are selected. These rules are designed to ensure that funds are used in keeping with NAHASDA’s goal of providing affordable housing for low income Native Americans. Beyond these concise regulatory “musts”, tribes have broad flexibility in designing and administering homebuyer programs. This section examines the key rules affecting homeownership programs – income guidelines, monthly payment limits, per unit costs and resale options.

### INCOME GUIDELINES

In general, homebuyers assisted with IHBG funds must be low income, meaning that their income does not exceed 80 percent of the median income for the area or the nation, whichever is higher. HUD publishes these low income category thresholds each year, by each family size. Thus, if the median income for a family of four in a particular location was \$20,000, the family would be eligible for assistance with NAHASDA funds if its income did not exceed \$16,000 (80 percent of \$20,000). These limits apply only at the time of purchase; families do not become ineligible if their income increases after they have purchased the house.

Under the following exceptions, a tribe may assist families over the 80 percent income threshold:

- ❑ Up to 10 percent of a recipient’s annual grant may be used to assist families whose income falls within 80 to 100 percent of median. Further, if local housing market conditions warrant, tribes may petition HUD to use more than 10 percent of their annual grant amount for families in the 80 to 100 percent of median range.

- ❑ For families purchasing a home through a lease purchase agreement, the 80 percent income threshold applies only at the time the lease was signed – they are not required to be low income at the time that they take title to the home.
- ❑ HUD may establish income ceilings higher than 80 percent of median income if local market conditions, such as prevailing construction costs, warrant such variation.
- ❑ Certain “model housing activities,” that are approved in advance by HUD, are also exempt from the low income requirement.

Even if one of the above exceptions is invoked to provide assistance to families whose income exceeds the 80 percent threshold, those families cannot receive the same level of benefits as low income families. The amount of assistance that non low income families are eligible to receive is determined as outlined below.

### Homebuyer Payments

#### Lease Purchase Agreements

Payment by non low income family =

$$\frac{\text{Income of non low income family}}{\text{Income of family at 80\% of median income}} \times \frac{\text{Rental payment of family at 80\% of median income}}$$

Note that this computed monthly payment need not exceed the fair market rent or value of the unit.

#### Downpayment or Other Assistance

Assistance to non low income family =

$$\frac{\text{Income of non low income family}}{\text{Income of family at 80\% of median income}} \times \frac{\text{Present value of the assistance provided to a family at 80\% of median income}}$$





## MONTHLY PAYMENT LIMITS FOR LEASE PURCHASE

In the case of lease purchase programs, monthly homebuyer payments for units assisted with IHBG funds cannot exceed 30 percent of a low income family's adjusted income. Thus, if a family's adjusted monthly income is \$1,000, their monthly payment cannot exceed \$300. Tribes are free to establish monthly payments below the 30 percent limit and have discretion to decide whether monthly utility payments are included in the monthly payment limit. In cases involving non low income families (see preceding section on Income Guidelines), monthly homebuyer payments may exceed 30 percent of adjusted income.

## RESALE REQUIREMENTS

There are no resale requirements under the NAHASDA program. However, tribes may wish to use this type of provision to ensure the long term affordability of housing units. For example, tribes may want to require that only low income families are

eligible to purchase the house for 10 years, regardless of how many times the house changes hands. These resale requirements would not preclude foreclosure or transfer in lieu of foreclosure to satisfy banks or other lending entities.

## PER UNIT COSTS

In the case of homeownership housing constructed or rehabilitated using IHBG funds, there are limits on the per unit cost of dwelling construction and dwelling equipment (DC&E). These per unit costs are based on the amount needed to construct a moderately designed house and are enforced to ensure that IHBG funds are not used to subsidize excessively luxurious housing.

DC&E limits are published by HUD and vary by geographic region. These limits include all construction costs of an individual unit that fall within five feet of the foundation. Costs for administration, planning, financing, site acquisition, site development more than five feet from the foundation, and utility development or connection are not included in per unit DC&E limits.



## Chapter Three

# IMPLEMENTATION AND FEASIBILITY ANALYSIS

When a tribe has determined its housing goals and developed a model program design, a feasibility analysis must be conducted to determine whether the tribe's goals can be accomplished with the resources it currently has available. In cases involving new construction, the first step is to estimate the costs of constructing new homeownership units. Next, the tribe must decide how to underwrite the project and consider how to match financing methods with the needs and requirements of both individual homebuyers and the project itself. Finally, tribes should investigate the possibilities of leveraging other public and private financing to complement the investment of IHBG funds.

### ESTIMATING CONSTRUCTION COSTS

Before undertaking the development of any new homeownership units the tribe should have an accurate estimate of the costs of the project. This section briefly examines a few common tools for estimating construction costs. For a more thorough examination of the construction process, see the model entitled Construction Issues.

#### Per Unit Limits for Hard Costs

As both a starting point and upper limit, tribes should refer to the per unit costs limits as discussed in Chapter Two. These standards, published by HUD, limit the amount that a tribe can spend per unit. Thus, if a tribe wants to build 10 homes and the per unit limit is \$65,000 per unit, the tribe knows that dwelling construction and equipment costs cannot exceed \$650,000.

#### Interview Local Contractors and Architects

For a second source of cost estimates the tribe should contact local architects and contractors and provide them with preliminary data about the project. With the experience they have acquired by working

on numerous projects, they will be able to provide a rough cost estimate for the housing project. The contractor or architect will usually be willing to offer this service hoping to obtain the contract to develop the project. In order to provide a reliable estimate they will need to regularly engage in building projects similar in scope to the one proposed. They should also be familiar with any special code or standard requirements of the tribe.

#### Square Footage Estimate and Comparable

Real estate developers and appraisers usually use a cost per square foot ratio to estimate projects' development costs in the early stage of the development process. For example, if in your region this ratio is \$60 per square foot for new construction, then a 1,000 square foot unit will cost roughly \$60,000. Tribes can contact real estate professionals or contractors to ascertain this ratio. Again, tribes must be careful interpreting these estimates, keeping in mind any special conditions associated with developing housing on their lands.

### UNDERWRITING THE PROJECT

The next step in developing a program is determining if potential low income homebuyers qualify for a loan. The process of evaluating potential borrowers is called underwriting and involves an objective analysis of the risks associated with a loan. There are three key variables to consider when underwriting a loan for home purchase:

- Credit* – has the borrower exhibited a willingness to repay the debt as measured by his or her past history of paying debts?
- Debt to income ratio* – does the borrower have the ability to repay the debt as measured by the debt to income ratio?



- ❑ *Loan to value ratio* – does the property constitute sufficient value compared to the size of the loan the borrower is requesting to adequately secure the debt?

### Credit

An analysis of credit is an evaluation of a borrower's willingness to repay the loan in question, given the buyer's past history of paying debts. The main tool in analyzing credit is the credit report, a detailed history of past indebtedness, employment, and savings. Lenders obtain credit reports from one of several national credit reporting agencies. Among the items that "raise flags" on a credit report are large levels of existing debt, a poor history of past repayments, and any outstanding judgments, garnishments or liens against the applicant. A few derogatory items will not automatically disqualify an applicant, but buyers should be prepared to explain past difficulties. In some cases the applicant may not have an established credit history from which a credit report can be generated. Tribes or lenders may wish to be flexible and can work with such borrowers to find other means of documenting situations in which the borrower has made regular payments, such as rent and utility payments.

### Debt to Income Ratios

A tribe should compare a borrower's monthly total income to the costs of their monthly housing expenses to determine if there is sufficient income to repay their mortgage. These ratios are often expressed as front end (housing expenses to gross monthly income) and back end (total debt including housing to gross monthly income). In order to apply these ratios correctly, the lender first gathers information on income, assets, liabilities and net worth. In general, the higher these ratios are, the greater the risk of the loan.

### *Housing Expense to Income Ratio*

The monthly housing expense to income ratio (front end) compares the amount of money a borrower pays each month for housing with the amount of his or her stable gross monthly income. Thus a prospective

borrower with a monthly gross income of \$550 facing a \$155 monthly mortgage payment has a ratio of approximately 28%. Acceptable housing expense to income ratios are typically in the range of 28% to 35% depending on the underwriting (or loan) guidelines.

### *Total Obligations to Income Ratio*

The total obligations to income ratio (back end) compares the sum of a borrower's debts and housing expenses with his or her gross monthly income. Total obligations is the sum of the monthly housing expense, the monthly payments on installment and revolving debt that extend beyond ten months, and any monthly alimony or child support payments for which the borrower is responsible. In the example of the borrower with a front end ratio of 28% from above, if that borrower also owed \$65 per month in alimony, the total obligations to income ratio would be 40%. Typical acceptable back end ratios range from 36% to 41% depending on the underwriting (or loan) guidelines.

### Loan to Value Ratios

Loan to value ratios compare the value of the property to the amount that the applicant is borrowing to purchase that property. The value of the property is obtained through an appraisal – a formal evaluation of the property by a trained professional who considers factors such as the home's condition and potential resale value. Thus, if an applicant wishes to take out a loan for \$40,000 on a home appraised for \$42,000, the loan to value ratio is 95%. Typical loan to value ratios for affordable housing lending fall in the range of 90% to 100% depending on the underwriting (or loan) guidelines.

### MEETING HOMEBUYER NEEDS

Ultimately, the tribe needs to decide what type of assistance it will provide to homebuying families. The type of assistance should be tailored to meet the needs of the families that the tribe has targeted for participation in the program. In some instances, families may be able to qualify for private financing with a small amount of assistance from the tribe, while in other cases the tribe may have to act as the



primary lender. This section examines several common financing methods and comments regarding the type of buyer to which they are most suited.

### Downpayment and Closing Cost Assistance

Some families have sufficient income to handle the monthly carrying costs of owning a home, but lack sufficient savings to cover downpayment and closing costs of a private mortgage. Even with very small downpayments, these upfront costs can very easily exceed family savings. For example, consider the purchase of a \$50,000 home with a monthly payment of \$300 that is well within the family's budget. The family plans to make a downpayment of three percent (\$1,500) but also incurs closing costs equal to two percent of the home's value (\$1,000). If the family does not have \$2,500 readily available, it will not be able to purchase the home. In such cases, the tribe may use IHBG funds to help the family afford these upfront costs by providing downpayment assistance while a private lender provides the primary financing. A common program used by private lenders interested in financing homebuyers in Indian country is the Section 184 Indian Loan Guarantee Program. More information about this program is provided in later sections of this model.

Some families may lack sufficient income to afford the full monthly payment associated with owning a home. For example, consider a case in which a tribe constructs a home that it will sell to a family for \$25,000. The family is able to provide a \$2,000 downpayment. The family will need to take out a \$23,000 mortgage. A local bank will offer them a loan with a 30 year term, at 8 percent interest. The monthly payment of \$169 is beyond the \$140 per month that the family can afford to pay. In such cases, the tribe may offer the family assistance, perhaps a \$5,000 grant, which reduces the amount of the loan that the family needs to \$18,000 and lowers the monthly payment to a more manageable \$132.

### Development Subsidy

Sometimes, to encourage private developers to work on tribal land or to reduce the cost of housing units, tribes may choose to use IHBG funds to subsidize the development of new housing. In some instances, the

tribe may offer a developer financing at rates lower than those available on the private market. Other times the tribe may simply provide a grant or deferred payment loan due on the sale of the property. This subsidy is ultimately passed along to the homebuyer in the form of a lower purchase price.

### Direct Lending

Sometimes, due to disinterest, geographic isolation or the low incomes of program participants, private lender financing will be unavailable to tribal members. In such cases, the tribe, upon obtaining approval of the appropriate federal agency, may assume the role of the lender and originate loans to the homebuyer. The terms of a loan offered by a tribe under a federal program will be set by the requirements of the federal program. Acting as the primary lender obligates large amounts of IHBG funds that cannot be used to assist other families.

### Matching Financing Method with Homebuyer and Project Needs

After tribes have determined how best to meet homebuyer needs, they need to determine how to structure this assistance. Should funds simply be granted or is repayment expected? If repayment is expected will interest be charged? Listed below are the most common forms of housing assistance.

- Direct Loan** – A direct loan is a loan which the borrower repays in monthly installments of principal and interest until the loan's principal is fully paid back. For example, a \$10,000 loan with a 20 year term and a 5% interest rate has monthly payments of \$66. At the end of the 20 years, the borrower will have paid back the \$10,000, plus \$5,840 in interest on the outstanding loan.
- Principal Only Loan** – This is a direct loan with a zero percent interest rate. The borrower only has to repay the principal. In the above example, the borrower will pay back only \$42 each month.
- Deferred Loan** – A deferred loan is a financial obligation, like a direct loan. However, the payments are deferred, usually until the borrower sells the home; up to that point, the borrower



does not have to repay any portion of the loan. This type of loan is advantageous when the borrower does not have the income to make any meaningful repayments on a regular basis, but the tribe does not want to sponsor a “give away” program.

- ❑ **Loan Forgiveness** – Loan forgiveness is a feature that can accompany direct or deferred loans. With loan forgiveness, the lender forgives a portion of the loan over time provided that the borrower agrees to uphold some commitment – for example, a promise to keep the house in good condition. Then, as long as the household fulfills its agreement, the lender reduces the amount of the loan. As an example, the tribe might lend the homebuyer \$10,000 but only require the household to pay back \$5,000 in principal provided that it follows a home maintenance program. The remainder of the loan effectively becomes a grant.
- ❑ **Grant** – The simplest form of assistance. The tribe simply gives the homebuyer money for the purpose of purchasing the home.

Each of these methods has their advantages and disadvantages. While grants are the simplest to administer, they are also the most costly because the tribe can never reuse the IHBG funds it gives away. On the other end of the spectrum, interest bearing loans hold the promise of increasing program income but can be extremely cumbersome to administer. In choosing among these methods, tribes should also keep in mind that they can be combined. If, for example, a family is offered \$10,000 in downpayment and closing cost assistance, \$5,000 might be in the form of a deferred payment loan and \$5,000 in the form of a grant.

## LEVERAGING FUNDS

Leveraging – combining IHBG funds with other public and private funds – helps IHBG funds go farther and allows more families to be served. Leveraging is an important concept for financing economic development. If a tribe’s own resources are insufficient to carry out a program, then the tribe must

leverage funds from outside sources, both public and private, to achieve its goals.

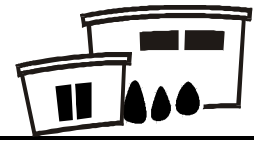
In a sense, IHBG funds can act like a lever, moving larger funding sources into place. Many private and public lenders or donors will not finance a program unless they see that the tribe is also contributing to the process. When a tribe uses its IHBG funds as leverage, it is signaling to outside sources that it is committed to the program, that its judgments can support the investment, and most importantly, that it is willing to share the risks of failure as well as the rewards of success.

## Private Funding Sources

IHBG funds can be combined with private mortgage financing and often made more appealing due to the availability of a loan guarantee or secondary financing from the tribe. Many private financial institutions increasingly are interested in making affordable housing loans. Although these institutions are wary of making mortgage loans on trust held land, they are still taking a greater interest in traditionally undeserved areas due to greater attention to the Community Reinvestment Act (CRA) of 1978. Under CRA, lenders must provide financial and other forms of support to the communities they serve. In addition, both Fannie Mae and Freddie Mac have developed special lending products that allow mortgages issued on trust held land to be sold on the secondary market, making it easier for lenders to undertake lending in Indian country. In addition, NAHASDA authorizes placement of Section 184 loans into Ginnie Mae loan pools.

Lenders also may be willing to make mortgage loans available if those loans are guaranteed under HUD’s Section 184 Loan Guarantee Program. HUD created Section 184 to encourage private lenders to offer mortgages on trust land. If the borrower defaults, HUD covers the lender’s debt and sells the house to an Indian buyer approved by the tribe – it is this guarantee against risk that encourages otherwise reluctant lenders to make loans on trust held land. Section 184 can also be used to purchase, rehabilitate, purchase and rehabilitate, as well as for the construction of new homes (including manufactured and modular homes).





Section 184 does not rely on conventional underwriting standards. It is similar to standard FHA underwriting guidelines but has a lower minimum investment requirement and uses only one ratio (total debt to gross income) to qualify borrowers. The tribe can use IHBG funds to reduce the lender's first mortgage amount by making a grant or deferred payment loan for part of the purchase price, thereby lowering the purchaser's monthly payment and lender's loan to value ratio.

Last, Indian groups may look to local philanthropies, trusts and business groups that express an interest in supporting housing initiatives. These organizations will be more likely to contribute to the program if the tribe has invested IHBG funds, because those funds will serve as an "endorsement" of the tribe's goals and program design.

### Public Funding Sources

There are numerous public sources of funds beyond IHBG dollars, especially at the federal and state level. As with private sources, public lenders will be more willing to contribute to a tribe's housing program if they see that IHBG funds are being used to help insure the program's success.

At the federal level, tribes may apply for Rural Housing Service (RHS) programs, such as Section 502. The U.S. Department of Agriculture sponsors direct lending projects and makes mortgages available on individual allotments, unlike private lenders. Under Section 502, RHS makes loans for up to 38 years at below market interest rates, secured by a deed of trust or leasehold interest on the property being assisted. Another federal source is the Federal Home Loan Bank System's Affordable Housing Program (AHP). AHP funds are competitively awarded grant funds that can be used to write down interest rates or provide a direct subsidy to a project for the purchase, construction or rehabilitation of affordable housing. To learn more about the AHP program, contact the Federal Home Loan Bank that serves your region.

At the state level, many state housing finance agencies (HFAs) offer mortgage credit certificates (MCCs) to support low income homebuyers. MCCs

lower housing costs by giving homebuyers offsetting federal tax credits that subsidize mortgage interest expenses. Many HFAs also administer mortgage revenue bonds, which raise funds to provide lower mortgage rates and closing costs than conventional mortgages. State housing and community development agencies (HCDAs) administer a variety of federal, state, and local initiatives, and increasingly operate Housing Trust Funds that tribes may be able to access as well. Interested tribes should contact their state HFAs and HCDAs for further information.

## SELECTING AND PREPARING HOMEBUYERS

Selecting qualified homebuyers and preparing those families to take on the responsibilities of homeownership is crucial to the success of any homeownership program. The first step is to ensure that potential homebuyers meet NAHASDA program eligibility requirements as outlined in Chapter Two. Second, due to the high demand for such programs, the tribe should set up a fair and open mechanism for selecting homebuyers from the pool of eligible families. Finally, the tribe should establish an effective counseling program that prepares families to assume homeownership responsibilities.

### Selection Criteria

Tribes have a variety of methods available to them to select homebuyers from the pool of NAHASDA eligible applicants. Three common selection methods are:

- "First come, first served,"* in which potential homebuyers are placed on a waiting list and assisted in the order they appear on the list;
- Ranking,* in which potential homebuyers are ranked for assistance based on criteria such as housing need, income, etc.; and
- Lottery,* in which assisted families are selected at random from a pool of eligible applicants.

### *First Come, First Served*

Prospective homebuyers apply for assistance once the program's availability is announced. All eligible



families who apply are placed on a list, and assisted in the order in which they apply. The tribe must keep good records and establish a clear and open process for notifying applicants as to their status. A clearly defined selection process will help all applicants see where they stand on the list. Tribes are encouraged to avoid application procedures that cause families to “camp out” in front of the program office so that they can be the first in line to hand in an application.

### **Ranking**

Ranking allows families to submit applications in a more orderly fashion. Tribes that decide to select homebuyers based on need or suitability for homeownership must ensure that they design a fair, open, and clearly defined process – homebuyers should *not* be selected according to whom they know, because this will cause resentment among those who were not selected, damaging the program’s credibility in the long term. A ranking system using various public criteria could be used – for example, families living in overcrowded or substandard conditions may be given preference. A tribe also may wish to target families with special needs, such as large families or those in which a member has a disability.

### **Lottery**

Using the lottery method, the program staff take all eligible applicants and place their names in a visible container. A staff member or tribal official – or better yet, a disinterested third party – then selects names from the container, at random, at a public ceremony. Like the ranking method, this avoids creating the tension over application submission that “first come, first served,” method causes. Moreover, because the lottery is drawn in public and at random, it also avoids any question of the fairness of the ranking system.

Whatever the method used, the tribe must also be sure that eligible families are qualified to be homeowners. The tribe may wish to consider a number of suitability factors. For example, the tribe may assess whether the family has sufficient income to maintain a home. If the family will be required to take on a mortgage loan in order to purchase the house, the tribe should assess the creditworthiness of the family. Additionally, a tribe may wish to inspect the family’s current residence to assess the family’s

housekeeping skills and general commitment to maintaining their home. After selection for participation in the program, a more thorough examination of a family’s eligibility for homeownership will be made during the homebuying counseling process.

### **Homeownership Education and Counseling**

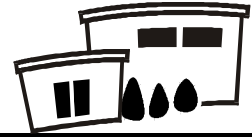
Because many of the families served by a NAHASDA funded program will be first time homebuyers, a key element of any program will be the provision of homeownership education and counseling. Effective homeownership education and counseling can help buyers achieve the independence and responsibilities of homeownership, improve program performance by reducing delinquencies and defaults, and encourage the participation of leveraged resources.

#### **Education and Counseling Elements**

While the two terms are often lumped together, homeownership education and homeownership counseling actually connote different types of activities. *Homeownership education* usually involves a general overview of the homebuying process, covers such topics as basic mortgage finance, and takes place in a large group classroom style environment. *Homeownership counseling* usually involves one on one meetings with a counselor that examines the particular circumstances of the homebuying family. Typical issues discussed in a counseling session are family budgeting and mortgage payment that the family can afford. An effective program will use elements of both techniques.

Topics a tribe/TDHE should include in a homeownership education and counseling program should include the following topics:

- Features of the tribe/TDHE’s homebuyer program.
- Credit counseling and loan repayment.
- Rights and responsibilities of homeownership.
- Household budgeting.
- Home maintenance skills.
- Resale affordability requirements.



**Resources**

Although homebuyer education and counseling are eligible NAHASDA activities, tribes/TDHEs may find a number of other means of delivering these services, including:

- HUD funded nonprofit counseling agencies.
- Courses provided by lenders or real estate professionals in nearby towns.
- Churches or other charitable organizations.

An excellent resource for learning about programs in your region and homebuyer education and counseling techniques in general is HUD's Housing Counseling Clearinghouse, which can be reached toll free at 1-800-217-6970.

**Post Purchase Counseling/Default Intervention**

Many communities have found that additional counseling is necessary to insure that families are

able to stay in their homes. *Post purchase counseling* stresses maintenance to ensure that the home is properly maintained, and budgeting to ensure that the ongoing obligations of a mortgage are met. *Early default intervention* can help prevent delinquencies from snowballing into foreclosure. Given the seasonal nature of many Indian families' income this may prove an especially important element of a homebuyer program. One common standard used by private financial institutions to flag potentially troubled homebuyers is two late payments of greater than 15 days. Whatever indicator is used, default intervention should begin early, before the homebuying family has accumulated an insurmountable backlog of payments and late fees. One typical solution to delinquency problems is the provision of additional short term assistance to help families meet mortgages in times of temporary hardship. Options for providing such assistance include interest free repayment or amortization of the repayment over the life of the loan.



# ***THE NAHASDA DEVELOPMENT MODEL SERIES***

## ***Rental Housing Development***



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# Chapter One

## DEVELOPMENT OPTIONS UNDER NAHASDA

### INTRODUCTION

The last four decades witnessed a phenomenon that was unprecedented in Indian country: a boom in the large scale construction of rental housing units. As a result of the 1937 Housing Act, approximately 28,000 units were provided between 1962 and the end of FY 1997. Concurrent with this, the Native American Housing Assistance and Self Determination Act (NAHASDA) was enacted, rescinding the 1937 Act programs and opening up new programs.<sup>1</sup> Now, with the implementation of NAHASDA, tribes will be able to go even further in addressing the housing needs for low income individuals. While adhering to the minimal requirements outlined in NAHASDA, tribes will take on the responsibility of developing their own written policies governing rental housing. As a result, the new Indian Housing Block Grant (IHBG) program gives each tribe an opportunity to implement those program aspects that will maximize the effectiveness of its rental housing program. The objectives are still primarily the same; like the 1937 Act programs, NAHASDA aims to assist low income Indian families. The method of doing so, however, is now up to the tribe.

### WHAT CAN NAHASDA BE USED FOR?

NAHASDA emphasizes "self determination"; more than in past programs, tribes act as the primary agents in shaping their own rental housing programs. The restrictions are few. In general, as long as low income tenants are not charged more than 30 percent of their adjusted monthly income, more than 90 percent of the IHBG funds are used to assist low

income Indian families, and the tribe's Indian Housing Plan (IHP) complies with NAHASDA and other applicable federal requirements, a rental housing project can be funded. IHBG can thus be used for a variety of activities, such as building or repairing a housing unit – whether it be an isolated home for rent or a group home for recovering substance abusers.

The following types of housing can be financed with IHBG:

- "Clustered" single family rental housing units.** IHBG funded rental projects may be one or more buildings on a single site that are under common ownership, management, and financing.
- Individual single family rentals on scattered sites.** Rental projects may also be scattered on more than one site, but still be under common ownership, management, and financing.
- Multifamily rental housing units.** Rental projects may include a series of family housing units grouped together in the same building structure or complex.
- Single room occupancy (SRO) living units.** SROs are separate units that may or may not have common facilities and sanitary and food preparation areas. For example, an SRO may be a rooming house with common cooking and eating facilities for workers commuting to a remote job site.
- Duplexes, triplexes, and garden apartments.** IHBG funds can be used for different variations of apartment complexes.

<sup>1</sup> Note: If 1937 Act funds were obligated to projects prior to NAHASDA, tribes must continue with the project. If the development is not built, tribes will not receive formula funds under the Formula Current Assisted Stock (see 24 CFR 1000.314).



- ❑ **Group homes or other forms of transitional housing.** These units provide housing for individuals with special needs, such as the chronically mentally ill, recovering substance abusers, and the homeless. A group home usually includes separate bedrooms, but a shared kitchen, dining and sanitary facility.

Similarly, IHBG funds can finance most costs associated with rental housing development, including:

- ❑ **New construction.** Rental homes or apartments can be built; utilities can be developed.
- ❑ **Rehabilitation of existing units.** Dilapidated homes or apartments can be rehabilitated, converted, or demolished.
- ❑ **Acquisition.** Decent homes or apartments can be bought on the market and then rented; and
- ❑ **Acquisition with rehab.** Homes or apartments can be bought, repaired, and rented.

For a more detailed description of eligible and ineligible costs, see Chapter 2.

## WHO CAN DEVELOP A PROJECT?

The developer is the entity that plans and manages the development phase of the rental project. Potential developers include the following:

- ❑ The tribe or TDHE which owns the units;
- ❑ For profit ventures, including sole proprietors and corporations, can develop and operate the housing;
- ❑ Limited partnerships are possible especially when the Low Income Housing Tax Credit is used as an additional subsidy;

- ❑ Nonprofit sponsors, both existing and newly created, can be owners – tribal social service corporations are an example of this type of sponsor; and
- ❑ Joint ventures can put two or more entities, from each of the ownership categories above, together to develop, own, and operate projects.

## FACTORS TO CONSIDER WHEN DESIGNING A RENTAL HOUSING PROGRAM

HUD no longer approves funding on the basis of project selection criteria. As long as the project is submitted as part of the Indian Housing Plan (IHP), and as long as the activities comply with NAHADSA and other federal requirements, the rental housing project can be funded by the tribe's IHBG.

The IHP will help a tribe decide which projects to fund and undertake, taking into account the amount of IHBG funds that are likely to be allocated to the tribe. In examining a potential rental housing program, a tribe thus may want to consider the following factors:

- ❑ **Project need and design.** To what extent will the project address housing needs of the tribe? Is the project feasible while maximizing benefits to low income Indian families?
- ❑ **Planning and implementation.** What are the financial, administrative, and legal actions necessary to undertake the project?
- ❑ **Capacity to implement project.** Does the tribe have the administrative staff necessary to carry out the project?
- ❑ **Leverage of other funds.** To what degree will the project leverage other funding?



## Chapter Two

# ADMINISTRATIVE AND REGULATORY ISSUES UNDER NAHASDA

### RENTAL HOUSING UNDER NAHASDA

The old world of Indian housing authorities and multiple HUD grant programs such as Indian HOME or the 1937 Act development program were made obsolete by NAHASDA. Characteristics of rental housing under the new IHBG program include the following:

- Rental housing units are built and managed with IHBG funds; NAHASDA terminates the housing assistance that was provided under the 1937 Act.
- The housing is managed by a tribe or its tribally designated housing entity (TDHE). The tribe may designate a TDHE to manage its housing.
- Rental housing programs can be funded with IHBG dollars if the projects are submitted as part of the tribe's annual Indian Housing Plan (IHP), and the IHP is determined by HUD to be in compliance with all applicable requirements.
- Rental housing programs must be geared to Indian families that are low income (less than 80 percent of median income) *at the time of initial occupancy*. Certain restrictions are placed on providing housing for non Indian families and non Indian families.
- NAHASDA establishes maximum rents for low income Indian tenants; monthly rents cannot exceed 30 percent of monthly adjusted income.

Under NAHASDA, each tribe develops its own written policies governing rent payments, including:

- How monthly rents are determined;
- Program eligibility, admission, and occupancy requirements; and

- How NAHASDA assisted rental units will be managed and maintained.

However, these policies must comply with the requirements outlined in NAHASDA and the implementing regulations of Part 1000. This chapter presents an overview of the requirements outlined in NAHASDA, as well as other federal requirements governing rental housing activities assisted with IHBG funds.

### DEFINITION OF "FAMILY" UNDER NAHASDA

Under NAHASDA, the definition of "family" is broad. A "family" includes, but is not limited to:

- A family with or without children;
- An elderly or near elderly family;
- A disabled family; and
- A single person as determined by the tribe.

### LOW INCOME ELIGIBILITY REQUIREMENT

NAHASDA aims to provide assistance primarily for low income Indian families, but recognizes a tribe's need to house other persons as well.

To qualify as an affordable housing activity eligible under NAHASDA, each dwelling unit must be made available to an Indian family that qualifies as low income at the time of occupancy. Under NAHASDA, a "low income family" is one whose income does not exceed 80 percent of the greater of:

- The median income for the Indian area; or
- The median income for the United States.



The tribe must maintain documentation verifying that the family is income eligible at the time of admittance to the rental program.

### WHEN LOW INCOME TENANTS' INCOME INCREASES

If low income Indian tenants in a NAHASDA funded rental project experience increases in income, they are still eligible for the program. In such cases, tribes may raise their rents when renewing their leases, as long as the rental payments do not exceed 30 percent of their adjusted family income. It is thus important for a tribe to update and maintain documentation verifying the tenants' annual income.

### TENANTS WHO ARE NOT LOW INCOME

Families who do not qualify as "low income" at the time of admittance can participate in a rental housing program only if it is part of a model activity approved by HUD.

### TENANTS WHO ARE NON INDIAN

Families who are non Indian can participate in a rental housing program only if:

- The tribe determines that the presence of the family is essential to the well being of the tribe, and
- The family's housing needs cannot be met without such assistance.

## ESTABLISHING RENTS

### Low Income Families

- Maximum rent:** Cannot exceed 30 percent of the family's monthly adjusted income.
- Minimum rent:** None.

### Non Low Income Families

- Maximum rent:** None.
- Minimum rent:** Cannot pay *less* than:

$$\frac{\text{Income of non low income family}}{\text{Income of family at 80\% of median income}} \times \text{Rental payment of family at 80\% of median income}$$

### Non Indian Families

- Maximum rent:** None.
- Minimum rent:** None.

It is important to remember that the *actual* rents a tribe charges may need to differ from the *maximum* and *minimum* rents it is allowed to charge. Maximum rents, for example, may not be affordable to those who need housing the most, or may not be high enough to support a project financially. *Actual* rents charged should have a relationship both to what people can afford and the income needed to make a project financially feasible.

Exhibit 2.1 summarizes the requirements for different types of rental participants.



Exhibit 2.1: Requirements for Different Types of Rental Participants

Participant	Maximum Rent	Minimum Rent	Secretarial Approval Required
Low income Indian Family	30% or less of monthly adjusted income.	Determined by the tribe.	No.
Non low income Indian Family	Determined by the tribe.	Less than:  (Income of family/ Income of family at 80% of median income) x (Rental payment of family at 80% of median income.)	Yes, non low income families can be assisted with rental housing only if part of a model activity approved by HUD.
Non Indian Family	Determined by the tribe.	Determined by the tribe.	No, if the presence of the family is essential to the tribe, and if housing needs cannot be met otherwise.

## UTILITY COSTS

The tribe can decide whether or not to include utilities in rental payments; however, in either case, it should do so consistently and include the definition of utilities in its written policies.

The tribe may thus want to ask the following questions:

- How much will the utility costs be for the rental project?** Utilities vary according to area and size of home, and the differences may substantially affect rental payments. For example, water utilities for a four bedroom home may cost \$80 a month, but only \$50 a month for a small home. Or a propane heating system for a four bedroom home might be \$150 a month for a unit in Alaska, but only \$40 a month for unit in Oklahoma. Forecasting utility expenses generally requires brief contacts with utility providers, calculation of percentage rate changes, and then application of such rate changes to prior year expenses for each type of utility.
- How much does the tribe benefit from excluding utilities from rental payments?** In some areas, the 30 percent maximum rent may barely offset the administrative fees involved in a

project. In such cases, the tribe can at least reap some extra needed income by charging utilities on top of the maximum rent. Or, the tribe may determine that efficient and environmentally sound operation demands that tenants' use of utilities be disciplined by cost, meaning that utility users should pay utility bills.

- How much does a tenant benefit from including utilities in rental payments?** In contrast, a tribe must be careful not to impose an undue hardship on low income tenants. In areas where utilities are unusually large, or median income is unusually low, including utilities in the maximum low income rents may provide extra housing assistance to those who need it most.

## DEVELOPING OCCUPANCY, ADMISSION AND RENT PROCEDURES

Keeping in mind the requirements outlined above, the tribe decides on the target population it intends to serve and establishes the occupancy, admission, and rent payment requirements.

There are four steps in determining occupancy and rents:

- Step One – Define and survey the target population.** Will the units be for singles, larger





families, or persons with special needs, such as elderly, handicapped, etc? NAHASDA funded programs should target low income Indian families. In a small community, all potential renters should be known individuals and families. Do they qualify as low income? What rents can they afford?

- ❑ **Step Two – Identify available housing resources in the area.** What housing resources are available and affordable to the targeted population? Is there a need for the proposed project? For NAHASDA funded projects, collect and analyze the data required in the Indian Housing Plan (IHP).
- ❑ **Step Three – Establish the rent structure.** NAHASDA specifies only maximum rents for low income Indian families. (Refer back to Exhibit 2 1.) Given the limit on the maximum rents that may be paid by low income Indian families, rents still must be low enough to be affordable to the target population, but sufficient to support the project financially. What actual rents will the tribe charge?
- ❑ **Step Four – Establish tenant selection and admission procedures.** How does the tribe move from marketing the project to leasing up the first available units? Who or what groups are in greatest need of assistance, and how should they be prioritized? The tenant selection process should incorporate criteria that:
  - Are consistent with the purpose of providing housing for low income Indian families;
  - Adhere to NAHASDA and other federal requirements;
  - Select tenants from a written waiting list in a manner consistently applied by the tribe (i.e. chronological order, elderly family, etc.); and
  - Give prompt written notification of rejection and the grounds for that decision.

## ELIGIBLE AND INELIGIBLE COSTS

NAHASDA can be used to finance most costs associated with rental housing development, including:

- ❑ **Dwelling Construction and Equipment Costs.** The amount of construction funds that can be spent per unit is limited by HUD. NAHASDA defines “dwelling construction and equipment costs” (DC&Es) to cover all construction costs of an individual dwelling within five feet of the foundation. This limit does not affect other associated costs with developing the unit, such as planning, site acquisition, water and sewer, demolition, and financing. The DC&E amounts are regularly published and updated by HUD.
- ❑ **Administrative and planning costs.** Administrative and planning costs directly related to carrying out the rental housing project can be determined to be eligible costs of that activity or considered to be administrative and planning costs. If the tribe charges the costs to administrative and planning costs, it may use up to 20% of its IHBG funds for that purpose. Any amount over 20% must be approved by HUD in the IHP.
- ❑ **Acquisition costs.** These may include the cost of purchasing land, including nontrust land outside tribal lands, or buildings directly related to the project.
- ❑ **Relocation costs.** NAHASDA can pay for temporary or permanent relocation if individuals and businesses must be moved to carry out the project. Relocation payments must be made in conformance with the Uniform Relocation Act (URA).
- ❑ **Environmental review costs.** Any costs related to the carrying out of required environmental review and environmental assessments of rental housing programs are eligible under NAHASDA.

Exhibit 2.2 below lists the primary eligible and ineligible costs associated with NAHASDA funded rental housing projects.



**Exhibit 2.2: Primary Eligible and Ineligible Costs Associated With NAHASDA**

Eligible Costs:	Ineligible Costs:
<ul style="list-style-type: none"> <li><input type="checkbox"/> Rental housing assistance to low income Indian families</li> <li><input type="checkbox"/> Up to 20 percent of IHBG funds spent on administration and planning</li> <li><input type="checkbox"/> Staff and overhead costs directly related to the rental housing project</li> <li><input type="checkbox"/> Costs associated with performing the environmental review and environmental assessment of rental housing projects</li> <li><input type="checkbox"/> Temporary and permanent relocation costs</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Housing assistance to non low income families unless part of a model activity approved by HUD</li> <li><input type="checkbox"/> Administrative and planning costs that exceed 20 percent of the annual grant amount unless approved by HUD</li> <li><input type="checkbox"/> Construction costs that exceed the DC&amp;E limits set by HUD</li> </ul>

**OTHER FEDERAL REQUIREMENTS**

The following is an overview of federal requirements that are applicable to rental units assisted with NAHASDA:

**Relocation:** If individuals or businesses must be moved to carry out a NAHASDA assisted rental project, tribes must comply with the requirements outlined in the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (URA) and the implementing regulations of 49 CFR part 24. The requirements include:

- Minimizing displacement when planning projects;
- Providing relocation assistance and services to displaced persons, whether temporarily or permanently relocated;
- Providing notices to tenants of imminent relocation projects and assistance in a timely manner;
- Notifying potential tenants of any planned relocation projects that may affect their lease; and
- When required, securing HUD approval on purchase price and appraisal value before acquiring property.

URA defines “displaced person” as any person that is displaced as a direct result of rehabilitation,

demolition, or acquisition for a project assisted with federal funds. The costs of required relocation assistance is an eligible NAHASDA project cost. For further guidance on relocation requirements, review HUD Handbook 1378 (Tenant Assistance Relocation and Real Property Acquisition.)

**Davis-Bacon:** The payment of Davis-Bacon wage rates to laborers and mechanics in the development of affordable rental housing is required under NAHASDA. Minimum wage rates apply to maintenance laborers and mechanics employed in the development of rental housing.

Thus, for all general contracts that exceed \$2000:

- Wage rates paid to laborers cannot be less than the wages prevailing in the locality, as predetermined by the Department of Labor under the Davis-Bacon Act; and
- Contracts that exceed \$100,000 must be paid in conformance with the overtime provisions in the Contract Work Hours and Safety Standards Act.

For more guidance on applicable labor standards, review HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs).

**Environmental Review:** An environmental review must be completed before any rental housing project is begun, although it does not need to be completed before the tribe submits its IHP outlining the activity.



The tribe can also choose whether the tribe or HUD will perform the review. Any related expenses are covered under NAHASDA (subject to HUD staff and fund availability).

**Flood Insurance:** NAHASDA funds cannot be invested in a project located in a flood hazard area unless flood hazard insurance can be obtained and maintained. The Federal Emergency Management Agency (FEMA) publishes maps identifying flood hazard areas. Flood insurance requirements are outlined under the Flood Disaster Protection Act of 1973.

**Lead Based Paint:** For most units constructed before 1977, lead based paint requirements apply to NAHASDA assisted rental housing units. For more guidance on lead based paint requirements, review the HUD publication, "Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing."

**Conflict of Interest:** In general, tribes must ensure that no one who participates in the decision making process regarding a rental housing program gains a personal or financial benefit from the program, aside from salaries or related administrative costs, unless the person or family is eligible under low income guidelines for the program under the tribe's rental policies.

**Indian Preference Requirements:** NAHASDA requires that contracts and grants awarded by the tribe must offer preference to Indians in the award of contracts, and in training and employment opportunities. The preference requirements are outlined in Section 7(b) of the Indian Self Determination and Education Act.

**Local Cooperation Agreements:** If the NAHASDA assisted rental housing project will be located within the jurisdiction of a governing body other than the tribe, the tribe must first enter into a local cooperation agreement with that body before expending NAHASDA funds.

**Tax Exemption:** The rental housing project must be exempt from any taxes imposed by the state, tribe, city, county, or other political subdivision.

**Non Discrimination:** Activities carried out under NAHASDA are subject to certain non discrimination requirements:

- Age Discrimination Act of 1975 and HUD's implementing regulations in 24 CFR Part 146;
- Section 504 of the Rehabilitation Act of 1973 and HUD's regulations at 24 CFR Part 8;
- Title VI of the Civil Rights Act (Title II of the Civil Rights Act of 1968) (applies to federally recognized Indian tribes that exercise powers of self government); and
- Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 (applies to Indian tribes not covered by the Indian Civil Rights Act; however, Title VI and Title VIII do not apply to actions by a tribe under Section 201(b) of NAHASDA).



## Chapter Three

# IMPLEMENTATION AND FEASIBILITY ANALYSIS

### INTRODUCTION

"Make your mistakes on paper!" This is the key to any successful rental development project. This chapter can help a tribe to develop a project so that the potential for mistakes later – when they count – is lessened. The steps typically involved in developing a rental project are listed below. They are grouped into the five stages a project moves through when it progresses from concept to reality. (Note: about 75 percent of the steps involve planning, not construction or rent up):

- Development Concept Stage.** An idea for the project is explored.
- IHP Submission Stage.** Planning proceeds in earnest. Future tenants are identified. The project is found to be feasible and financing is committed.
- Closing Stage.** Final construction plans and budgets are prepared. Real estate purchase (if any) is closed.
- Construction Stage.** The project is built or rehabilitated. Rental units are leased.
- Property Management.** An experienced management agency ensures that the property is rented in compliance with all requirements and that the property is adequately maintained.

Housing development projects are like baseball games. You can't say you've won until the last out. With a development project, completion of construction and a successful rent up are the winning runs. But a development project can get rained out in any inning. More than a few rental housing developers have found a good site, made good plans, lined up financing, and still not built their projects.

For example, what if lumber prices are 30 percent higher than expected when the project is bid out? What if there is not enough financing and no more can be found? Unfortunately, the project may no longer be feasible.

### PLANNING TASKS: MANY ARE DONE OVER AND OVER

During the project concept development stage, some tasks are done over and over, each time with more care. Construction plans move from simple "concept plans" to "schematic plans" to "final working drawings" as the project progresses from concept to the start of construction. They are all plans of the same building or buildings, but each is completed with additional care and detail.

Financing is similar. Budgets move from quickly sketched out numbers to detailed project "pro formas" that are reworked again and again, usually on computer spreadsheets. (Pro formas are forecasts of sources and uses of funds, and income and expenses.)

### PLANNING CRITERIA

A tribe should answer the following questions during the planning process and in their Indian Housing Plan application:

- Need.** Do surveys or other data indicate overcrowding, substandard housing, and a need for new rental units? Do the number and types of units proposed meet the need?
- Demand.** Are there long waiting lists for adequate housing in the area? Are families with real needs willing to move or upgrade the property if they receive financial assistance?



- Financial feasibility.** Does a survey indicate an ample pool of qualified people who want to rent the units, at the rents proposed? Will the project hold its own financially?
- Administrative capacity.** Are qualified personnel or consultants available to plan and implement the project?
- Leverage of other funds.** Do IHBG funds leverage conventional financing, state funds, tribal funds, private contributions, mortgage insurance, or other financial support?

## FORMING AN INITIAL CONCEPT

The idea for a tribal rental development project begins as a general concept of what should be built, acquired, or rehabilitated. Certain tribal members may need housing but do not qualify for a NAHASDA funded rental housing program or have a low priority on the waiting list. Someone floats an idea for a project – perhaps someone in a housing authority or social service agency.

At this stage, funding and staffing needs are minimal. An experienced tribe/TDHE may have staff to explore the idea. A consultant may provide free advice over the phone. The project's advocates can do some basic research. A building or some empty homes may be ideal for reuse.

There is no "right" way to get an idea for a rental project. In all cases, the staff will need to:

- Conduct a needs study;
- Identify and investigate a site for the project;
- Develop concept plans for construction or rehabilitation;
- Develop an initial financing plan;
- Get community and tribal support; and
- Identify the development team.

## Conduct a Needs Study

A tribe can use IHBG funds to address unmet needs for rental housing. Most tribal leaders and housing

professionals have a sense of their tribal members' unfulfilled housing needs. But how can this "sense" be verified and housing needs better understood and demonstrated? Data is required to verify needs in the Indian Housing Plan, and may be needed to verify needs to funders. The tribe will need to document shelter needs, both in terms of types and sizes of housing needed. An actual survey of what tribal members need and want in rental housing is essential in determining if a project concept makes sense. For example, assume that the tribe developed a concept for building two bedroom rental apartments and conducted a survey. The tribe would not want to proceed beyond the concept stage if the survey indicated that most of the families wanted to purchase (not rent) three and four bedroom single family homes.

The tribe should show that housing needs translate into housing demands. Demand is less understood and harder to document. Demand refers to the willingness and ability of people to buy a product at a specified price. Thus, to measure demand, a tribe must have a specific product in mind.

Demand for rental housing depends in large part on location, neighbors, type of construction, layout, rents, utility costs, and other factors – i.e. what the housing is going to look like and cost. Potential tenants cannot give you an informed answer without this information.

Many people, for example, would rather live in substandard housing they own and pay little or nothing for, than pay rent for a new home or apartment. Many people prefer isolation to clustered housing.

In a large city, rental demand is determined by market studies of rent levels, vacancy rates, desirable areas, etc. Statistical assumptions are then based on trends among large numbers of renters.

In smaller communities, like most tribal settings, rental market studies cannot be statistical. It is essential to have a project concept, have a site in mind, talk to people who need housing, and see if they want to rent it.



## Identify and Investigate a Site for the Project

A cardinal rule of real estate development is: there is no project without site control. Site control means ensuring that the entity that proposes the development (the tribe, TDHE or other developer) owns or has leased the project on a long term basis, or that the developer has an option or purchase contract for the property.

Site control is ideal, but not mandatory, at the concept stage. There must be, however, at least a reasonable likelihood that the property will be available.

For any site (land or buildings), surveys should be completed at this stage to determine:

- Legal status of the property.** Who owns it or has rights of use? Are water rights an issue? If the property is not on tribal land, what state or local land use controls apply? Is there a site survey that will show whether easements have been granted for roads, gas lines, power transmission lines, etc. – in other words, places where nothing can legally be built?
- Infrastructure.** What road, water, sewer, electrical, and telephone service is available or will be available in the near future?
- Determination of historical preservation requirements.** If the proposed project is an historic structure or in an historic district, special rules may apply to construction and use. These could affect the costs of rehabilitation.

Refer back to “Other Federal Requirements” on page 9 for applicable requirements to consider at the survey stage, including:

- Environmental review issues;
- Flood hazard issues;
- Relocation and displaced person issues; and
- Lead, asbestos and other hazards that may accompany the site.

Another important site related issue is: Will the project be on or off tribal land? This affects how the

rental housing can be marketed and who can occupy it. Tribes may use IHBG funds to acquire, build, or rehabilitate housing off tribal lands. In some instances, there is a great need for off site housing: for example, many tribal members may work in an urban area during the week, and return to their families on the reservation for the weekends.

## Develop Concept Plans for Construction or Rehabilitation

Once a site is identified, the next step is to determine what construction or rehabilitation will be needed in general terms. At this stage, concept plans will be simple. Plans for new construction, for example, may only show floor plans and how the building is sited on the land. These types of plans can be prepared by design professionals at a low cost.

For repairs to an existing building, a preliminary work write up usually suffices. If structural or major mechanical repairs are indicated, input from a design professional will be needed. The need for handicapped accessibility in the units should also be factored into design decisions.

NAHASDA does not dictate the style of architecture – only the amount of funds that may be spent on the construction and equipment costs of the unit. (See the explanation of “DC&Es” on page 6.) Depending on the tribe’s preferences, designs can emulate traditional Indian housing or other styles.

## Develop an Initial Financial Plan

Once concept plans have been prepared, site improvement and building construction costs can be estimated. Estimates can be obtained from contractors or engineers, or be based on the tribe’s or TDHE’s past construction experience. Knowing these costs is critical to developing an initial financial plan and getting a general idea of whether the project will be financially feasible.

Depending on the size of the project, federal wage requirements under the Davis-Bacon Act could affect construction costs. (See “Davis-Bacon” on page 7.)





The financial plan for a rental development project consists of pro formas – estimates or forecasts of the project's finances. There are two types of pro formas:

- Project pro forma** – lists sources and uses of development funds. It includes hard costs (land, construction) and soft costs (fees, interest, holding costs, etc.) and also shows potential funding sources for the project, which at this stage may be far from certain; and
- Operating pro forma** – shows the income (rents) and expenses (maintenance, management, utilities, etc.) of the project once it is up and operating.

### Get Community and Tribal Support

Many well conceived affordable housing projects are tabled or set aside as a result of community opposition. However, there is a general sentiment against rental housing in many Native American communities. Off tribal land, a perfect site for affordable rentals may generate strong opposition by neighbors who fear the project will reduce property values or have other negative impacts.

These problems can sometimes be overcome by having a good project concept and explaining that concept, early and often, to all interested parties.

Because of the high value many Native Americans place on homeownership, any rental housing project by a tribe is likely to have a very specific purpose that will be supported by tribal leaders and members.

### Identify the Development Team

Once a project concept passes all the stages described above, there is one last question to answer: Who will carry out all the major tasks needed to complete the project successfully? This is usually an assemblage of organizations and individuals referred to as the development team.

A typical development team for a rental development project is composed of the owner/developer, an architect/engineer or rehabilitation specialist, the builder, a property manager, an attorney, an

accountant, the tribal government, and a project manager.

### DETERMINE SITE FEASIBILITY

By the time it completes the concept development stage, a tribe should have a fairly firm idea for a project. The next stage in planning is to determine feasibility. The stakes are often high with a rental project – hundreds of thousands or even millions of dollars may be at risk.

The major risks are:

- Will the project get built within the budget?
- Will the project get rented up?
- Will rents forecast in the pro forma be collected? Will the property be well managed?
- Will management maintain federal compliance?

With proper planning, financing, and management, a tribe should be able to answer all of these questions in the affirmative. The process of getting these answers for a rental development project is called a feasibility analysis. A checklist can serve as a guide for determining whether the concept for a specific project is feasible.

At the development concept stage, the proposed project developer has (or has secured) site control, or there is a reasonable likelihood of this occurring. At this stage site control is a necessity. Evidence of site control can include:

- An allotment of tribal property or pledge of an allotment, conditioned on funding approvals;
- A purchase option or sales contract for nontribal property;
- A deed or long term lease to the property, if it is already owned or leased by the project developer.

At the concept stage, some site investigations should have been performed. Now is the time to conclude these investigations.





- Site requirements.** If there are serious questions about whether the site is buildable, or meets site related federal requirements, experienced professionals should provide clear answers, including the estimated costs of meeting the requirements (e.g., tenant relocation or removal of hazards).
- Infrastructure.** The developer must be certain that adequate roads, water, sewage disposal, and electrical power will be available.
- Land survey.** Unless a recent survey has been completed for a property, it may be necessary to contract for one now. Particularly on nontribal land, this survey will include the exact boundaries of the property, easements, and other factors that could affect the building plan.

## COMPLETING SCHEMATIC CONSTRUCTION PLANS

Schematic drawings are created at this stage. These drawings show floor plans and enough information to make reliable cost estimates, but they are still not complete enough to bid out. If moderate rehabilitation is involved, final work write ups should be completed at this stage.

NAHASDA does not require use of a specific housing standard. However, construction plans should conform to:

- HUD Section 8 Housing Quality Standards (if no other standards are available);
- Local or state land use and building requirements, and the local cooperation agreement, if the project is not on tribal land;
- A tribal rehabilitation standard, if the project involves rehab
- HUD's Cost Effective Energy Standards, if substantial rehabilitation is involved; and
- The CABO Model Energy Code, for any new construction.

Other issues that should be addressed at this stage include:

- A plan for abatement of any environmental hazards, such as lead, radon and asbestos;
- Design features to comply with federal fair housing (disabled access) requirements; and
- Incorporation of traditional materials, siting, and layouts of the housing.

Input from community members and potential tenants is also very important at this stage.

## ESTIMATING CONSTRUCTION COSTS

Remember that the amount of IHBG funds that may be spent on the construction costs of any unit is capped by the Dwelling Construction and Equipment Costs. (Refer back to page 6 on DC&Es.) It is thus important that plans be sufficiently detailed by this stage to make construction cost estimates. These estimates can be prepared by an architect, engineer, or professional estimator. Costs per square foot from a recent project are a reliable basis for cost estimates, if the proposed rental housing is identical in design and similar in number of units.

If an all new design or rehabilitation is involved, however, cost estimates should be based on takeoffs from the plans. Takeoffs are the conversion of building plans into a list of materials, quantities, and labor hours required.

Until construction bids or final cost estimates are received, a construction contingency line item should be put in the estimates. This line item should amount to at least 10 percent of construction costs.

## ESTIMATING NONCONSTRUCTION COSTS

This stage or project planning can require expenditures for the following kinds of costs:

- Options or purchase contracts.** Fees or earnest money may be required if nontribal land is being acquired.



- Legal work.** This may be required for preliminary research to look for possible problems with land title, water rights, etc.
- Architectural work.** Normally, project developers do not invest in full working drawings until there is every likelihood that the project will be funded and built. However, "concept" plans will be needed in order to get good cost estimates.
- Consultant costs.** Although many consultants will work for a fee contingent on the project being funded, certain minimum costs for time, travel, and other expenses may have to be paid at this stage.
- Survey and appraisal costs.**
- Land costs.** May be required if nontribal land is being acquired.

The estimated total amount of these expenditures should be worked into a soft costs budget. In addition to the possible costs above, this budget will typically include:

- Developer fees.** The project developer may charge reasonable fees. If the project developer is a tribe/TDHE, they can charge legitimate development expenses, but cannot profit from the NAHASDA work.
- Construction period interest.** This only applies if a construction loan is involved.
- Holding costs.** These include real estate taxes (if applicable), insurance, site utilities, site security, etc. incurred during the construction period.
- Real estate taxes.** These include transfer taxes, and other taxes and assessments that must be prepaid (may apply only to nontrust land).
- Development contingency line item.** Until all soft costs are verified, an approximate 10 percent contingency on these costs should be maintained in the budget.

- Administrative costs.** NAHASDA allows tribes to charge administrative and planning costs directly related to a rental project to that activity. Alternatively, tribes may charge these costs to administration and planning. If this option is chosen, tribes may not exceed the 20% annual cap on such costs, unless approval is granted by HUD. (Refer back to "administrative costs" on page 6.)

## CALCULATING PROJECT FUNDING NEEDS

How do the tribe and the developer determine the IHBG funding needs of a project? These are the steps involved:

- The net operating income and the terms of available conventional financing determine how much conventional financing (if any) the project will support. For example, higher project income and lower interest rates will allow for a larger conventional loan, and vice versa. Little or no net operating income will mean that the project needs 100 percent subsidy financing from NAHASDA and/or other sources. Lenders will want to see net cash flow equal to 10 to 20 percent of the debt service amount, as an extra financial "cushion" for the project.
- Once the amount of potential conventional financing (if any) is determined, this is subtracted from the total uses of funds on the previous pro forma. The result is the amount of additional funding that the project needs. The IHBG funding or subsidy (in this method of calculating it) is a grant or loan for which payment is deferred at least until the conventional loan is paid off.

There are other, more complicated ways to calculate a subsidy amount. For example, if the tribe wanted to invest IHBG funds in a project with a 1 percent interest, repayable loan, some of the debt service would go to paying off that loan. As a result, the amount of the potential conventional financing would be reduced.



For tribes considering first time projects, the deferred payment loan subsidy is recommended because of its simplicity and high leverage of conventional financing.

## **IDENTIFYING POTENTIAL TENANTS**

At this stage it is necessary to create a marketing plan. For small tribal communities, it is strongly recommended that potential tenants sign a letter of interest in renting the housing before the tribe submits the IHP. In addition to these letters, the marketing plan should identify other means for recruiting tenants – such as advertising, public service announcements, letters to public housing tenants, etc.

Marketing, therefore, should start in earnest at this stage. The site, the floor plans, and the rents are all known. This is the time to sign up eligible tenants!

## **GETTING AN APPRAISAL**

Conventional financing sources will require an appraisal to ensure that the value of the property after construction well exceeds the loan amount. The appraiser will require detailed architectural plans and financial pro formas to determine the future value of the project.

## **GETTING CONDITIONAL FUNDING COMMITMENTS**

Approval of financing by outside sources is an achievement, but it does not mean the funding sources are necessarily ready to close their loans. Many funding approvals are conditional commitments of funding. Typical conditions include:

- Completion of working drawings;
- Getting construction bids that fall within the budget; and
- Getting final legal approvals (such as building permits).

## **CLOSING THE FINANCING**

“Closing the financing” means performing all the tasks necessary for the tribe to sign grant and loan agreements, start construction, and draw down funds.

If land or buildings are being purchased, these tasks are also necessary steps for the real estate closing. At this closing, the project developer takes title to the land and/or building. Financial and real estate closings usually occur at the same time.

The tasks associated with this phase of a project fall into two categories – closing and construction. Closing tasks include creating working drawings for construction, making final pro formas, getting legal approvals, closing financing, closing the purchase of the property, and beginning the process of leasing units. Construction tasks, some of which will occur simultaneously with closing tasks, include:

- The start of construction;
- Site inspections;
- Drawing down funds and making payments;
- Completion of leasing arrangements;
- Ensuring site security;
- Making punch lists; and
- Completing construction.

## **CREATING WORKING DRAWINGS FOR CONSTRUCTION**

For new construction and substantial rehabilitation projects, final working drawings are created during this stage. With new construction, final working drawings take much more time and are more expensive to produce than the earlier schematic plans. Thus, final working drawings are usually only prepared once firm financial commitments for the project have been obtained. If the project involves only moderate levels of rehabilitation, final work write ups must be completed by this time.

In either case, the final plans should include all the information required for a builder to bid on the project. If a tribal agency's workforce will construct the units using force account construction, the project will not be bid out or only portions will be bid out. Working plans will still be needed for that agency to perform final cost estimates, to ensure that the project can be built within budget.



## REQUESTING AND AWARDING BIDS

A decision must be made on how to bid out the construction. Remember to take into account NAHASDA's procurement and Indian preference requirements. (Refer back to "Indian preference requirements" on page 8 and 24 CFR Part 85, 24 CFR 1000.42, and 1000.48 through 1000.54.)

At a minimum, bid packages must include:

- Construction plans
- Contracting requirements
- NAHASDA and other federal requirements
- Tribal requirements

## DEVELOPING FINAL PRO FORMAS

When the bids that come in are higher or lower than expected, the project budgets/pro formas may need to be completely reworked. If budgeted contingency funds are insufficient, high bids can make the project unfeasible.

At this point, it is critical to distinguish between three kinds of budgets, how they interrelate, and who is responsible for them.

### Construction Budget

This budget usually includes construction costs and related costs such as building permits, site security, and construction management fees. Creating and monitoring this budget is the responsibility of the architect or owner's representative.

### Project Pro Forma

Typically, this budget is created by the project manager long before this stage in the project. The project pro forma tracks total development costs. It may only have one line item for construction costs, and will focus more on such soft costs as architect's fees, construction period loan payments, legal costs, etc. In some projects, these costs are minor and easy to control. In others, overruns of soft costs can ruin the financial feasibility of a project.

## Operating Pro Formas or Sales Forecasts

Rental projects have operating budget forecasts for rents and expenses. "For sale" housing will have proceeds of sales forecasts. Both are created by the project manager and can be affected by changes in construction costs. For example, if higher than expected costs require a larger loan and bigger monthly payments for the project, rent or sales prices may have to increase.

## GETTING LEGAL APPROVALS

At this stage, all final legal approvals to build and occupy the project must be in place. These will include:

- Rezoning or zoning vacancies (if required and presumably only if nontribal land is involved)
- Site plan approval, if required; and
- Building permits, water permits, and sewer discharge permits.

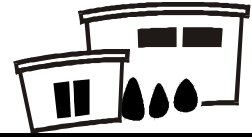
## CLOSING THE FINANCIAL AND REAL ESTATE PURCHASE

Preparations for these closings may require legal assistance, especially if conventional financing and complex development approvals are involved. The developer is normally responsible for costs of preparing and recording deeds, as well as transfer taxes, if any.

## LEASING THE RENTAL UNITS

At this point, projects in smaller communities should have lists of qualified tenants who want to live, and afford the rents, in the new rental housing. At the close of financing, it is advisable to sign leases with prospective tenants, contingent on completion of construction.

In projects in larger market areas, where demand is known but tenants have not been identified, the marketing plan serves as the guide to renting up the project.



## MANAGING CONSTRUCTION TASKS

Construction usually begins when the developer/owner issues a notice to proceed. The architect or other construction professional employed by the project owner will make periodic inspections to ensure that the work conforms to the plans. If no architect is involved, this person is sometimes called a clerk of the works or owner's representative.

Construction payments or "draws" and change orders are usually made only on approval by the authorized owner's representative – the architect or other professionals. Most contracts allow for withholding payment for 5 to 10 percent of the work as an incentive for the contractor to finish the job. That representative is responsible for maintaining construction accounts of all funds drawn and funds remaining, change orders, use of contingency funds, and retainage.

The builder is usually responsible for site security, i.e., ensuring that no damage or theft occur, and for arranging code compliance inspections by all appropriate agencies. If the architect or other design professional created plans that conflict with building or zoning ordinances, responsibility for correcting those problems falls to that person or firm.

At this stage, the owner or project manager will have some involvement in construction. He or she will typically co approve change orders, constantly review the construction budget, and help resolve dispute with contractors.

But the owner or project manager will also have responsibilities unrelated to construction. These include:

- Tracking total development costs versus the project budget;
- Ensuring that sufficient funds remain to pay all construction and nonconstruction costs;
- Maintaining required reporting and good communications with funders; and
- Leasing the housing – or ensuring that someone else does.

When construction is completed, a punch list of work items that must be completed or corrected before the job is finished and occupancy can take place is prepared. When these items are completed, the owner's representative, project manager, contractors, and required code inspectors usually inspect the property. In some jurisdictions a certificate of occupancy must also be issued before the project can be occupied. Once this certificate is issued, retainage is released and the construction contract is closed out.



## Chapter Four

# SUPPORTIVE HOUSING

### WHY SUPPORTIVE HOUSING?

An unfortunate fact of life in many Indian areas is the lack of housing developed for people with special needs. While many American cities and towns are beginning to develop residential treatment and transitional living programs for the homeless, the substance addicted, and other groups in addition to traditional affordable housing, rural Indian areas are still working to provide even basic housing for their special needs households. NAHASDA can be used to help meet the need for supportive housing.

Most supportive housing projects will find that their operations lend themselves more readily toward rental housing. Even permanent supportive housing is more easily managed if the housing is provided on a rental basis; the project staff are better able to control the provision of services if they act as the landlord and building manager.

### SUPPORTIVE SERVICES

Supportive housing is housing in which residents with special needs receive social services on site. Supportive housing offers a living environment where residents can receive help to resolve or cope with personal or medical problems that prevent them from living independently. For example:

- Substance abusers need alcohol and drug free homes, to avoid exposure to addictive substances, and where they can receive counseling to overcome their dependencies.
- Elderly individuals may need assistance with cleaning, cooking, and other everyday chores along with better access to medical services.
- Runaway youth and victims of domestic abuse need a safe housing environment where they can develop their self esteem, improve their

education, and develop independent living and job skills.

These needs can be met through supportive housing. The housing may take the form of a group home for five or six unrelated adults, with a live in counselor; it may take the form of single room occupancy buildings, where individuals have their own rooms but are served meals in a common area and have on site medical care. In fact, almost any housing arrangement can be adapted to become supportive housing through the addition of services and service providers to meet the special needs of the residents.

By providing supportive housing, and not just supportive services, tribes can provide a safe and protective environment for their more vulnerable members. While the traditional approach to caring for special needs family members is to take the person into the home, families are not always best equipped to address acute needs such as substance addiction or mental illness. It is often the case that supportive housing provides the combination of access to services and a safe, monitored environment. Supportive housing relieves persons with special needs from both the burden of finding their own appropriate housing and from remaining in unhealthy environments, so that they do get the services and assistance they need.

Last, supportive housing fosters independent living to the greatest extent possible. In some supportive housing projects, residents participate in house governance and share housekeeping duties. Effective supportive housing should help residents develop independent living skills to the greatest extent feasible – the ability to shop, cook, and clean for oneself, to manage money and pay bills, and to cooperate with others – while attending to their individual needs.





## TRANSITIONAL VS. PERMANENT HOUSING

Supportive housing can be transitional or permanent. For example, a troubled, runaway youth might move into a supportive housing project as a transition between an intensive counseling and education program and permanent, independent living arrangements. An elderly individual, on the other hand, more likely would seek supportive housing as a permanent living arrangement.

The distinction between transitional and permanent housing depends on the needs of the project's clients and on the project's mission. For example, many recovered substance abusers require ongoing counseling and peer support, and may have a diminished capacity to earn income. Consequently, even when they are recovered, they may still need low income housing, plus an environment that protects them from falling back into addiction. The tribe therefore might develop permanent supportive housing for this group instead of transitional housing, to offer ongoing peer support and limited counseling supervision.

## SITING THE HOUSING

Supportive housing can come in many shapes and sizes. Supportive services can be provided in group houses with individual or shared bedrooms and common living and dining areas, single room occupancy (SRO) apartments with collective living rooms and possibly kitchen facilities, or multi unit apartment buildings. The housing development itself can be on a single site or in several buildings on scattered sites. There are different advantages to each physical arrangement:

- Smaller, congregate developments allow greater supervision and social interaction.
- Larger developments can serve more residents.
- Scattered developments allow greater privacy.

Appropriate siting depends on three issues: the particular needs of the resident population that the supportive housing was developed to meet, the supportive services being provided, and the tribe's own preference and local conditions. Two examples:

- A tribe that structures its community life around hogans or family lodges might want to replicate that type of building design in its supportive housing projects.
- A home for single parents might be more effective with separate apartments with common space only for meetings and group activities, so that the parents and children have their own family areas.

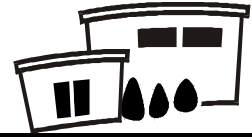
A successful supportive housing project must resolve issues of project design, physical design, location, and financing. The development of supportive housing also takes commitment; tribes cannot simply build homes for special needs populations and then walk away. There must be ongoing attention to project management and service provision so that the housing units remain healthy environments that tribal members can enter and leave as their needs change (and as vacancies permit).

## MEETING HOUSING NEEDS

Especially among Indian families, special needs individuals often prefer to remain at home with their families, and use only outpatient treatment or counseling instead of moving into a supportive housing environment. Therefore, the project planners should be sure that the supportive housing will meet the needs of the people it is intended to serve. A balanced analysis of hard numbers from Census and tribal records, well designed and complete surveys, and interviews with affected individuals will help the assessment team to develop a fairly reliable picture of the community's needs.

In addition, tribes should carefully consider the needs of tenants with regard to accessibility. The elderly and disabled often require units that are accessible to them.





## COORDINATION WITH SERVICE PROVIDERS

Effective supportive housing must coordinate housing delivery with service delivery. If the tribe already has an active service delivery system on the reservation, then the project manager can meet with those service providers to agree on ways to provide the service on site. If the local service provider is located off the reservation, the project manager may be able to contract for on site service delivery for some days of the week, with tribal peer counseling or traditional healing methods in use on other days. Some projects can use their board members' contacts with other Indian organizations to develop a network of social service providers.

The most important factor for successful service coordination is communication. Tribal agencies often have specialized interest and operate independently of one another. However, to create an effective supportive housing project, there must be a partnership between housing developers and service providers in all aspects of project development, from conceptualization to implementation to day to day operation.

Although the availability of trained or experienced social service providers will vary with each tribe's circumstance, clearly the service providers must be well trained in order to give residents effective help. Just as important, projects should use Native American counselors whenever possible, since the residents respond better to staff who are culturally sensitive.

# ***THE NAHASDA DEVELOPMENT MODEL SERIES***

## ***Finance***



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July 26, 1999



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# Chapter One

## FINANCING HOUSING WITH THE NAHASDA PROGRAM

### INTRODUCTION

In 1996, Congress enacted the Native American Housing Assistance and Self Determination Act (NAHASDA). Through this program, tribes are given flexibility to loan or grant funds to qualified individuals, households, developers, and nonprofit housing organizations for the development of affordable housing.

In fact, NAHASDA offers tribes significant flexibility in determining how it will finance housing projects. These options include:

- ❑ **Direct loans:** Under a direct loan program, the tribe acts as the lender and finances the development of housing. The tribe may lend to individual low income tribal members for homeownership or modernization/rehabilitation activities or it may lend to private developers who will in turn develop or build housing for tribal members. The tribe is responsible for determining how much it wants to lend and at what interest rate. It also underwrites and services the loans.
- ❑ **Deferred payment loan:** Under a deferred payment loan program, the tribe lends funds to individuals or developers. This loan is then retired in one of two ways. First, it may be forgiven over time. For example, if the tribe lends a tribal member \$50,000 to buy a home, the tribe may elect to forgive \$5,000 per year until, at year 10, the loan is retired and the tribal homebuyer no longer owes a repayment to the tribe. Alternately, the deferred payment loan may be due only upon an event. For example, the tribe may lend a homebuyer \$10,000 to repay their loan and only require repayment of this loan if and when the homeowner sells the home. The interest rate and amount of the deferred payment loan is left to the discretion of the tribe.
- ❑ **Interest rate subsidies:** Under this type of financing, the tribe uses its IHBG funds to reduce the interest rate charged by a private lender to a tribal borrower. For example, assume that a lender is willing to finance a homeowner to rehabilitate their home at an 9 percent interest rate. The owner cannot afford the monthly loan payments at this interest rate. The owner can afford a loan at a 3 percent interest rate. The tribe could then make a payment to the lender to "write down" the interest to the affordable level.
- ❑ **Principal reductions:** Similar to the interest rate subsidy, the tribe works with a private lender to make a loan more affordable to a tribal borrower. Under this option, the tribe makes a payment to the lender which is used to reduce the principal amount owed by the borrower. For example, if a tribal member needs to borrow \$60,000 to build a home but can only afford a loan at \$40,000, the tribe can give \$20,000 to the lender to make the loan affordable to the borrower.
- ❑ **Grants:** NAHASDA permits tribes to directly grant funds to tribal members or developers. Under this type of financing, the tribe gives funds to the recipient without requirement for repayment. This option is frequently used to assist very low income tribal members.
- ❑ **Self Financing:** Under this option, the tribe does not fund individual members or developers, but rather undertakes the development itself. For example, if the tribe wants to build a series of homes, it could simply build these homes itself using either force account crews or contracting with a licensed and bonded contractor. This is a very typical method of constructing housing and gives the tribe maximum control over the project. However, it can be an inefficient method of delivering housing because it does not leverage the IHBG resources.



Which of these various financing mechanisms used is up to the tribe. The decision made by the tribe will vary based upon the needs of the community and

upon the types of programs included within the Indian Housing Plan (IHP). The following chapters in this model highlight how these various financing mechanisms can be used.



## Chapter Two

### FINANCING HOMEOWNERSHIP WITH NAHASDA

There is no standard NAHASDA homeownership program. Unlike the Mutual Help program, which was administered similarly throughout the country, NAHASDA allows tribes considerable flexibility. This flexibility is evident in the array of financing approaches available.

The example of Tom and Mary Greenleaf is instructive. The tribe has determined that the Greenleafs have an income of \$15,000 a year, which qualifies them for housing under NAHASDA. They wish to build a modest home that costs \$58,000. If the tribe designs a lease purchase program similar to the old Mutual Help program, the Greenleafs will pay a percentage of their income (no more than 30% of income) for this housing. Assuming that the tribe sets their payment rate at 25% of income, their housing payment will be about \$300 a month. Under this scenario the tribe would expend \$58,000 (the full cost of the home) of its IHBG.

Exhibit 2.1 illustrates how the NAHASDA program can provide the Greenleafs with a home at approximately the same payment using a different type of financing and costing the tribe less money. A lending scenario such as the one shown in this exhibit uses a \$22,000 deferred payment loan from the tribe combined with a private loan from a financial institution. The Greenleaf's total monthly debt would be \$315.

Under this NAHASDA example, the tribe saves money (\$58,000 - \$22,000 = \$36,000) and the Greenleafs get their home at approximately the same monthly payment as the lease-purchase model. (Note: This assumes that the Greenleafs have \$2,500 in cash available as downpayment.)

This example also shows not only how a tribe might approach this type of project, but also how a lender might work with a family. On a \$58,000 home, a lender may require an \$11,600 down-payment (20

percent of purchase price). The buyer will also have to pay about \$2,000 or more in closing costs. Many (but not all) lenders will accept an applicant who has a commitment for a second mortgage loan or a grant to cover these cash requirements.

The Greenleaf family example implies a tailored approach to loan making by the tribe. In other words, each homebuyer is given just enough subsidy to make the purchase possible. A more standardized approach might be developed if many potential homebuyers are in similar financial circumstances. For example, if their incomes were similar to the Greenleaf's, and they wanted to buy similarly priced homes, everyone in the program could be offered a \$22,000 loan.

**Exhibit 2.1: How a Tribal Loan Could Help the Greenleafs**

<b>Use of Funds</b>	
Purchase price of home	\$58,000
Closing costs	<u>2,600</u>
Total uses of funds	\$60,600
<b>Sources of Funds</b>	
Greenleaf's cash	\$2,500
Tribal loan with NAHASDA funds at 0% interest, due only on resale	\$22,000
Maximum loan lender will make based on installment debt ratio	<u>\$36,000</u>
Total sources of funds	\$60,500
<b>Greenleaf's Monthly Payment</b>	
Monthly payment to conventional lender	\$265
Loan payment to tribe	0
Monthly payment for taxes and insurance*	<u>\$50</u>
Total payment	\$315
*Taxes would normally not be paid on tribal land.	



## DECIDING ON AN APPROACH

The deferred payment loan program suggested above is a relatively simple approach to helping first time homebuyers with subsidy funds such as IHBG – an approach that is becoming more and more typical. But there are other options to consider.

In creating financial programs for first time homebuyers, tribes face three decisions:

- What will the purpose and amount of the IHBG subsidy be?
- Will IHBG funds be leveraged? and,
- What will the form of IHBG subsidy be?

As described above, leveraged financing combines IHBG with other sources, such as a conventional loan from a private lender. Nonleveraged financing consists of IHBG financing only.

Exhibit 2.2 can be a tool for making these decisions. The first questions to answer have to do with the purpose of the subsidy (the left side of the chart). A more informed decision about the form of the subsidy (right side of chart) might be made after reading the remainder of this chapter.

## CHOICES IN FORM OF SUBSIDY

A tribe has major choices in the selection of the form of subsidies it will make. Any of these can be leveraged with other funds. A discussion of each follows.

### Leveraged Grants

With this approach, the tribe makes a grant in the amount of the subsidy needed. With a grant there is no expectation of repayment. Thus, no liens are placed on the property. Tribes/TDHEs may wish to consider whether they want to offer grants for more than \$5,000 since IHBG funds are limited. To address this issue, grants may be limited to downpayment and closing costs only.

### Leveraged Deferred Payment Loans

This is a zero percent interest loan with no monthly repayment required. The entire principal is due on resale of the property, rather than in monthly installments. The loan may be structured so that it can be forgiven over 5 to 15 years. Forgiveness of loans can prevent any windfall profits, which would be likely with a generous grant.

**Exhibit 2.2 — What We Want from Our First Time Homebuyer Program**

<u>Purpose of Subsidy</u>	<u>Form of Subsidy</u>
<p>_____ Help with cash needed to close the loan</p> <p>Example: \$1,500 to \$4,000 to help with downpayment and closing costs. Buyer provides \$500 to \$2,000.</p>	<p>_____ Grants</p> <p>_____ Amortizing loans</p> <p>_____ Deferred payment loans</p>
<p>_____ Reduce the monthly payment</p> <p>Example: \$10,000 to \$25,000 in funding that reduces the first mortgage amount or the interest rate.</p>	<p>_____ Grants</p> <p>_____ Amortizing loans</p> <p>_____ Deferred payment loans</p>
<p>_____ Help with loan to value ratio</p> <p>The purpose here is to put money into the purchase to reduce the lender's risk in the event of default. The same financing that reduces the monthly payment can also help with this problem.</p>	<p>_____ Grants</p> <p>_____ Amortizing loans</p> <p>_____ Deferred payment loans</p>





### Leveraged, Amortized Loans

In this case, the subsidy is repaid on a monthly basis at low or zero percent interest rates. For financial reasons illustrated in Exhibit 2.3, amortized loans must be at least twice as large as deferred payment loans to achieve the same affordable monthly payment. Typical interest rates are zero to three percent for affordable housing.

### Nonleveraged Loans

A tribe can lend a family all the funds needed to buy a home provided the total amount of funds is within NAHASDA dwelling cost and equipment cost limits (as applicable). Interest rates can be as low as zero percent, depending on the financial strength of the borrower.

### Nonleveraged Grants

NAHASDA regulations allow a tribe to completely fund the cost of a home through a grant to a qualified household. This approach is, however, generally considered inefficient. Exhibit 2.4 on the following page lists some of the pros and cons of the five subsidy options described above.

Several other financial tools are available, but the five described above are especially compatible with new programs.

### TYPICAL SUBSIDY OPTIONS

Comparative examples of the three most typical subsidy options are provided in Exhibit 2.3. Each option can assist with downpayments and closing costs, reduce monthly payments, and solve income ratio problems. The two leveraged options also address lenders' loan to value concerns.

Exhibit 2.3 assumes a purchase price of \$80,000, as might be experienced with building new homes at remote sites with on site wells and septic systems. However, all three exhibits reduce the monthly payment and solve cash requirements. The leveraged variations have the added benefit of attracting conventional financing.

Other approaches for using IHBG funding to assist homebuyers are also available. For example, NAHASDA could be used only for downpayment assistance. Once these decisions are made, there are a number of other program design issues to be solved, such as marketing, loan processing, and construction management. These broader issues are addressed in other NAHASDA models.

**Exhibit 2.3 — Comparison of Three Typical Homebuyer Financing Options**

Purchase price and closing costs	\$80,000		
Buyer Annual Income	\$22,500		
Affordable payment	\$540 (29% of monthly income)		
NAHASDA-Funded Purchase Financing	Unleveraged Loan (98% Loan at 5%, 30 yr. Fixed)	Leveraged Amortizing Loan (44% Loan at 0%, 20 yr. Fixed)	Leveraged Deferred Payment Loan (20% Loan due at sale)
Tribal loan amount	\$78,400	\$35,000	\$16,000
Conventional loan amount	0	\$43,400	\$62,400
Buyer downpayment	\$1,600	\$1,600	\$1,600
Total purchase cash	\$80,000	\$80,000	\$80,000
Payment to tribe	\$480	\$145	\$0
Conventional loan payment	0	\$335	\$480
Taxes and insurance	\$60	\$60	\$60
Total monthly payment	\$540	\$540	\$540

*Finance*

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Number of loans that can be made with \$200,000	2.5	5.7	12.5
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**Exhibit 2.4 — Pros and Cons of Various Subsidy Options**

Form of Subsidy	Pros	Cons
Leveraged grants	<ul style="list-style-type: none"> <li><input type="checkbox"/> Solves most lending problems for some low income borrowers without further subsidy</li> <li><input type="checkbox"/> Easy to operate</li> <li><input type="checkbox"/> Maximizes size of private loan</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Funds don't recycle</li> <li><input type="checkbox"/> Expensive means of leveraging (if more than help with downpayment)</li> </ul>
Leveraged amortized loans	<ul style="list-style-type: none"> <li><input type="checkbox"/> Can solve loan to value problems while returning program income</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Don't reduce monthly payments as much as grants or deferred – requires at least double the funds to create the same affordable monthly payment</li> <li><input type="checkbox"/> Collections</li> </ul>
Leveraged deferred payment loans	<ul style="list-style-type: none"> <li><input type="checkbox"/> Solves most lending problems for low income borrowers</li> <li><input type="checkbox"/> Maximizes size of private loan</li> <li><input type="checkbox"/> Creates some program income</li> <li><input type="checkbox"/> Collection easier</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Funds don't recycle as quickly as with amortizing loans</li> <li><input type="checkbox"/> More management work than grants, but not as much as amortizing loans</li> </ul>
Nonleveraged loans	<ul style="list-style-type: none"> <li><input type="checkbox"/> No need to work with other lenders</li> <li><input type="checkbox"/> Program income</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Fewer families can be assisted</li> <li><input type="checkbox"/> No sharing of loan risk</li> </ul>
Nonleveraged grants	<ul style="list-style-type: none"> <li><input type="checkbox"/> Reaches lowest income buyers – they pay only taxes, insurance, and maintenance</li> <li><input type="checkbox"/> Easy to operate</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Won't score well on NAHASDA leveraging criteria</li> <li><input type="checkbox"/> Serves fewest families with same dollars as compared with other options</li> <li><input type="checkbox"/> No program income</li> </ul>

**SOLVING OTHER FINANCING PROBLEMS**

Although the subsidy possibilities listed in Exhibit 2.4 can solve problems, they do not solve all the financial problems experienced by tribal members. Where does the \$58,000 home for the Greenleafs (previous example) come from? Who funds the infrastructure?

Who provides construction financing? What about rental and special needs housing? Who pays the utilities under rental housing?

Chapter Three focuses on how NAHASDA can be used for construction financing. Subsequent chapters address financing to meet other needs – rehabilitation of owner occupied homes, affordable rental housing, and special needs housing.



## Chapter Three

# CONSTRUCTION FINANCING

A first time homebuyer program will not be possible unless decent, affordable homes are available for purchase. This is a serious problem for many tribes. Except in the case of previous IHA low rent and Mutual Help housing, residential construction financing is difficult to obtain on tribal lands due, in part, to trust land issues. The NAHASDA program solves some of these problems. The IHBG can finance construction of homeowner, rental, and special needs housing.

Under NAHASDA, tribes have a source of financing to build or rebuild homes on scattered sites – one house at a time or as clustered developments. The IHBG can be used to finance the following construction related costs:

- ❑ **Land or building purchase.** Costs for the purchase of land, a single family home or rental property that can be constructed on or rehabilitated are allowable.
- ❑ **Construction or rehabilitation.** Hard costs of construction or rehabilitation are eligible within certain limits (see 24 CFR 1000.156). (NAHASDA's primary construction standards are established by the tribe and may be set at HUD's Housing Quality Standards and/or local codes.) Costs for site development as well as utility development or connections related to the housing is also eligible.
- ❑ **Fees and holding costs.** Design, engineering, and other fees or costs during construction, such as architectural/engineering, taxes, and insurance, are all eligible. Reasonable developer fees are also allowed.

NAHASDA does set limits on the amount of IHBG funds that can be spent to construct or rehab housing. Maximum per unit NAHASDA construction cost amounts are described in the NAHASDA regulations.

These are referred to as dwelling construction and equipment (DC&E) costs [24 CFR 1000.156].

By definition, construction financing is temporary – loans must usually be repaid within 3 to 12 months, depending on the size of the project. With NAHASDA, housing construction financing cannot occur without firm plans to complete the project, to market the housing, and to finance the end use of the property. Sources of permanent financing must be clearly identified. The IHBG may constitute some or all of the permanent financing.

If, for example, a tribe wants to acquire or build homes for first time homebuyers or a rental project, the following should be in place before construction financing is committed:

- ❑ **Site control.** The proposed user of the funds must have a title, long term lease, an option, or a sales contract on the land;
- ❑ **Plans and specifications.** Working drawings for infrastructure and construction (or rehabilitation) must have been prepared;
- ❑ **Legal and other approvals.** All zoning approvals, building permits, water rights, and waste system permits must have been obtained. Among some tribes, religious or cultural groups may have to approve use of some land;
- ❑ **Financial feasibility.** There must be a plan and budgets that show the project is feasible over the long term;
- ❑ **Marketing plan.** There must be a plan that shows there are clients who are ready, willing, and able to buy or rent the property must be prepared;
- ❑ **Evidence of permanent financing.** Written commitments for permanent financing must be provided; and



- Environmental Review.** An environmental review must be performed before funds are committed [24 CFR 1000.20].

## WHO CAN RECEIVE NAHASDA CONSTRUCTION FINANCING?

The NAHASDA program can provide construction financing to:

- The tribe;
- A TDHE;
- Qualified for profit and nonprofit builders or housing developers; and
- Individuals who want to build or rehabilitate their own homes.

## EXAMPLES OF CONSTRUCTION FINANCING

With some types of NAHASDA projects, it is essential to separate construction financing from permanent financing – with other types of projects they may be combined.

### Example 1: Separate Construction and Permanent Financing

The Flat River Tribe identifies 10 families who can afford to buy homes with partial IHBG financing. A lender will provide the rest of the permanent financing. The builder who will construct the homes for the tribe has been identified. In this case, the tribe provides IHBG construction funds to the builder to construct the homes. The buyers receive permanent financing from a lender for most of the purchase price. The permanent funds are used to repay the construction loan as each unit is sold.

### Example 2: Combined Construction and Permanent Financing

In some projects, construction and permanent financing are one and the same. The Green Mountain Tribe provides \$500,000 in IHBG funds to the Council on Aging to build 10 rental units for frail

elders. No other financing is involved. The IHBG funds are used to construct the housing and the loan is “rolled over” as permanent financing. In other words, construction and permanent financing are one and the same. This combined approach may be necessary for projects unable to obtain 100 percent financing from other sources.

### Example 3: A Common Approach

Exhibit 3.1 shows a more detailed scenario of using IHBG for construction financing of new homes at Long Lake, as well as partial permanent financing on the same homes. In this third example, a 100 percent IHBG funded construction loan helped to leverage conventional, permanent loans.

#### Exhibit 3.1 — Construction and Permanent Financing at Long Lake

<b>Project:</b> Build 10 homes costing \$70,000 each. provide \$20,000 partial permanent financing to buyers. The IHA proposes to build and sell homes to NAHASDA qualified families that have been identified.	
<hr/>	
<b>Construction Phase Financing (10 homes)</b>	
IHBG construction loan	\$700,000
<hr/>	
<b>Permanent Financing (10 homes)</b>	
10 bank loans, average \$50,000	\$500,000
10 IHBG funded tribal loans at \$20,000 each	<u>\$200,000</u>
<b>Total Financing</b>	<b>\$700,000</b>

In this example, the Long Lake Tribe would “roll over” \$20,000 in construction financing to each of the 10 homebuyers. A surplus of \$500,000 would remain after the sale of the last home. The Tribe could use this to continue the project or to fund another NAHASDA eligible project.

In all three examples, the Tribe is permitted to charge reasonable interest rates to a developer for the IHBG construction loan. If interest is charged, this would become program income that could be reused to provide additional loans.



## POTENTIAL PITFALLS

Acquisition and construction loans for housing are considered high risk by lenders. The major risks are cost overruns, projects not being completed, and housing not being fully rented or sold after completion.

In many urban areas, private developers are eager to use potentially low interest sources of funds like IHBG to build rental or homeowner housing. Such proposals are not as likely in many tribal areas, except where the local housing market is strong. The tribe should proceed with caution if it is approached by a development firm that wants NAHASDA financing to build low income housing on its behalf. In particular, the tribe should ensure that no other source of construction financing is available to the developer.

The trust status of much tribal land makes it difficult to obtain construction financing, because the land can only be leased, not sold. Many lenders are reluctant to provide loans for construction on leased land. In these cases, IHBG construction financing to a developer may be necessary.

In any case, the terms of construction loans to developers should be negotiated with great care. The general rule is that the for profit developer should have some assets at risk, and thus be motivated to successfully complete the project.

Alternatively, tribes may want to contract with a private developer or an experienced local nonprofit organization to serve as developer or even undertake the construction phase themselves.



# Chapter Four

## FINANCING RENTAL HOUSING

NAHASDA can fund most types of low income, affordable rental housing. New construction, acquisition of housing to be rented, acquisition with rehabilitation, and rehabilitation of existing rental housing are all eligible for funding.

As with construction loans, a variety of project owners are eligible for NAHASDA financing. Owners can include the tribe, a TDHE, for profit investors and nonprofit organizations.

NAHASDA has detailed regulations regarding construction funding limits per rental unit, incomes of eligible occupants, and allowed rents. These regulations are described in detail in the Rental Housing model in this series, which also provides advice on planning and implementing the various types of rental projects listed above.

With regard to financing, standard techniques and underwriting criteria can be used to finance all these activities. These techniques and criteria are the subject of this chapter.

### NAHASDA FUNDED VS. 1937 ACT RENTAL HOUSING

Most rental housing on tribal lands is low rent public housing and Mutual Help lease purchase housing that

addresses many, but not all, needs of housing for tribes. NAHASDA offers the opportunity for tribes to help a broader spectrum of low income renters. Because 1937 Act housing provided tribes with much of the financing for housing on tribal lands, it is important to understand the major differences between 1937 Act programs and the NAHASDA program.

Traditionally, 1937 Act programs built clustered single family homes as rentals. There was an 80 percent of median income limit on the incomes of occupants in these programs. Renters (or leasing homebuyers under Mutual Help) paid up to 30 percent of their income for rent and utilities.

From the 1970s on, housing was also built under the Mutual Help program – a lease to own program. Under this program, a portion of the housing payment pays off the debt on the home. When the debt is paid off, the family owns the home outright.

Exhibit 4.1 contrasts funding rental housing through NAHASDA and Indian housing programs. Note that all the Indian housing programs authorized under the 1937 Housing Act are now repealed.

**Exhibit 4.1 — Comparison of NAHASDA Funded Rentals and 1937 Act Housing**

	<b>NAHASDA Rentals</b>	<b>1937 Act Housing</b>
Source of funds to build	Tribe gets NAHASDA grant; makes grant or loan to project developer/owner.	Grant for all costs from HUD to Indian housing authority.
Source of funds for operation		Annual grants from HUD pay majority of costs; rents pay minor portion.
Source of funds for major repairs	Rents must be sufficient to fund reserves for replacement. IHBG funds can be used for repairs.	HUD grants are available.
Typical monthly rents	Enough to cover operations and some debt service (generally greater than \$250).	\$0-\$100 – rents do not have to cover debt or all operating costs.





## RENTAL PROJECTS MUST OPERATE LIKE BUSINESSES

The 1937 Act low rent housing program was structured to provide not only funds to build housing but also to pay for ongoing IHA administrative costs associated with the project and long-term operating deficits resulting from housing units in which income was less than operating costs. NAHASDA, however, is designed to encourage tribes to develop housing in a more “market-driven” manner.

Projects that are funded with IHBG should be carefully analyzed up front to determine whether or not the income from the project, primarily from rents, will be sufficient to at least cover expenses, including management, maintenance, utilities, insurance, replacement reserves and loan payments. This analysis is referred to as underwriting, and is discussed further below. Note that IHBG funds can be used for pay for these expenses, as well as operating deficit reserves, if necessary. However, the more IHBG funds used to cover long term expenses of housing, the less funds available to develop additional housing.

## FINDING HELP TO UNDERWRITE RENTAL HOUSING PROJECTS

In applying for IHBG funds for rental projects, tribal leaders may face more financial challenges and risks than with single family programs. Projects can be implemented by a TDHE, a for profit developer, nonprofit developer, or a tribal agency, but the tribe is responsible for underwriting the funding.

Whether the IHBG funding is in the form of a loan or a grant, the tribe will have to act like a prudent lender who wants to ensure that the project is financially feasible. If proper underwriting is not done, the project may get built, but still fail as a “business.”

Tribes may wish to seek assistance in setting up a rental development project. Some of the possible sources for help with underwriting include:

- ❑ **Development consultants.** Many private consultants are experienced at “packaging” rental development projects, often for nonprofit or public clients.
- ❑ **Conventional lenders.** The potential involvement of a conventional lender in financing a rental project is strong assurance that financial feasibility will be closely scrutinized. Unlike consultants, lenders could have a financial stake in the project being successful.
- ❑ **HUD field offices.** Many of these offices have personnel experienced in reviewing rental housing proposals. They might be called on to review projects at the “idea” stage before an application is made.

## PRO FORMAS – TOOLS OF UNDERWRITING

A pro forma is the basic tool of rental housing underwriting. Budgets that forecast construction costs and financing are usually called project pro formas, while budgets that forecast rents and expenses are called operating pro formas.

Exhibit 4.2 shows pro forma for an imaginary rental project at Piney Hill. The project consists of ten one room apartments for single individuals.



### Exhibit 4.2 — Pro Formas for Piney Hill Apartments

<b>Project Pro Forma</b>		
<b>Project Description:</b> New construction of 10 studio apartments with common living, cooking, and eating areas. Sponsor is tribe.		
	<b>Total</b>	<b>Per Unit</b>
<b>Source of Funds</b>		
Conventional loan (10%, 20 yrs.)	\$100,000	\$10,000
NAHASDA deferred loan (0% interest, all payments deferred until sale)	<u>\$200,000</u>	<u>\$20,000</u>
Total sources of funds	\$300,000	\$30,000
<b>Uses of Funds</b>		
Land (donated by tribe)	\$0	\$0
Construction	\$250,000	\$25,000
Construction interest, fees, etc.	<u>\$50,000</u>	<u>\$5,000</u>
Total uses of funds	\$300,000	\$30,000
Estimated appraised value after construction		\$300,000
Loan to value ratio for lender		33%
<b>Annual Operating Pro Forma</b>		
	<b>Total</b>	<b>Per Unit</b>
<b>1. Annual Income</b>		
10 rental units (\$320 month)	\$38,400	\$3,840
Less vacancy and loss (8%)	<u>(\$3,070)</u>	<u>(\$307)</u>
Effective gross income	\$35,330	\$3,533
<b>2. Annual Expenses</b>		
Fuel and utilities	\$8,000	\$800
Insurance	\$3,000	\$300
Management	\$4,000	\$400
Maintenance	\$5,000	\$500
Replacement reserve	\$2,000	\$200
Taxes	<u>0</u>	<u>0</u>
Total Expense	\$22,000	\$2,200
<b>3. Net Operating Income (NOI)</b> (effective gross income less expenses)		
	\$13,330	\$1,333
<b>4. Debt Service (DS)</b>		
	\$11,580	\$1,158
<b>5. Net Cash Flow (CF) [NOI – DS = CF]</b>		
	\$1,750	\$275
<b>6. Debt Service Ratio (DSR)</b> (item #3 divided by item #4) [NOI / DS = DSR]		
	1.15	



## UNDERWRITING CRITERIA FOR RENTAL PROJECTS

Under NAHASDA, the underwriting criteria for rental housing projects is both similar to, and different from, the criteria for homebuyer programs. Conventional lenders look at the following major factors:

- ❑ **Financial feasibility.** The project's capital and operating pro formas must indicate that income will exceed expenses. These pro formas must be supported by plans and construction contracts that verify costs, and by market studies that verify demand for the housing at the specified rents.
- ❑ **Experience and capacity of the development team.** Lenders want to ensure that the entire development team has a track record in building and managing this type of project. The "team" usually consists of an architect, builder, attorney, financial person, market analyst, property manager and the tribe/owner.
- ❑ **Sponsor's equity.** This is similar to the downpayment required from a homebuyer. It is cash provided at the front end of the project, to ensure that the sponsor or developer has a financial stake in the project and won't walk away. As with downpayment assistance for homebuyers, IHBG could stand in place of equity for tribal and nonprofit sponsors. A 10 percent equity is considered a minimum stake from for profit developers.
- ❑ **Debt service ratio.** This is similar to the debt ratios used in homebuyer underwriting, which ensure that the borrower has enough income to repay the loan. In rental projects, lenders expect the project to have enough income to repay the loan. Typically, lenders want to see forecasts of enough rental income to pay all operating expenses, and enough extra cash to pay 115 to 130 percent of loan payments. In Exhibit 4.2, the 1.15 debt service ratio represented a 15 percent surplus of cash income after paying debt service.

- ❑ **Loan to value ratio.** Just as with IHBG purchase loans, lenders want to ensure that there is a lot more value in the property than the value of their loan, in case of foreclosure. Currently, most lenders will not lend more than 70 percent of the appraised value of rental properties. If the project is not yet built, lenders look at the future value of the project, based mostly on its projected net income from rents. In Exhibit 4.2, the project had an excellent 33 percent debt service ratio.

A natural question from tribal leaders is: "Why do we have to look at the same budgets and criteria as conventional lenders?"

The answer is: careful underwriting is in the tribe's best interest. Underwriting criteria regarding financial feasibility and the experience of the development team are intended to ensure the success of *any* project, whether funded with a grant or loan. The criteria for sponsor's equity is the ideal to obtain if possible, and should be mandatory for profit motivated sponsors. And, criteria regarding the debt service and loan to value ratio apply only if there is a loan in the project.

With rental projects, the subsidies tribes offer may be substantially the same as what they offer for homebuyer programs. Because the amounts of funds in a rental project are, however, usually much higher, tribes will want to consider much more closely the legal form of their funding, loan security, and possible program income.

When a tribe works with a private developer of the rental housing, a loan is the most likely financing approach. Even if no repayments are possible, as with the example given, making a 0 percent interest, no monthly payment loan due only on sale will give the tribe long term control over the project. If the project is mismanaged, for instance, or it is converted to a non NAHASDA eligible use, the tribe could foreclose on the loan and take over the project. With a grant, the tribe would have less immediate recourse.



## SYNDICATION OF RENTAL PROJECTS USING TAX CREDITS

For several years, the Low Income Housing Tax Credit program has been a major resource in raising low cost capital for affordable rental housing projects. It is also a potential source of leveraged funds for the NAHASDA program.

In its simplest terms, the tax credit is available for eligible acquisition, rehabilitation, and new construction of rental housing. A syndication involves setting up a legally constituted limited partnership for each project. Typically, an experienced developer must be a general partner, but a nonprofit organization created by a tribe or tribal agency could be a co-general partner.

The benefits of the syndication come from sale of units of the partnership to investors who are attracted by the tax benefits.

These key factors should be kept in mind when considering syndications:

- ❑ **They are complicated.** The legal, financial, and accounting responsibilities of a general partner are substantial;
- ❑ **Most syndicated projects cost \$1 million or more.** The transaction costs involved in creating the partnership and selling "units" are substantial;

- ❑ **30 to 50 percent of the project cost can be raised** – in the form of equity, which doesn't necessarily have to be paid back, but only for qualified projects; and
- ❑ **Incentives to donate the property to a non profit can be built in.** Although by law a limited partnership must be profit motivated, finances can be structured so that the profit motivated investors have an incentive to donate the project to a nonprofit, generally 15 years after construction.

## CHALLENGES WITH FINANCING RENTAL PROJECTS

Most tribes have little experience in developing market driven rental projects. The obstacles to surmount are formidable:

- ❑ The market for non IHA rental units is often untested;
- ❑ Experience in financial packaging for these types of rental properties may be lacking; and
- ❑ Conventional lending is hard for tribes to access.

NAHASDA rental housing can, however, fill definite niches for many tribes. Where experience is lacking, the soundest strategy is often to start small with the most pressing needs and best opportunities.



## Chapter Five

# FINANCING REHABILITATION FOR HOMEOWNERS

Financing the rehabilitation of homes for owner occupants is a familiar activity for many tribes. Funding sources that have been used include Indian Community Development Block Grants (ICDBG), Bureau of Indian Affairs (BIA) repair grants, and the Rural Housing Service Preservation program. NAHASDA can extend the rehabilitation of homes to more families.

NAHASDA is an additional source of financing. In many ways, it has more flexibility than any other federal program. For example, where other programs have tended to give priority to very low income families, under NAHASDA, owners' incomes can be as high as 80 percent of area or national median income. Moreover, where other programs generally offer grants, tribes can grant or loan IHBG funds for rehabilitation.

### HOMEOWNER REHABILITATION ACTIVITIES POSSIBLE WITH NAHASDA

NAHASDA can also be used to fund both moderate and substantial rehabilitation for homeowners, as follows:

- Moderate rehabilitation** typically involves \$10,000 to \$25,000 in assistance for partial repairs to a home.
- Substantial rehabilitation** typically costs \$25,000 or more per NAHASDA and involves structural work, major systems replacements, and sometimes room additions.

Some major differences exist between NAHASDA funded rehabilitation and some ICDBG and BIA funded programs. All NAHASDA funded rehabilitation must be carried out in accordance with a written rehabilitation standard created by the tribe (this may

be the HUD Housing Quality Standards [HQS] standards). For example, emergency repairs that do not meet these standards cannot be funded.

### WHO CAN ADMINISTER A NAHASDA FUNDED REHABILITATION PROGRAM

NAHASDA provides flexibility concerning the administration of NAHASDA funded rehabilitation financing. The program can be administered by either the tribe or tribally designated housing entity (TDHE).

### FORMS OF FINANCIAL ASSISTANCE AND LEVERAGING

Typical forms of financial assistance for rehabilitation programs including the following.

#### Grants

These are provided with no expectation of repayment and are typically deemed most appropriate for elderly and very poor homeowners who cannot afford to repay a loan. Grants are also used for smaller amounts of assistance (for example, \$10,000 per property owner or less).

#### Deferred Payment Loans

These are typically zero percent interest loans with no monthly payments. Repayment is due on the sale of the property. This form of assistance can recycle funds to the tribe. The deferred payment loan is most appropriate when owners cannot afford monthly payments, the home is likely to be resold someday to someone outside the family, and there is likely to be enough equity in the home to repay the loan. Sometimes, these loans are forgiven over a period of 5 to 10 years – the purpose, as with recoverable grants, is to prevent windfall profits.



### Low Interest, Amortizing Loans

Amortizing loans (those that require repayment) are generally most appropriate for owners who have the wherewithal to repay the loan. However, the interest rate charged may range from zero percent to market rate. Tribes may want to consider offering grants to owners with incomes below 50 percent of median income because these households have less ability to repay, and loans to those with incomes of 50 to 80 percent of median.

### Leveraged Loans

Around the United States, few HUD programs that finance moderate rehabilitation for low income homeowners have been able to leverage conventional loans. The loans are considered too small or too risky to be profitable. On major

reconstruction of homes, however, the opportunities for leveraging become much the same as described in earlier chapters. Typically, leveraging is much more likely to occur when project costs exceed \$25,000 per dwelling unit.

### EXAMPLES OF NAHASDA FUNDED REHABILITATION FOR HOMEOWNERS

Consider the Willow family. The Willow's have owned their home for generations. The home needs substantial rehabilitation. The estimated cost for this rehabilitation is \$25,000. Their household income is \$12,000 a year. They have no debt on the house, and their only housing payments are for utilities and maintenance. Exhibit 5.1 shows the options available for financing the rehabilitation of the Willow's home.

Exhibit 5.1 — Financing Rehabilitation of the Willow's Home

Options	Pros and Cons of Each Option
<p><b>Option #1 – Grant</b>                      Source of funds                      Grant \$25,000                      Repayment None</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Simple to administer</li> <li><input type="checkbox"/> Willows could afford some repayment, but are not required to pay</li> <li><input type="checkbox"/> Tribe gets no income; no funds recycled</li> </ul>
<p><b>Options #2 – Deferred Payment Loan (DPL)</b>                      Source of funds                      Deferred payment loan \$25,000                      Repayment Due on sale, but 2,500/year forgiven</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Simple to administer</li> <li><input type="checkbox"/> DPL allows some repayment if Willows sell house in first 10 years</li> <li><input type="checkbox"/> Tribe gets little or no income</li> </ul>
<p><b>Option #3 – Low Interest Amortizing Loan</b>                      Source of funds                      Low interest loan \$25,000                      Repayment \$222/month (22% of income)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Tribe gets income it can recycle to other housing projects</li> <li><input type="checkbox"/> Monthly collections create administrative work</li> </ul>
<p><b>Option #4 – Leveraged Loan</b>                      Source of funds                      Tribal deferred payment loan \$7,000                      10 year bank loan at 8% interest \$18,000                      Total \$25,000                      Repayment \$222/month (bank loan only)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Uses less funds; can help more families with same NAHASDA grant</li> <li><input type="checkbox"/> Leverages private lending</li> <li><input type="checkbox"/> Hard to attract lenders to make small rehab loans</li> <li><input type="checkbox"/> Trust land status could prevent conventional loan</li> </ul>



Nationwide, many housing rehabilitation programs for very low income elderly and disabled homeowners tend to offer grants, but these grants are rarely for more than \$10,000. Deferred payment loans are often offered to families in the same categories when the rehabilitation cost exceeds \$5,000 to \$10,000. In some programs, these loans are forgiven over 5 to 10 years, in others they are due and collected when the property is sold or transferred. Leveraged loans are worth considering, particularly for households between 50 and 80 percent of median income where a private lender may be available to participate.

Each tribe must decide which approach to use, after considering the needs, incomes, and circumstances of homeowners who may qualify for rehabilitation assistance, the capacity of program administrators and availability of private financing.

The NAHASDA model for planning and program design provides advice on conducting needs studies and designing NAHASDA funded rehabilitation programs. The NAHASDA model for owner occupied rehabilitation provides detailed guidance and model documents for setting up a homeowner rehabilitation finance program.





## Chapter Six

# REVOLVING LOAN FUNDS

Using NAHASDA to make loans offers new opportunities for tribes to create Revolving Loan Funds (RLFs). Throughout this guidebook there have been references to situations where loans, rather than grants, are a prudent approach. Examples include:

- ❑ **Construction loans.** Unless the tribe is undertaking housing construction itself with NAHASDA, loans are a means for keeping control of the project, and for recycling funds.
- ❑ **Rehabilitation loans.** Homeowners at the high end of the low income range, and investor owners, may have ability to repay loans, but lack access to conventional financing.
- ❑ **Rental housing loans.** Some projects may be able to support debt service, but simply lack access to conventional loans.

As discussed here, an RLF is any housing loan originated by a tribe and provided to a borrower who is obligated to repay that assistance on a periodic – usually monthly – basis.

### MANAGEMENT ISSUES WITH REVOLVING LOAN FUNDS

Starting a loan fund is a long term commitment. The tribe or tribal agency must either hire persons who are experienced in underwriting loans or train existing staff to undertake these activities. Staff trained as loan underwriters become the bankers for the tribe. If the tribe has a loan committee, members of that committee must also be trained. In addition, staff and loan committee members must have the authority to say no to ineligible loan applicants.

#### Staffing Issues

How much staff is needed? This can vary widely, depending on how much extra work is needed – construction monitoring, credit counseling, helping

raise non NAHASDA funds, etc. For basic loanmaking, a rough rule of thumb is that one loan officer/loan manager is needed for every \$300,000 or \$400,000 in loans made in a year.

How can staff be paid? NAHASDA allows 20 percent for administration for *each* grant to the tribe. But this is a one time source of funds. To continue staffing a revolving loan fund, from time to time the tribe would have to obtain additional capital and new administrative funds from NAHASDA, or other funding sources.

Repayments of NAHASDA funded loans can be used to make new loans, where again 15 percent of the funds can be used for administration. This can be a very small stream of income in the early years of a loan fund.

One approach that simplifies loanmaking is to only offer deferred payment loans, due only on sale of the property. This avoids the need for monthly loan collections and the complex accounting that goes with it, and thus, lowers administrative costs.

#### Accounting Issues

The agency administering an RLF must have an accounting system capable of fund accounting – tracking various restricted funds that go into and out of the RLF. In addition, it must be able to produce amortization reports for each nondeferred payment loan – these show the current status of principal and interest owed to the tribe.

#### Loan Guidelines

Any loan fund needs policies and procedures. Loan guidelines will spell out who is eligible, what activities are eligible, and maximum loan amounts and terms, such as interest rates and time allowed for repayment. Model guidelines can be obtained from



the many affordable housing loan programs now operating around the country.

### Loanmaking and Management Procedures

Making and managing loans requires great care. Federal (and sometimes state) banking and truth in lending laws apply to each transaction. Disorganized procedures can disappoint and frustrate clients, and result in noncompliance with HUD rules. Exhibit 6.1 lists the basic tasks in loanmaking.

#### Exhibit 6.1 — Lending Tasks

- Program marketing** – finding qualified applicants and getting them interested in the program.
- Getting lender participation** – finding lenders to make first mortgage loans, if the program involves leveraged loans;
- Prequalifying applicants** – based on financial information and credit reports;
- Verifications** – checking information on employment and assets;
- Training and counseling** – helping applicants understand this complicated process;
- Assisting with construction** – helping with plans, estimates, bidding, and quality control;
- Meeting truth in lending requirements** – generally involving proper disclosures to loan applicants;
- Underwriting** – determining if the loan or grant application is eligible;
- Making the loan or grant commitment** – approval is usually made by a program manager or loan committee;
- Arranging the loan or grant closing** – signing of loan documents by borrower and tribal agency; and
- Escrow management** – many construction funds are put into an escrow fund after closing, and released only after inspections.

### Ongoing Management Responsibilities

If the tribe has made a 20 year loan, it is responsible for managing that loan for up to 20 years, whether or not administrative funds are available. Tasks involved in loan management include:

- Collections.** Often, the most difficult job with a loan fund is monthly collections. Written notices and penalties for late payments must be *immediate*, or borrowers can get so far behind they never catch up.
- Post purchase counseling.** In single family loan programs, tribes may want to offer financial counseling to borrowers with serious late payment problems.
- Escrow funds management.** If the tribe is the only lender, it will probably want to escrow taxes (if any) and insurance along with the loan payment. These funds must be accounted for separately and paid out periodically.
- Foreclosures.** Generally, when borrowers get more than 90 days behind, loan foreclosure must be initiated, which means the tribe must be prepared to take possession of the property or a loan forbearance – essentially a restructuring of loan repayment terms – must be negotiated.
- Fund and loan accounting.** The program must keep detailed, accurate records of all funds and payments on each loan, including monthly reports regarding payments received, delinquent accounts, and reconciliation of funds.
- Reporting to HUD and other funders.** These are generally financial reports, but in varying and special formats.
- Consideration of other lenders.** Other lenders may at some point ask the tribe to “subordinate” the NAHASDA funded loan so they can advance more funds to the borrower or request loan payoff information.
- Reporting to state lending regulatory agencies.** If applicable.
- Releasing liens at loan payoffs.** When loans are fully paid, recorded liens (mortgage deeds) must be discharged.



## DECISION POINTS FOR ESTABLISHING LOAN FUNDS

In deciding whether to establish a revolving loan fund, a tribe should consider these criteria:

- ❑ **Types of loans to be made.** Deferred payment loans are relatively easy to administer, because payments come only on the resale of the properties financed. Revolving loan funds are more difficult to administer.
- ❑ **Loan volumes.** A tribe should forecast how many loans it expects to make initially with IHBG, and how many might be made with new funds in future years. Loan volumes should be high enough (at least 5 to 10 loans a year) to justify setting up management systems and maintaining trained staff.
- ❑ **Potential for future capital funding.** Future loan volumes depend on this factor. Loan repayments will fund very few new loans in the early years of a fund. From time to time, new capital will be required to achieve reasonable volumes of loans. Although IHBG is one source of funding, it is not the only one. ICDBG funds, State government funds, and foundation funds have been widely used to capitalize revolving loan funds for affordable housing.
- ❑ **Staffing.** The tribe should have identified sources for funding ongoing staffing costs, or have designated staff for this work. It is also ideal to have one staff person dedicated to this work over a period of time, rather than have a frequent turnover of staff.
- ❑ **Training.** Initial and ongoing training should be available for all staff and loan committee members involved with a loan fund.

## LEVERAGING AND OTHER BENEFITS OF LOAN FUNDS

Despite many challenges, revolving loan funds can offer many benefits to a tribe, particularly where

conventional financing is difficult or impossible to obtain. Managed in certain ways, a IHBG created loan fund can become a “tribal housing bank” for financing affordable housing for tribal members.

Revolving loan funds can help leverage other sources of funds. Most of the leveraged financing methods recommended in this model involve the tribe making loans with IHBG funds. Repayments of these loans must be deposited in the tribe’s NAHASDA account, from which they can be loaned out again and, therefore, potentially leverage more funds.

The NAHASDA regulations do not *require* that these repayments be loaned out again – the funds could be granted or advanced for other NAHASDA eligible activities. But having IHBG recycle through a revolving loan fund is prudent. It can provide a permanent pool of tribal capital for affordable housing that continues to attract other capital.

With some tribes, leveraging conventional financing may not be possible in the initial stages of a revolving loan fund. For example, with NAHASDA purchase programs, if interested lenders cannot be found, the tribe may have to provide nearly 100 percent financing. This does not mean that these funds cannot be leveraged later, through sales of loans. A number of nonprofit organizations have started revolving loan funds throughout the country that initially provided virtually 100 percent financing. After several years of experience, some have been able to sell their loans to conventional lenders or secondary markets. The key to their success? The loans were performing – that is, they were being paid on time.

Selling loans is another form of leveraging. If a IHBG funded home purchase loan for \$60,000 can be sold several years later, new private capital becomes available to make another loan.

Although the potential benefits of a revolving loan fund are substantial, the initial and long term responsibilities are formidable. A tribe should give careful consideration before committing to setting up such a fund or for that matter, before making any housing loans.



# Chapter Seven

## OTHER SOURCES OF FUNDING

Leveraged financing is an important concept – for both the NAHASDA program, and tribes that wish to attract new capital for affordable housing. Leveraged financing refers to the use of one source of funding to attract or make feasible another source of funds. In this instance, IHBG funds leverage other funds.

What does leveraged financing look like? Assume a tribe wants to design a NAHASDA funded program to help 10 families buy homes. The case of Betty and George Walker, who want to buy a \$61,000 home, is typical. Exhibit 7.1 shows two ways the tribe could use the NAHASDA program to help the Walkers – one with leveraged financing, one without.

**Exhibit 7.1 — Helping the Walkers Purchase a Home**

<b>Approach #1. Leveraged Financing</b>	
Walkers' cash downpayment	\$1,000
Bank loan	\$40,000
Tribal loan from NAHASDA	<u>\$20,000</u>
Total funds used for purchase	\$61,000
<b>Approach #2. Nonleveraged Financing</b>	
Tribal loan from NAHASDA funds	\$61,000

Under Approach #1, the Walker's cash downpayment and a \$20,000 NAHASDA funded loan leveraged a bank loan. Under Approach #2, NAHASDA provided all the financing.

Why is it preferable to use NAHASDA funds to leverage financing? Approach #1 does the following:

- Makes the program application more competitive.** A NAHASDA loan using leveraged financing will score higher.

- Stretches NAHASDA dollars.** In Exhibit 7.1, a leveraged \$61,000 NAHASDA grant would help 3 families, while an unleveraged NAHASDA grant where the tribe financed 100 percent of the costs would help only 1 family.
- Can make monthly payments affordable.** Monthly payments can be made much more affordable using partial NAHASDA financing. A NAHASDA funded loan can be offered on various terms: low interest rate, 0 percent interest rate, or with no monthly payments whatsoever and repayment due only on sale, or the financing can be a grant.
- It attracts private lending.** For reasons explained below, IHBG funds, particularly when used with loan guarantees, may be essential to attracting private lenders to tribal land.

### SOURCES OF LEVERAGED FINANCING

Exhibit 7.2 describes the major sources of leveraged financing that are potentially available to Indian tribes for projects that use NAHASDA. To date, some of these sources – such as the Low Income Housing Tax Credit and philanthropic grants – have rarely been used by tribes for housing projects.

The potential for leveraged financing exists. Around the country, even in small, rural communities, nonprofit organizations have obtained many types of leveraged funds for affordable housing. Because of its inherent flexibility, NAHASDA may be the lever to help tribes increase affordable housing opportunities.



Exhibit 7.2 — Major Sources and Possible Uses of Leveraged Financing

Major Possible Sources	Rental Housing	Homes for Sale	Homeowner Rehabs
Loans from banks, savings and loans, credit unions	■	■	■
Indian Community Development Block Grants (ICDBG)	■	■	■
Bureau of Indian Affairs (BIA) Housing Improvement Program (HIP)			■
Federal Home Loan Bank Board (FHLBB) grants and loans	■	■	■
Rural Housing Service (RHS) grants and loans	■	■	■
Foundation and corporate grants	■	■	
Equity investments using the Low Income Housing Tax Credit	■		
State housing finance agencies – loans and grants	■	■	■
McKinney Act grants for the homeless (HUD)	■		
Tribal cash from business enterprises and other sources	■	■	■
Homebuyer's cash downpayments		■	

### CHALLENGES IN LEVERAGING

Native American tribes face many challenges in using the NAHASDA program. Some of the obstacles that must be overcome to obtain leveraged, conventional financing include:

- ❑ **Lack of relationships with lenders and other funders.** Many tribes are in situations that are similar to certain low income, inner city neighborhoods where outside investment in new homes and home repairs has ceased. Local governments and nonprofit groups have had to work hard to attract lenders, foundations, corporations, and others to invest.
- ❑ **Trust land title issues.** Because most tribal land is held in trust by the Federal government, land must be leased rather than sold. This creates problems for lenders that seek a secure form of collateral for financing.
- ❑ **Varying abilities to repay loans.** Although some Native Americans have good incomes and credit histories, poverty is widespread. Low

incomes make it hard for homeowners to repay loans with conventional terms. The need for low rents makes it hard for rental projects to support market rate loans.

- ❑ **Effort required to manage loan programs.** NAHASDA can be used to create a revolving loan fund, but the mechanics of making loans, loan collections, and fund management are long-term, substantial responsibilities.
- ❑ **Tribal members' expectations of grants.** Many BIA and HUD housing programs have involved grants – at least for repair of owner occupied homes. Selling a loan program may have to overcome expectations based on past history.

The remainder of this finance model describe ways that tribes can successfully deal with these challenges and secure additional financing from other private and public sources.



# Chapter Eight

## CONVENTIONAL MORTGAGE LENDING

Before using IHBG funds in combination with other financing, tribal planners should understand the basic principles of conventional mortgage lending. Understanding these principles can help in designing the tribe's loan programs. Knowledge of conventional lending is also essential in obtaining many kinds of leveraged financing.

This chapter addresses four concepts: (1) the definition of conventional lending, (2) the underwriting criteria used in conventional lending, (3) how underwriting criteria are applied to individual loan applications for home purchases and (4) the tools available (other than NAHASDA) to help low income Indian families obtain loans for the purchase of homes.

Home purchase loans are the focus on this chapter. They are the simplest and most widespread example of conventional real estate financing, and many of the principles that apply to home purchase loans also apply to rental project and rehabilitation financing.

### CONVENTIONAL LENDERS

A conventional lender is an organization that is in the lending business to make a profit. Banks, savings and loan associations (S&Ls), and mortgage companies are examples of conventional lenders. Credit unions, which often make short term loans for home improvements, also fall into this category.

Loans are sometimes packaged for conventional lenders by mortgage brokers who ensure that the borrower is qualified. The brokers also prepare the required paperwork.

Interest charged for conventional loans is generally set at market rate – i.e., a rate that provides enough return to make the loan profitable. Lenders typically offer interest rates that are within a few percentage points of other lenders, based on their cost of funds, their financial position, and perception of risk. Few

loans are made with the lender's cash on hand. Most lenders must borrow money or sell bonds to make long term loans. Thus, if a lender must borrow funds at 6 percent interest, the lender makes loans to customers at around 8 percent. The difference covers the cost of making and collecting the loan, and provides a profit.

### CONVENTIONAL HOUSING LOANS

Housing loans made by conventional lenders can take several forms. Long term loans are called permanent or end loans, as opposed to shorter term construction or home improvement loans. The most common types of conventional housing loans are:

- Permanent home purchase loan.** These loans are made at fixed or variable interest rates, have repayment timeframes of up to 30 years; and require downpayments ranging from 3 to 20 percent of the purchase price;
- Permanent rental housing loan.** These are made at fixed rate, or variable commercial loan rates, have repayment periods of 10 to 20 years, and typically require a 30 to 40 percent downpayment;
- Construction loan.** The rates for these loans are about 2 to 3 percentage points higher than home purchase loans. They must be repaid on completion of construction. Usually, the borrower must have a commitment for a permanent loan; and
- Home improvement loan.** Rates for these loans are higher than purchase loans. Typically, the borrower has 5 to 10 years to repay. No downpayment is required, but the borrower must have equity in the home. Home equity loans have become popular alternatives to this loan type.

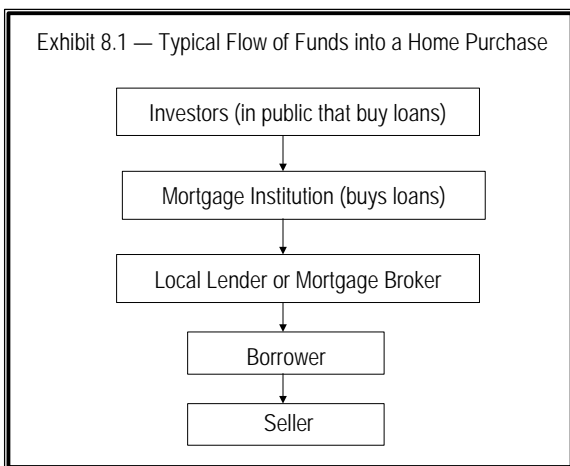




## THE SECONDARY MARKET

First time homebuyers often have the impression when they obtain a mortgage that the money used for the purchase of their home comes from funds stored by their local bank, and that the loan is held by the lender until their note is paid off. This is usually not the case. Many local lenders originate or make a loan and then immediately sell it to a national mortgage institution, such as Federal National Mortgage Association (Fannie Mae) or Federal Home Loan Mortgage Corporation (Freddie Mac). The originator may still collect monthly payments (called servicing the loan) under contract to the purchasing entity. In this case, the originating lender makes its money on application and origination fees (which include fees called points) and on servicing fees (a percentage of the monthly payment).

In the United States, the ultimate sources of most housing loan capital are large financial institutions that bundle loans from many loan originators and sell securities based on these mortgages to investors. These entities, including Fannie Mae and Freddie Mac, engage in what is referred to as the secondary mortgage market. Exhibit 8.1 shows how funds flow from their original source to borrowers and sellers.



Although many banks still hold purchase mortgages in their portfolios, the majority of loans are now sold in the secondary market. Mortgage companies almost

always sell the loans they originate. Portfolio loans are still common with so called community reinvestment lending programs in which lenders offer special, or relaxed, terms to low income borrowers. These programs are described in more detail below.

## LOAN UNDERWRITING CRITERIA

Underwriting is the lender's process of deciding whether to make a loan, and how much to lend. This process must be understood clearly if a tribe is developing a leveraged home purchase loan program.

Many first time homebuyers have either been turned down for a loan, or had difficulty finding an understanding lender. There is often a vague understanding of why loan denials happen – for example, “my credit wasn’t good enough,” or “the bank wasn’t flexible.” The reality is that responsible lenders have a well defined underwriting process and rules for making these decisions. This process is either established by the secondary market purchaser – if the loans are to be sold – or by the lender based on many years experience with such lending.

Loan underwriting typically occurs in five steps. Each of these steps involve what lenders call loan underwriting criteria:

- Step 1.** Does the borrower meet cash (downpayment, closing costs) requirements?
- Step 2.** How big a loan can the borrower afford based on the lender’s housing payment to income ratio?
- Step 3.** How big a loan can the borrower afford based on the lender’s total debt to income ratio?
- Step 4.** How much can be lent on a particular home based on the lender’s loan to value ratio?
- Step 5.** Does the borrower meet criteria requirements?

The following sections describe how these criteria are applied to individual loan applicants.





### Cash Requirements

Lenders want a new homebuyer to have a financial stake in the purchase – actual cash (equity) that is at risk if the homebuyer fails to repay the loan and the home must be foreclosed. Lenders also expect homebuyers to have sufficient cash to pay closing costs for the loan, which are often substantial.

The typical cash requirements for a loan include:

- ❑ **Cash available for downpayment.** Twenty percent of the purchase price is typical. Lenders believe that this gives borrowers a real “stake” so that they won’t stop making payments and walk away. If the borrower has mortgage insurance some lenders will reduce the downpayment to 3 to 5 percent.
- ❑ **Cash for closing costs.** Closing costs generally range from \$1,500 to \$6,000 for a modestly priced home, depending on state laws, local costs, and lending practices. Typical closing costs a homebuyer can expect to pay include: fees for the loan application, an appraisal, a land survey, a title report, mortgage insurance, title insurance premiums, prepaid taxes and insurance, the origination fee (“points”), and document preparation and recording fees.

Consider imaginary homebuyers John and Mary Greenleaf. In Step One of the underwriting process, the lender must determine how much the Greenleafs can pay for a home based on their available cash. To make this determination, the lender makes the following calculation.

Step 1: How Much Can the Greenleafs Pay for a Home Based on Their Available Cash?	
Greenleaf’s available cash	\$2,500
Subtract: Estimated closing costs	\$1,500
Leaves: Amount available for downpayment	\$1,000
Purchase price possible with \$1,000 downpayment, assuming 20% requirement	\$5,000

As with many low income buyers, cash requirements are a substantial problem for the Greenleafs – no decent homes are available anywhere in the United States for \$5,000. But there are ways that

conventional lenders can reduce their cash requirements, thereby increasing the buying power of families like the Greenleafs.

Part of the Greenleaf’s problem can be solved with mortgage insurance. The primary purpose of this insurance is to reduce downpayment requirements – typically to 5 percent of purchase price.

How does mortgage insurance work? In exchange for a monthly insurance premium paid by the borrower, the insurer guarantees payment of a portion of the loan in case of default. This makes the loan more secure for the lender, and thus the lender can reduce its downpayment requirement.

The Section 184 Indian Loan Guarantee program is specifically designed for use by Native Americans on trust land. The program is described in more detail below.

Step 1 (Option 2, with loan guarantee): How Much Can the Greenleafs Pay Based on Their Available Cash?	
Amount available for downpayment	\$1,000
Purchase price possible with \$1,000 downpayment, assuming 5% requirement	\$20,000

If the Greenleafs were to obtain mortgage insurance, the purchase price of a home they could afford would be calculated as shown in the example.

Mortgage insurance, even with the Section 184 program, is not widely available on tribal lands. Even if it were available, it still would not provide the Greenleafs enough purchasing power to buy a decent home in the areas where most Native Americans live.

### Housing Expense to Income Ratio

Lenders compare the amount of money a borrower pays each month for housing with the amount of his or her stable gross monthly income. This is called a housing expense to income, or “front end” ratio. The old rule of thumb for what people can afford to pay monthly for housing was a week’s pay, or about 25 percent of monthly income.

Typically, lenders now use a front end ratio of 28 percent for conventional loans. Lenders developed



the housing expense to income ratio because long term experience showed that buyers with housing loans in excess of this ratio tended to experience difficulty in meeting payments and, hence, might default on their loan. Sometimes, in special affordable housing loan programs, conventional lenders raise the ratio to as high as 33 percent so the borrower can afford a bigger loan.

**Step 2: How Much Can the Greenleafs Borrow Based on the Housing Payment Ratio?**

Greenleafs' combined monthly income	\$1,250
Maximum percentage of income lender allows for housing payment (the housing payment ratio)	28%
Maximum monthly mortgage payment allowed by the ratio (28% x \$1,250)	\$350
Subtract: Estimated monthly taxes and insurance	\$60
Amount left for mortgage payment (\$350 - \$60)	\$290
8%, 30 year loan affordable with a \$290 payment	\$39,785

This discussion concerns conventional financing. It could well be that as a tribe designs its own homebuyer programs, it may decide that tribal members cannot afford 28 or 33 percent of income for a housing payment. The ratio is a maximum amount lenders allow. Most lenders would consider it safer to lend at a lower ratio.

The housing expense has four components: payments to the loan principal, to loan interest, for real estate taxes, and for property insurance. Together these are often called PITI, for principal, interest, taxes, and insurance.

**Total Debt to Income Ratio**

Lenders also have a rule of thumb for total monthly debt payments. This is called the total debt to income ratio (sometimes also called the "back end" ratio). With this ratio, lenders compare total monthly obligations, including housing payment (PITI), car loans, ongoing credit card payments, personal loans, and other fixed debt with total monthly income. Lenders typically allow a back end ratio of no more than 36 to 38 percent of income. The following chart shows how it works.

**Step 3: How Much Can the Greenleafs Borrow Based on the Installment Debt Ratio?**

Greenleafs' combined monthly income	\$1,250
Greenleafs' monthly, nonhousing installment debt payments	\$125
Percentage of income paid for installment debt	10%
Lender's total debt ratio	36%
Percent of income available for housing payment (36% - 10%)	26%
Amount available for monthly housing expenses (26% x \$1,250)	\$325
Subtract: Estimated monthly taxes and insurance	\$60
Amount left for loan mortgage payment (\$325 - \$60)	\$265
8%, 30 year loan affordable with a \$265 payment	\$36,355

Notice that at each step of the underwriting process, the Greenleafs have qualified for a different loan amount – \$36,355 based on the total debt to income ratio, \$39,785 based on the housing payment ratio, and \$20,000 based on cash available for downpayment (assuming mortgage insurance). The lowest number always applies. Therefore, if the downpayment problem can be solved by loaning or granting IHBG funds, \$36,355 would be the most the Greenleafs could borrow.

**Loan to Value Ratio**

To make this calculation, the lender needs to know the appraised value of the home the Greenleafs want to purchase. In case the Greenleafs ever stop paying the loan, the value of the home is of major importance to the lender.

The underwriting criterion that applies here is called the loan to value ratio. Most lenders want to lend no more than 80 percent of the value, as established by a professional appraisal. This protects the lender in the event of a default on the loan. If the appraisal is correct, and property values have not gone down since the home was purchased, the lender is very likely to get back the money it is owed when the home is sold.

Let's assume the Greenleafs had in mind a home that is on the market for \$37,000, and which was just appraised for \$39,000.



The results appear discouraging. Even if the Greenleafs could afford to pay off a \$36,100 loan, the lender would not lend that much for this house. A problem such as this can be solved with IHBG funds. The tribe could finance the difference between the \$36,100 loan (what the Greenleafs can afford) and \$31,200 (what the bank will loan) with NAHASDA.

Step 4: How Much Can the Greenleafs Borrow Based on the Lender's Loan to Value Ratio?	
Sale price of home that Greenleafs want to buy	\$37,000
Appraised value of home	\$39,000
Lender's loan to value ratio	80%
Maximum loan from bank (80% x \$39,000)	\$31,200
NAHASDA makes up the difference (\$36,100 - \$31,200)	\$4,900

### Credit Requirements

Housing and total debt to income ratios measure the prospective borrower's ability to pay. Lenders also want to ensure that borrowers have a willingness to pay. This is often referred to as creditworthiness. Lenders expect borrowers to have a demonstrated reliability to meet debt obligations and a steady source of income. Typical credit requirements call for:

- Good credit.** All home mortgage lenders require a detailed credit report. Isolated missed payments are usually not a problem, but a history of overdue payment is. Foreclosures on past mortgages or judgments, garnishments, or recent bankruptcies are reasons for denying a loan – unless there is a good explanation.
- Steady income.** Borrowers must show a history of stable employment and income.

The following chart shows how credit requirements applied to the Greenleafs.

Step 5: Do the Greenleafs Have Good Credit?	
Number of bills that are currently overdue	0
Number of late payments in past year	1
Bankruptcy in past 7 years?	No
Years at current job – Tom	2
Years at current job – Mary	4
Credit decision	Credit acceptable

### THE REALITY: SERIOUS PROBLEMS FOR LOW INCOME BORROWERS

Conventional home mortgage lending works from sets of rules that are intended to maintain profitability and reduce risk. Because of these rules, many families are denied conventional home loans simply because they do not have enough income or cash.

Typical problems that must be resolved in designing a NAHASDA funded first time homebuyer program include:

- Insufficient cash for downpayment and closing costs;
- Poor or marginal credit – unpaid bills or late payments;
- Housing expense to income ratio – typically, maximum 28 to 33 percent of income – limits loan amount;
- Total debt to income ratio – typically, maximum 36 to 38 percent of income – limits loan amount;
- Loan to value ratio – conventional lenders typically will not lend more than 80 percent of appraised value of a property (without mortgage insurance); and
- Discrimination – studies have documented that some lending practices are unfair to minorities and single women.

### WILL LENDERS MAKE CONCESSIONS FOR LOW INCOME BORROWERS?

The answer is, sometimes and in some places. The Community Reinvestment Act (CRA) requires that lenders make special efforts to lend to low income borrowers, and in low income communities where little investment is going on. But it is up to each lender to decide what special efforts they will undertake.



Many conventional lenders have focused most of their CRA housing efforts on affordable home purchase loan programs for low income families. These programs shave interest rates and make underwriting ratios more liberal, and employment and credit requirements are sometimes not as strict.

Some so called CRA programs have focused efforts on specific target neighborhoods. Many larger lending institutions offer programs through all their branch offices to any borrower with a household income that is below 80 percent of the area median.

Some of these programs are active and currently available to low income Native Americans.

CRA has thus led many lenders to forgo a little profit and accept a little more risk in order to make loans to disadvantaged borrowers. Some lenders see this type of lending not only as compliance with federal rules, but also as a form of community service – a long term investment in improving the communities in which they do business.

## **SOLUTION FOR TRUST LAND: SECTION 184**

The Section 184 program can work well with NAHASDA funded and other tribal lending programs that involve conventional loans. The Section 184 Indian Loan Guarantee program not only reduces cash requirements, but is also designed for use on trust land. This overcomes a major barrier to involving many lenders.

Under Section 184, the tribe must enact ordinances that permit the leasing of trust land. The homebuyer buys the house but leases the land. Both the house and the land lease are security for a loan from a conventional lender, and both can be foreclosed on if the borrower fails to pay. If a foreclosure occurs, HUD generally assumes control of the home and pays what is owed to the lender.



## Chapter Nine

# CHALLENGES IN CREATING NAHASDA PROGRAMS

New affordable housing financing programs for Native Americans are badly needed, but they are complex and difficult to design and implement. NAHASDA is an important new resource that can fund both the administrative and capital costs of setting up a wide range of housing finance programs.

As described above, NAHASDA can help create the equivalent of a tribal housing bank for tribes with the right resources and circumstances. But the challenges should not be minimized. Tribal planners need to thoroughly understand the NAHASDA program. NAHASDA offers great flexibility in designing financing programs, but along with flexibility comes the requirements for much analysis and decision making.

Leveraging other funding is also challenging for many tribes that have traditionally not had access to major sources of funds such as conventional mortgage loans. Other challenges include making decisions on what form of subsidy to use, whether to make construction loans, whether to finance rental housing, dealing with trust land issues, and (if loans are involved) the long term responsibilities of managing a loan portfolio.

The first step is for tribal planners and decision makers to understand what NAHASDA can do.

### OBTAINING LEVERAGED AND CONVENTIONAL FINANCING

Leveraged financing is important for two key reasons: tribes have needs for housing capital that are far greater than HUD programs can provide, and some

tribes may wish to encourage the growth of private housing markets on tribal land.

### MAKING CHOICES ON PROGRAM ELEMENTS

In designing a NAHASDA funded program, tribes must decide whether to make grants or loans, and if loans are chosen, whether they should be amortized loans (repayable) or deferred payment loans (due only on resale of the property). Different programs may require different methods. For example, grants may be most appropriate for very low income elders receiving home repair financing, but loans may be the better choice for more expensive home purchases when the families can afford some monthly payments.

With NAHASDA, the method used is entirely up to the tribe.

### LONG TERM RESPONSIBILITIES

One of the most important issues tribes face in planning a NAHASDA funded program is the long term consequences of their choices in designing programs. Although NAHASDA is flexible in terms of eligible activities, the program has many administrative requirements, some of which continue long after a project is completed.

For example, tribes must ensure low income occupancy of a rental project for as long as 15 years. Home purchasers using IHBG funds must abide by restrictions on the resale of homes. IHBG funds used by a nontribal entity or person are subject to a specific written agreement between the tribe and that entity or person.



## NAHASDA AS A CATALYST FOR CHANGE

The beginning of this model described the serious obstacles experienced by Native Americans in obtaining capital for housing. Because of generally low incomes and the trust status of much tribal land, many Native Americans have been denied equal access to conventional financing.

NAHASDA is a challenging program. Under the right circumstances, it may be a powerful tool for some tribes to start accessing capital for housing.

NAHASDA gives tribes more choices. And the results of well planned NAHASDA programs can give tribal members more housing choices and opportunities.

# *THE NAHASDA DEVELOPMENT MODEL SERIES*

## *Construction Issues*



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# Chapter One

## CONSTRUCTION APPROACHES

### INTRODUCTION

When Indian tribes produce or rehabilitate affordable housing, they make a major investment for the betterment of their communities. To ensure that federal housing funds are used wisely, tribes need to manage construction effectively. Construction management involves the development of high quality work specifications, the selection of competent contractors and work crews, the inspection of work in progress, and careful monitoring of payments against the work completed to ensure that the final product is of good quality.

This model describes good business practices for construction management and explains related procurement procedures required under the Native American Housing Assistance and Self Determination Act (NAHASDA). Procurement is the act of purchasing or contracting for the acquisition of goods and services, particularly (in this case) those related to housing construction and rehabilitation. NAHASDA's procurement requirements ensure that the process tribes follow for hiring construction contractors and professional services is both fair and beneficial to the Indian community. The additional practices described can help tribes monitor their contractor's performance once they are hired; with effective use, they will strengthen the tribes' housing delivery system.

Within this model:

- ❑ This chapter describes different construction methods or approaches for building or rehabilitating units which determine how the project will be managed;
- ❑ Chapter Two discusses the creation of standards for both new construction and rehabilitation projects, as well as the development of a suitable SOW;

- ❑ Chapter Three describes procedures for procuring professional services and construction services;
- ❑ Chapter Four discusses construction management – contract preparation, the preconstruction conference, contract modifications, and contract closeout;
- ❑ Chapter Five describes Davis-Bacon wage requirements and other applicable labor laws; and
- ❑ Chapter Six describes the inspection process.

This model is only an introduction to the topic of procurement and contracting under NAHASDA, and provides recommended procedures. It is important that all recipients of Indian Housing Block Grant (IHBG) funds become familiar with the appropriate federal rules and regulations regarding contracting and procurement. Careful procurement can save time and money by enabling tribal organizations to put their IHBG funds to the best uses possible. Procurement and contracting guidelines are not obstacles to program operations. They are a means of ensuring that IHBG funds are used to realize the goals of the tribe's Indian Housing Plan (IHP). Establishing a well run system of construction management is, in itself, a major element of homebuilding for Indian communities.

In most instances under NAHASDA, the tribe or the tribally designated housing entity (TDHE) will be responsible for developing single family or multifamily housing. However, the tribe, the TDHE or the individual homeowner may be responsible for procurement and contracting of rehabilitation services. Even if an individual homeowner is responsible for rehabilitating his or her home, the tribe or TDHE may be responsible for performing oversight services. In this chapter, the word "owner" is used



when "tribe," "TDHE" and "individual homeowner" are interchangeable.

**Procurement and Construction Management – in Brief**

The steps for successful procurement and construction management are:

- Decide whether to contract out for the work or to perform it in-house with force account labor;
- Prepare a detailed SOW, based on the tribe's written construction standards, that explains the services to be performed, the materials and methods to be used, and the schedule for completion;
- Conduct an open and competitive process for soliciting contractor's bids;
- Evaluate bids on the basis of price, qualification and Indian preference;
- Conduct a preconstruction conference to ensure that all parties understand their responsibilities;
- Complete environmental review requirements;
- Monitor the progress of the work through regular on site inspections;
- Resolve all disputes fairly as they arise; and
- Conduct a final inspection and ensure that all requirements of the work write up and contract have been completed before making the final payment to the contractor.

## GETTING STARTED

Once the tribe or owner has made a decision to embark on a construction process, there are several key stages that take place before the actual construction process occurs.

One of the most important stages of the construction procurement process is the selection of the construction approach that will be used to accomplish the necessary housing construction. The elements to be considered in deciding which approach to use are the size of the project, the tribe's capacity to administer the construction, cost and goals that the tribe or TDHE set forth in the IHP.

Before a detailed SOW has been developed (which is discussed in detail in Chapter 2), the tribe must determine how the work will be accomplished, i.e.,

who should undertake the construction. There are three basic approaches:

- Contracting with a general contractor from outside the tribe;
- Using the tribe's construction manager and subcontracting the work to subcontractors who will hire Indian work crews; and
- Using the tribe's own force account labor.

The choice of approach will depend largely on the capacity of the tribe, the size of the project, and the goals set forth in the Indian Housing Plan (IHP).

## GENERAL CONTRACTOR

A general contractor (GC) is a professional builder who contracts to do a particular project for a set price. The GC takes primary responsibility for the management and completion of the project, including hiring subcontractors for specialized work (such as plumbing or electrical work). The general contractor also may perform a large part of the work itself. The advantages of using a GC include:

- The responsibility for cost control, quality control, and meeting time schedules rests with the contractor, and the tribe is protected from cost overruns through its contract;
- The tribe can select a contractor with specific skills in response to particular needs;
- The contractor is fully licensed and insured;
- The contractor provides records that help the tribe to monitor and allocate costs; and
- The tribe does not have to purchase equipment or maintain a warehouse and materials inventory.

The use of a GC makes the most sense under the following circumstances:

- A tribe lacks experience in construction;
- There are capable contractors available;
- When projects are particularly complicated; and/or



- ❑ If the small size of a NAHASDA program does not indicate a need for the tribe to develop its own in-house construction capacity.

There are also disadvantages to using a GC. With a GC, the tribe may have less control over the day to day progress of the construction. Unless there is a local Tribal Employment Rights Organization (TERO), that advises the hiring process, the tribe also gives up control over the direct hiring of laborers and subcontractors, even though the tribe can encourage the use of local trades people. (If a TERO is in place, the tribe may insist on a certain level of Indian participation on work crews.) The other aspects of construction management – specifically, project inspection, monitoring, and payments – can help the tribe keep on top of the project. The loss of hiring control may best be addressed by selecting a different approach to construction contracting.

## CONSTRUCTION MANAGERS WITH SUBCONTRACTORS

The construction manager (CM) is an individual employed directly or on a consulting basis by the tribe. A typical CM may be a tribe's construction specialist or an employee of TDHE. The CM has no financial liability for completion of the project and does not make a profit on the work performed (as a general contractor does). Rather, the CM acts as a general contractor but bids out 100 percent of the work to subcontractors from the various trades (concrete, roofing, plumbing, and so on).

CMs must have the experience necessary to supervise the completion of a construction project. It is especially helpful if the CM is licensed as a general contractor or building inspector. CMs must also have good management skills because they must work with laborers and subcontractors and coordinate construction activities. In particular, the CM's (and by extension, the tribe's) relationship with the subcontractors is the key to involving Indian labor in the construction process. The CM must require

potential subcontractors, as part of their bid on the work, to propose ways in which they will provide work opportunities for Indians.

### Balancing Experience and Inclusiveness

The Dove Mountain TDHE has used the general contractor method with varying degrees of tribal/TDHE involvement to ensure that the work is performed by experienced trades people using local labor. On one project, the TDHE's contract required that the non Indian general contractor set aside 10 to 20 percent of the contract funds for minority payroll or subcontracts. The TDHE also furnished the general contractor with lists of local trades people who were potential subcontractors. Tribes who seek to emulate this strategy should note that it requires effective employment outreach to identify local trades people.

On another project, the local general contractor used Indian labor to construct new housing units. Through their participation in the project, the laborers learned how to use brick masonry to build structures. A tribe or TDHE may hire them directly for future projects.

Use of a CM with subcontractors has many advantages. The overall cost of construction should be lower than with the GC approach, because the CM approach eliminates the GC profit from the project cost. The CM approach can result in increased employment opportunities, since contracts with subcontractors can require the reasonable creation of jobs for Native Americans. The tribe, through the CM, also gains valuable experience in project management. Subcontractors provide records that help the tribe to monitor and allocate costs. By using the CM approach the tribe does not have to purchase equipment or maintain a warehouse and materials inventory.

The disadvantage to this construction approach is that the tribal members may view the tribe – not the general contractor – as the responsible contractor and the tribe will have to resolve all disputes or problems directly. In addition, the coordination and supervision of numerous subcontractors, instead of one GC, can be administratively expensive and time consuming.



As a consequence, this innovative approach is advisable for tribes with one or more experienced construction managers.

## **FORCE ACCOUNT LABOR**

Under the force account labor approach, the tribe or TDHE performs most or all of the work. The tribe's employees serve as the construction crew, and the tribe provides the equipment and materials. The tribe is responsible for overseeing the work, controlling costs, and ensuring that guidelines for quality and time schedules are met. Subcontractors may be used in force account construction.

The advantages of the force account labor method include:

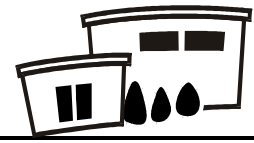
- ❑ The tribe controls the program, providing the opportunity for better quality work at reduced costs. In particular, the labor costs of the force account method are usually lower than those for contractors and subcontractors, because the tribe does not have to pay the contractor's profit; and
- ❑ The force account method provides an opportunity to employ tribal members in construction work, thereby improving job skills and broadening the tribe's economic base.

In addition, although NAHASDA cannot be used for training unskilled or semiskilled workers, the tribe can use NAHASDA programs as training opportunities. Workers on NAHASDA funded projects can gain experience needed to become qualified construction contractors and laborers and work outside of outside their reservations or villages. NAHASDA funded programs should not, however, serve solely as public employment or training projects. Work crews should hire only the minimum number of laborers needed to perform the work, so that the funds are used most efficiently, and the laborers should be reasonably skilled and willing to remain with each project from start to finish, so that the work can be completed efficiently.

The drawback to the force account labor method is that it requires a larger investment of administrative effort than other approaches. If problems occur during construction, the tribe is directly responsible for correcting them. In contrast to when a general contractor is required to obtain a performance bond, the tribe has no assurances that the work will have been completed when the funds are depleted. Furthermore, force account labor may require expensive investments in equipment, tools, and training, as well as an inventory of construction materials. The ownership entity must have sufficient materials and tools on hand to complete the project, and the work force must be trained on the use of equipment to avoid poor workmanship and accidents. In general, tribes should consider the force account method if they have – or can hire – experienced construction supervisors and have a large enough program to justify the necessary investments in equipment and staff.

## **SUMMARY**

Whatever construction method or approach is used, the process should result in the highest quality work for the most reasonable price. Where force account labor is used, the tribe must ensure that the crews are well supervised, so that the work is accomplished in a satisfactory manner. The construction supervisor also must be appropriately trained and experienced in construction and capable of managing and training an unskilled or semiskilled work force. Finally, although this is not a NAHASDA requirement, the tribe or TDHE, if either retains a construction crew, should maintain adequate builder's risk, workers' compensation, and public and vehicular liability insurance. The point of the above discussion is not to discourage Indian tribes from using force account labor. However, it must be emphasized that, with limited resources and building standards to meet, tribes should ensure that they use the construction approach that will maximize the NAHASDA program's productivity and benefits at the lowest cost to the tribe.



# Chapter Two

## PROPERTY STANDARDS

A guiding principle of NAHASDA is to assist and promote affordable housing activities to develop, maintain and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas. One of the ways that tribes and public agencies determine what constitutes an appropriate environment is by adopting standards for housing quality. In fact, a factor of the tribe's need component for its allocation of NAHASDA is the number of American Indian and Alaskan Native (AIAN) households that are overcrowded or without kitchens or plumbing.

Although NAHASDA does not require adoption of a specific set of property standards, it is recommended that tribes and property owners uphold property standards and building codes for newly constructed units and existing stock. HUD's Section 8 Housing Quality Standards (HQS) are an example of the guidelines tribes might use to ensure the provision of decent, safe and sanitary housing for tribal members. In the procurement and project management process, the tribe can use standards when monitoring projects to measure the success of the builder's performance. In addition, tribes might want to have their own written construction standards.

The tribe's work does not end at the completion of construction. Once a property is built, be it single family or multifamily construction, it should be maintained in accordance with specified guidelines in order to preserve its useful life.

### SECTION 8 HQS

HUD established basic HQS for units rented by families receiving Section 8 assistance. These standards were developed to establish a minimum acceptable housing quality with respect to the following categories. For a list of these categories, see Exhibit 2.1.

#### Exhibit 2.1 — HQS Categories

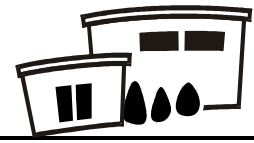
Property Owners may want to require that all newly constructed units are built in accordance with HQS standards, and that these standards be maintained in existing units. Adherence to these standards can be monitored through inspections of the following components:

- Sanitary facilities;
- Food preparation and refuse disposal;
- Space and security;
- Thermal environment;
- Illumination and electricity;
- Structure and materials;
- Interior air quality;
- Water supply;
- Lead based paint;
- Access;
- Site and neighborhood;
- Sanitary condition; and
- Smoke detectors.

HQS requirements were established to guarantee a basic level of decent, safe, and sanitary housing nationwide. These standards are not prohibitive enough to restrict the availability of units of reasonable quality or make a large number of habitable units unavailable in locations where the supply of affordable housing is limited. HQS guidelines are not the same as local building codes for new construction or local housing codes for existing housing, which are often much more stringent.

At a minimum, it is recommended that tribes maintain units to HQS requirements and cooperate with tenants by addressing requests for repairs or maintenance, and by complying with the terms of dwelling leases. Tribes might also institute periodic inspections to ensure unit adherence to these standards. The HQS guidelines are not the same as local building codes for new construction or local





housing codes for existing housing, which are often much more stringent.

## HOUSING AND BUILDING CODES

The goal of building codes generally is to protect the health and safety of persons using a structure. Building codes may cover every aspect of the design, construction, and renovation of structures, covering technical specifications, performance standards, and material and method standards.

State and local codes are often based on model codes that have been developed by national code development organizations. The tribe or TDHE may want to consider amending national model codes to reflect the tribe's conditions and standards. For example, the Partnership for Advancing Technology in Housing (PATH) website (<http://pathnet.org>) provides electronic links to code inspection resources.

## APPLYING CODES AND STANDARDS

Applying building codes and standards involves active monitoring and communications with staff. Key application steps for the tribe or TDHE include the following:

- Identify the housing quality standards and building codes by which existing buildings and repair work will be inspected, as well as the materials and methods by which work will be evaluated.
- Meet with the tribal or TDHE housing staff to clarify roles and applicability of codes and standards.
- Develop enforcement procedures in response to non-compliance.
- Assure that all inspectors and active contractors are familiar with codes and standards, and are clear about the procedures to be followed during and after inspections, especially if standards are not met.

## SCOPE OF WORK

In construction and rehabilitation management, a primary means to assure the performance of quality work is through the development of a detailed scope of work (SOW). The SOW is developed prior to determining the construction approach, and is an important component of any bid package.

Whether a tribe decides to use force account labor or seeks outside contractors or subcontractors, it must develop a SOW for the project. Especially if the tribe will use outside contractors or subcontractors, this SOW is critical to developing a package of information to use for soliciting bids or proposals from interested parties – in short, the tribe must tell the prospective contractor what it wants them to do.

In fact, the SOW is important under any method, because it is used to:

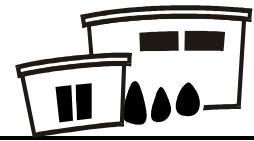
- Determine estimated project cost during the design stage;
- Define quality and building methods/practices;
- Adequately judge construction progress; and
- Address any special local building restrictions (for example, determining what periods of the year stucco can be satisfactorily applied, soil freeze depth, and site considerations).

### Successful Construction Contractor Procurement

Successful contractor procurement with federal funds entails a number of good practices, including:

- Developing a complete SOW for the project;
- Determining whether the ownership entity should provide its own construction services;
- Selecting competent contractors by an open, competitive process; and
- Providing a procedure for challenges to the process





The SOW is a description of the work to be performed on the project. To be effective, it must be very specific. The SOW (also called a work write up) should be based on the tribe's written construction standards (see Exhibit 2.2, and a copy of the HUD Section 8 HQS form in the appendix), and should

describe the amount and type of housing to be built or rehabilitated, the building sizes, and the materials to be used. Regardless of who selects the contractor, the tribe will be responsible for this part of the procurement process. And if "this part" means preparation of SOW, that may be done by the TDHE or a hired consultant, not just the tribe.

**Exhibit 2.2 — Property Standards, Performance Standards, and Work Write ups**

**Sample Property Standard**

Roof. Roofs shall be structurally sound and maintained in a safe manner and have no defects that might admit rain or cause dampness in the walls or interior portion of the building.

**Performance Standard that Corresponds to the Sample Property Standard**

(Ref. R 11) Roof. Repair by replacing defective sheathing boards leaving new deck surface smooth and clean, and adequately secured to structural members. Nails to be 8d common; for plywood sheathing 6 inches OC along all edges and 12 inches OC along intermediate members for plywood. Plywood is to be sheathing grade no less than 3/8 inch but be same thickness as existing.

Item Number	Required Repair	Performance Standard Reference Number
1	Install new plywood sheathing over existing sheathing in 4" x 10" area over northeast corner, front porch	R 11

**Tips for Preparing Work Write ups**

- All specifications should be based on the tribe or TDHE's written construction standards, and written with full detail, in clear language. A good specification is sufficiently definitive and clear to permit the preparation of bids or proposals on a common basis in order to obtain the benefit of full and free competition or to allow full understanding of work to be accomplished by CM or FA supervisors or subcontractors.
- The work write up should be specific with respect to location, size, and type of repair. Detailed specifications allow the tribe or TDHE more control over the contractor and define the contractor's obligations.
- A tribe or TDHE cannot specify particular brand names to the exclusion of others. It may, however, indicate a "brand name or equal," which does not unduly restrict competition.
- If the architect, land planner, and engineer are not part of the same company, insist on good communications among

**Rehabilitation Projects**

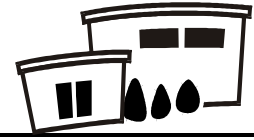
As described in the Owner Occupied Rehabilitation model in this series, the process for developing a SOW for rehabilitation projects involves several steps that are performed by the project architect, engineer, or experienced construction manager. (For a discussion of maximum costs for rehabilitation, please refer to the Finance model.) In summary, the steps for developing a rehabilitation SOW are:

- Initial property inspection to identify housing deficiencies;

- Development of a work write up based on the initial property inspection and the tribe's construction standards and building codes; and
- Preparation of a cost estimate.

**New Construction Projects**

The above process works well for moderate rehabilitation projects – projects that cost \$25,000 or less – but developing a SOW for new construction projects and some substantial rehabilitation projects is more complicated. For more complex projects, the



tribe may want to hire an architect or engineer to prepare schematic architectural drawings and the project work write up. These drawings may consist of floor plans, elevations, cross sections, and detailed specifications related to interior and exterior finishes. Additionally, because new construction projects typically involve road construction, development of water and sewer systems, site grading, and landscaping, the bid package may also include a detailed site plan, drainage plans, grading plans, and (if desired) landscape plans.

## **SUMMARY**

Beyond meeting good construction practices, the work crew on a NAHASDA funded project – whether run by a GC, a CM, the tribe, or a TDHE – should produce housing that meets or exceeds certain tribal standards, such as Section 8 HQS, HUD's standards for health and safety in federally assisted housing. Construction and property standards can be upheld through the operation of a SOW or work write ups that are detailed and specific. Adherence to quality standards for construction and rehabilitation of housing will ensure that tribal communities provide the highest quality environments possible.



# Chapter Three

## PROCUREMENT

The procurement of contractors, services and products for the construction project is one aspect of managing the entire construction process. In many cases, the easiest way to find a contractor is simply to turn to someone known to or referred by tribal officials and offer him or her the contract. Although this approach might get the job done, it is not consistent with federal procurement requirements. Federal rules for procuring contractors and other products and services are designed to ensure that the tribe finds the best contractor or products possible for the job at a reasonable cost in an open competitive process. By following these requirements, a tribe may find a contractor or service provider who can do the job better and for less money – and with whom the tribe can subsequently develop a long term relationship.

Applicable procurement requirements for tribes/TDHEs using NAHASDA funds are primarily outlined within 24 CFR 85.36. In addition the NAHASDA regulations include an Indian preference requirement.

This chapter begins with a brief discussion of the Indian preference requirement. It reviews basic procurement standards for the different contracting situations a tribe might face. (See box for a review of the principles of procurement.) It then discusses the procedures for procuring professional services through the Request for Proposal (RFP) method and for procuring construction services through the Invitation for Bids (IFB) method. And finally, it describes how proposals are to be evaluated and awarded.

**Principles of Procurement**

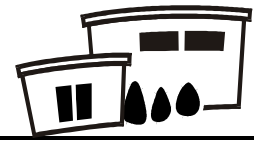
Effective procurement procedures ensure that the ownership entity makes acquisitions in an efficient, effective manner and in accordance with applicable federal purchasing guidelines. The following procurement principles should serve as your guide:

- Treat all prospective sources in a fair and equitable manner;
- Maximize open and free competition;
- Maintain “arm’s length” relationships with contractors;
- Ensure that the contractor is responsible;
- Ensure that the price is fair and reasonable; and
- Provide an opportunity for appeal and remedy.

### INDIAN PREFERENCE

Congress included Section 7(b), the Indian preference clause, in the Indian Self Determination and Educational Assistance Act, to ensure that federal funds designated to assist Indian communities would also employ Indians and provide economic opportunities to Indian organizations and businesses. Because IHBG funds are federal funds that are for the exclusive benefit of Indian communities, Section 7(b) requirements apply. Thus, Indian tribes that receive IHBG funds have a real opportunity and incentive to use funds to better the economic conditions of their communities.

NAHASDA regulations at 24 CFR 1000.52, in accordance with Section 7(b), requires that, to the greatest extent feasible, grant recipients give preference in the award of contracts and in regard to



training opportunities and hiring funded under NAHASDA to Indian organizations and Indian-owned economic enterprises. Additional Indian preference requirements applicable under NAHASDA are found in the Indian housing regulations at 24 CFR Part 1000, Sections 48, 50, and 54. Indian preference requirements apply to all types of procurement, including small purchases. (An Indian organization is a tribe's governing body or its designated representative, like a TDHE. An Indian owned enterprise is any for profit business that is at least 51 percent owned by Indians.)

The preference requirement applies to all Indians, not just those of a particular tribe. Tribes may limit their procurement advertising to Indian organizations and enterprises or they may structure their bid evaluation procedures to favor Indian bidders through the methods described in this chapter. Because the Indian preference requirement applies to subcontracts as well as contracts, if a tribe hires a general contractor, that contractor must, in turn, adhere to an Indian preference policy when hiring laborers and subcontractors. The federal regulations at 24 CFR 1000.52(f) contains a Section 7(b) clause that must be included in all contracts and subcontracts involving IHBG funds.

If a tribe/TDHE has never had its procurement policy approved by HUD, they may develop a procurement policy and certify that it will provide for Indian preference in procurement activities to be consistent with Section 7 (b) of the Indian Self Determination and Educational Assistance Act. Self-governance tribes may certify that their administrative requirements meet or exceed the requirements stated under these federal regulations. As an alternative, the tribe/TDHE may elect to use a two-stage preference procedure. The procedure requires that tribes/TDHEs first invite or solicit responses from Indian-owned entities to determine if there is sufficient competition to restrict the solicitation to Indian-owned entities. Based on the number of responses received, the tribe/TDHE may decide to offer the solicitation to Indians only or open the solicitation to Indian and non-Indian owned entities.

### **Section 3 Requirements**

Under NAHASDA, tribes/TDHEs are required to comply with section 3 of the Housing and Urban Development Act of 1968 and HUD's implementing regulations at 24 CFR Part 135. Section 3 is designed to provide contracting, job training, and employment opportunities for low-income persons, including residents and resident-owned businesses. Although section 3 compliance is required, this type of preference should be consistent and not in conflict with Indian preference. The federal regulations at 24 CFR 1000.42 state that Section 3 requirements apply only to those housing activities or projects for which the amount of assistance exceeds \$200,000. It is important to remember that the threshold requirement applies to the level of assistance provided and not just to the amount of a specific purchase or contract.

### **METHODS OF PROCUREMENT**

Procurement is a major part of managing the construction process. HUD has developed different methods of procurement to reflect and address the different kinds of contracts that its grantees face. All, however, share an emphasis on open and free competition and cost effective procurement.

### **COMPETITIVE PROPOSALS (REQUEST FOR PROPOSALS – RFP)**

The competitive proposal method is used when a contract cannot be awarded based solely on price. This is the preferred method for procuring professional services. The competitive proposal method may also be used when conditions for the sealed bidding method are not present. For example, a tribe/TDHE may not know exactly what it wants and detailed scope of work or product description is not available.

Under the RFP process, the tribe issues a detailed description of the kind, quantity, and quality of the service to be purchased and asks suppliers to submit proposals to provide that service. Proposals are sealed to ensure that competition among bidders remains fair. The tribe evaluates the proposals based on price plus a number of factors that relate to the



delivery of the service, such as experience, technical capability, style of delivery, and so on.

### **Qualifications-Based Selection (QBS)**

Tribes/TDHEs may also use competitive proposal procedures for qualifications-based selection (QBS). This method can only be used for the procurement of architectural/engineering (A/E) services. Under the QBS method, offers are evaluated based on technical qualifications. Price is not used as an evaluation factor.

Once the tribe/TDHE selects the most qualified candidate, a price is negotiated with that firm. If a fair and reasonable price cannot be agreed upon, the tribe/TDHE will attempt to negotiate with the second most qualified firm, and continue in this manner until a contract is awarded.

### **Simplified Acquisition**

Tribes can use a more informal process for purchases that do not cost more than the simplified acquisition threshold, which is currently set at \$100,000. However, tribes/TDHEs who have different limits than the simplified acquisition threshold stated in their respective policies must follow the lower of the two limits.

Tribes/TDHEs can obtain price or rate quotations from an adequate number of qualified sources (typically at least three). Oral quotes should, however, always be followed up with written documentation. Simplified acquisition procedures expedite the procurement process and generally do not require public advertisement or a public bid opening. A simplified acquisition procurement should, to the greatest extent feasible, provide Indian preference in the award of contracts.

Another type of simplified acquisition procedure is the blanket purchase agreement. This type of agreement would be used for routine purchases of materials and supplies and must also be competed. Sometimes a discounted price can be negotiated with the supplier. Tribes/TDHEs must always promote open competition, so it is a good idea to rotate the use of a blanket purchase agreement among several suppliers or sources.

### **Professional Services**

When the tribe contracts for professional services – such as land surveying, architectural services, etc. – the method of procurement depends primarily on the size of the contract:

- For purchases above the simplified acquisition threshold (currently set at \$100,000), procurement must be accomplished by requesting formal proposals, referred to as the Request for Proposals (RFP) process; but
- For purchases of up to and including \$100,000, a more informal means can be used (as described below).

### **Construction Services**

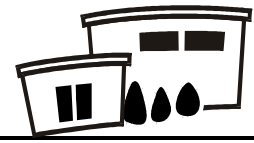
Procurement for construction services may be done through one of two methods:

- If a tribe will select the contractor, procurement can be accomplished through a sealed bid procurement, also called the Invitation for Bids (IFB) process; or
- If an individual homeowner will select the contractor, procurement can be accomplished through a tribe issued “contractor’s bid package” that, although less competitive than the IFB, can still ensure a reasonable cost procurement (see box on the following page).

### **SEALED BIDDING (INVITATION FOR BIDS – IFB)**

Sealed bidding procedures are another option tribes/TDHEs can use to procure goods and services in an amount that exceeds the simplified acquisition threshold amount. Sealed bidding should be used if the following conditions are present:

1. A complete, adequate and realistic specification, purchase or product description and/or statement of work is available;
2. Two or more responsible bidders are willing and able to compete effectively for the business/award; and



3. The procurement lends itself to a firm-fixed-price contract and the selection of the successful bidder can be made primarily on the basis of price.

Sealed bidding is the preferred method for procuring construction services. (See Appendix 3 for an IFB checklist.) Under the sealed bidding method, a tribe/TDHE issues an invitation for bids (IFB) to all prospective bidders. The IFB shall be publicly advertised and solicited from an adequate number of competitors. The tribe issues a description of the work to be done and other project requirements, and contractors submit bids in response. The contractors are required to submit their sealed bids in a required format by a certain time and date. At the public bid opening, the bid prices and the bidders are read. The best qualified contractor with the lowest responsive bid is generally awarded the contract, subject to Indian preference and Section 3 preference where applicable.

In each case, a contractor's bid for construction services requires written documentation of work plans to be evaluated thoroughly. The IFB must contain precise descriptions of the work to be accomplished and the methods of construction to be used. Use of informal solicitations is not recommended for rehabilitation projects of any size. It is absolutely critical that the work to be performed is clearly stated in writing.

**Contractor's Bid Package for Owners**

If an individual property owner or buyer is given the option of selecting the contractor, the tribe or TDHE should provide a contractor's bid package to the owner. This package might include:

- Owner fact sheet regarding contractor selection responsibilities;
- Contractor's instructions regarding the bidding process, including the response time and date;
- Cover letter to work specifications explaining the use of the document;
- Owner's work specifications/work write up;
- Contractor licensing and insurance requirements; and
- List of prequalified contractors (optional).

The competitive process of procurement should be used for all federally funded housing construction and rehabilitation projects, except when an individual property owner (or buyer) selects the contractor to work on his or her home. If the individual homeowner selects the contractor, a competitive bid process is not necessary. Instead, the homeowner may solicit proposals from contractors by using a "contractor's proposal package" that contains basically the same information as would be found in an IFB. Although the tribe may assist the owner with the preparation of the package and the evaluation of the proposals, the homeowner is responsible for issuing the package and for negotiating with and selecting a contractor. Under this type of procurement, the property owner is not required to observe the Indian preference requirement, but the TDHE must ensure that the contractor meets certain qualifications and that the contractor's bid is close to the TDHE's cost estimate (typically within 10 percent).

There are many advantages to allowing individual homeowners to select their own contractors. First, because the tribe is not a party to the contract between the homeowner and the contractor, it may act as a fair and impartial monitor over the construction process. Second, the tribe will avoid any appearance of favoritism toward a contractor. Third, a homeowner may be able to select a contractor more quickly and at less cost than a tribe because the tribe must undertake a more formal bid and selection process. Last, in areas where many contractors are available, numerous projects can be performed simultaneously, and each individual homeowner can develop a relationship with a particular contractor. In all, the homeowner is empowered to identify and select the contractor of his or her own choice.

Of course, homeowner selection of the contractor has some risks. Generally the tribe's representatives are more experienced in evaluating bids and negotiating with contractors than are individual homeowners. In addition, economies of scale are lost when individual homeowners select separate contractors instead of selecting one contractor that is qualified to do all work for the tribe. In situations where there are few qualified contractors in the area, individual homeowners may be unable to find qualified contractors. Under such circumstances, the tribe





might want to create a list of contractors who are prequalified – properly licensed and insured.

### Competitive Method vs. Sealed Bidding

The competitive proposal method differs from the sealed bidding in several ways. First, there is no public opening of proposals received. The contents of each proposal are kept confidential. The RFP procedure is more complex, labor intensive and time consuming than the sealed bidding method.

In addition, the RFP process allows negotiations or discussions between the tribe/TDHE and the candidates. For example, the tribe/TDHE may want to establish a competitive range for offers received. Negotiations would then be held with those candidates who fall within the competitive range and have a chance of being selected. A competitive range could be a score (rank) of at least 70 points on a 100 percent evaluation scale. Candidates may be permitted to make a best and final offer after negotiations are completed.

### Noncompetitive Proposals

The noncompetitive proposal method is a solicitation of proposals from a single source or a determination of inadequate competition after solicitation of a number of sources. This method may be used when contract award is infeasible under one of the competitive methods described in this chapter. In addition, one of the following circumstances must apply:

1. The item/service is only available from a single source;
2. An emergency condition is present which will not permit a delay resulting from competitive solicitation;
3. HUD specifically authorizes a noncompetitive proposal; or
4. After solicitation of a number of sources, competition is determined to be inadequate.

The use of the noncompetitive proposal method should be avoided if possible. The use of competitive proposals is always preferred. When awarding a

noncompetitive proposal, the tribe/TDHE must perform a cost analysis to ensure that the proposed cost is fair and reasonable. Also, the tribe/TDHE may be required to submit the proposed procurement and supporting documentation to HUD for review prior to contract award.

## PROCEDURAL STANDARDS

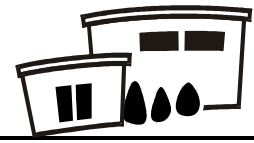
The tribe's procurement methods rely on a competitive process where bidders submit their qualifications, experience, and proposed costs to compete for the contract. Even the individual homeowner's procurement method is based on an evaluation of price and qualifications. Thus, regardless of contract size and procurement method, the tribe should attempt to solicit a minimum of three quotations from qualified sources to ensure fair competition and a cost effective result. (An individual homeowner may simply select a contractor who meets the tribe's contractor eligibility criteria if the bid amount and SOW are acceptable.)

When the tribe conducts the contractor selection process, the competition must be open, and all bids must be made public. Losing bidders have the right to compare the winning proposal with their own, and, in some cases, they may wish to appeal the tribe's decision. The tribe must, therefore, have an independent appeals process to address bidders' concerns.

Tribes must also follow ethical standards of conduct related to open and fair competition. They need to be especially aware of the federal restrictions on conflict of interest and gratuities. A conflict of interest occurs when the parties to a contract do not have what is known as an "arm's length" relationship with one another. An "arm's length" relationship exists when the buyer and seller are legally, financially and personally independent entities. Directors, employees, or agents of the tribe should have no financial or personal interest in the procurement or contracting process. In addition, the buyer and seller cannot be immediate family members. In accordance with 24 CFR 1000.30(b), immediate family ties are determined by the tribe/TDHE in its operating policies.







A related requirement deals with gratuities. Gratuities are gifts or favors that a seller gives to a buyer. Because gratuities can be used to influence procurement decisions, there are strict limits on the ability of federal grantees and subgrantees (including tribes) to accept gratuities. Basically, no director, employee, or agent of the grantee or subgrantee – in this case, a tribe receiving IHBG funds – is permitted to solicit or accept gratuities, favors, or any other goods or service of monetary value from actual

potential contractors or suppliers. Only under certain conditions, when a contractor or supplier gives an unsolicited gift of nominal value (\$25 or less), can the gratuity be retained.

Finally, HUD has specific procedural standards that tribes must adhere to when using IHBG funds for procurement, whatever method is used. For the most part, these standards simply encourage good business practices, but they are also important for program monitoring purposes. These standards affect the administrative practices that tribes must follow, specifically:

- A contract administration system** that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts;
- A written code of standards of conduct** that governs the performance of employees of the tribe who are engaged in the award and administration of contracts;
- Procedures for reviewing procurements** to prevent unnecessary or inappropriate purchases;
- A record keeping system** to detail the significant history of a procurement; and
- Protest procedures** for handling and resolving contract disputes.

Tribes should contact their local HUD field offices for assistance in implementing these procedures.

In summary, procurement using IHBG funds must follow a formal and principled procedure that, while favoring Indian bidders, maximizes competition for contract and subcontract awards. The remainder of

this model discusses these procedures in greater depth.

## **PROCUREMENT OF PROFESSIONAL SERVICES**

Inevitably, rehabilitation and new construction projects require the services of a number of professionals. Some of these professionals and the kind of services they provide include:

- Architect.** Most new construction projects and larger rehabilitation projects require an architect to design the building, prepare the construction plans, estimate project costs, and supervise construction.
- Engineer.** If the project requires significant site work, such as water and sewer systems or road construction, the services of a civil engineer may be required to design the necessary improvements. Geotechnical engineers may also be needed to provide soil borings.
- Land planner.** Detailed site and landscape plans may be necessary prior to the construction of a project, particularly one involving a large number of newly constructed units (architectural firms often can provide these services).
- Environmental consultant.** The services of an environmental consultant may be necessary to ensure that no environmental hazards are present on site. This usually involves testing ground water and topsoil, as well as examining proximity to dump sites or other environmental threats.
- Appraisers.** Most rehabilitation and new construction projects require an appraisal, generally for financing and insurance purposes. An appraiser conducts this analysis, usually based on the market sales of similar properties, to determine the post rehabilitation or completion value of a property.
- Attorney.** For many larger projects, the tribe will need an attorney to prepare contracts, execute promissory notes and mortgages, and represent the tribe at closings.



This section describes the process involved in contracting for professional services. Contracts for professional services must be awarded using a competitive proposal process, also known as a Request for Proposals (RFP) process. (See box for a description of good practices in procuring services.)

**Services Procurement**

Although price is often a deciding factor for construction contracting, a tribe's decision for procurement of services depends more heavily on the provider's experience. Again, there are certain federal requirements and good practices to observe, including:

- Determining a precise SOW and designing factors for award that correspond to it;
- Selecting competent providers by a fair, competitive process; and
- Ensuring that the service is provided on schedule so that construction proceeds smoothly.

**CAUTION:** Tribes must take care not to procure professional services on an informal basis instead of going through a competitive process. For example, a tribe may contact a local architectural firm simply to discuss possible projects. Those initial discussions might lead to more detailed discussions, preliminary cost estimates, and even preliminary drawings and plans, without the tribe's having issued an RFP. This situation violates the NAHASDA regulations and common procurement standards – the tribe must solicit proposals through the RFP process before a potential contractor performs any work. If a tribe solicits proposals after a contractor has already performed work on an informal basis, there is a risk that other potential contractors will be at a competitive disadvantage.

**Exhibit 3.1 — Sample Checklist for a Complete Request for Proposals (RFP)**

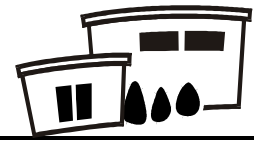
- A statement requesting proposals from qualified firms, providing a specific date, time, and place where proposals are due
- A description of the proposed construction project
- A detailed SOW
- A summary of the evaluation criteria, including Indian preference requirements
- A proposed project schedule
- Other federal requirements:
  - a. The tribe's contracting and subcontracting plan, including a required statement describing how contractors intend to provide Indian preference in subcontracting
  - b. List of Indian subcontractors, if available
  - c. Penalties for noncompliance with the tribal contracting and subcontracting plan
- Required proposal contents:
  - a. Corporate experience, including details of specific completed projects
  - b. Resumes of key staff and consultants
  - c. Description of services to be provided
  - d. Cost proposal
  - e. Subcontracting statement
  - f. Evidence of eligibility as a tribal organization, if applicable
  - g. Statement regarding ability to achieve stated schedule

**CONTENTS OF AN RFP**

Good RFPs provide sufficient instruction to encourage firms to submit responsive proposals for the services described above. In addition, they are prepared in such a way that the tribe receives all the information it needs to evaluate proposals. Although each RFP is different, there are many common elements. A checklist of these elements is provided in Exhibit 3.1. Particular attention should be paid to the SOW and the factors for award, which provide a basis for understanding the need for certain information in the competitive proposal process.

**DEVELOPMENT OF A SOW FOR PROFESSIONAL SERVICES**

The first step in the RFP process is the development of a SOW for professional services. A SOW describes the specific tasks, deadlines, and products required of the service provider. There are a number of essential elements of a complete SOW. First, the



SOW should clearly identify the scope of the proposed project (for example, to construct 15 new two bedroom units of approximately 900 square feet each on a site located on Sunrise Road). Second, the SOW should also clearly identify the specific professional services required. An example of an architectural SOW – perhaps the largest and most likely professional services contract in most NAHASDA projects – is shown in Exhibit 3.2.

### Exhibit 3 2 — Sample Architectural SOW

- a. Prepare three alternative design options, which shall be professionally rendered (color renderings are not required).
- b. Prepare preliminary cost estimates based on selected design.
- c. Make necessary presentations to tribal staff and leaders.
- d. Prepare detailed architectural plans, including necessary elevations, floor plans, cross sections, profiles, and detailed specifications to allow for the project to be bid.
- e. Provide all necessary surveying and engineering services, including geotechnical testing (up to three soil borings) and preparation of construction and site plans.
- f. Provide a Phase 1 Environmental Assessment of the site to ensure that environmental hazards are not present.
- g. Coordinate with the Bureau of Indian Affairs, Indian Health Services, and other regulatory agencies to ensure that all permits and approvals are obtained prior to construction bidding.
- h. Prepare bid packages and manage the construction bidding process. Review all submitted bids and provide a recommendation.
- i. Make two progress inspections weekly of construction to ensure compliance with plans, review construction draw requests, and make recommendations to the tribe on payment once a month.

**Note:** The above SOW would also be applicable to rehabilitation projects, except that the need for site work is generally minimal.

Although the tribe can solicit each service from a separate firm, a single architectural firm should be able to provide many of the necessary services. In large part, the SOW determines this choice because it spells out whether professional services should be provided separately or as a package. Requesting a

package of services together in one RFP has administrative advantages, because it is easier and often faster to award one large contract than several smaller ones. Even if local firms generally do not have all the required capabilities in house, they can be encouraged to put together a team of complementary firms and consultants that could jointly respond to the tribe's RFP.

### FACTORS FOR AWARD

The RFP must include the factors for award that will govern selection of a proposal, including the number of points assigned to each factor. This information ensures that each firm understands the basis on which its proposal will be judged. It also protects bidders against the possibility that the RFP issuer, after proposals have been received, will tailor the factors so that the award fits a particular proposal.

The tribe may use numerous factors in addition to price to evaluate each proposal. These factors depend on the size and complexity of the project, the type of service solicited, the timeframes involved, and so on. A few of the more common criteria included are described below. The factors include suggested values. However, tribes/TDHEs may choose their own rating system.

#### Firm's Experience

The experience of the firm on similar projects should be heavily considered in any solicitation for professional services. An inexperienced architectural firm might run into delays and cost overruns that a more experienced firm would avoid. A suggested value for this factor is 10 to 20 points on a 100 point scale.

#### Staff or Team Member's Experience

Even if the firm has experience, it may not be clear that the professionals proposed for the contract have the necessary experience. The RFP should require that bidders specify which professionals will be involved, what roles they will play, and their individual experience with similar contracts. The value of this factor is probably in the range of 10 to 20 points, again on a 100 point scale.



## **Responsiveness**

The firm's proposal should meet all the requirements of the RFP. Moreover, it should address the tribe's needs. In all cases, the proposed service delivery should be sound and thorough, but, where possible, the tribe might favor plans that are especially sensitive to the tribe's tastes and culture. The value of this factor may range from 10 to 20 points as well.

## **Indian Preference**

This is a required selection factor and should be clearly identified in the RFP. There are two methods for applying Indian preference. First, the tribe may reserve 15 percent of the available points for each Indian bidder. For example, using a 100 point system, each Indian organization or Indian owned enterprise would automatically receive 15 points in this category, and all other firms would receive none. Alternatively, if the tribe is reasonably sure that it will receive at least two responses to the RFP, it may limit eligibility to Indian organizations and Indian owned enterprises (with no points awarded for this factor). If it does this, however, it must advertise this limitation in the RFP.

## **Price**

Although price should be considered in the procurement of professional services, it generally receives less weight than other factors for award. A point value in the range of 10 to 20 points on a 100 point scale is generally appropriate. If, however, the tribe selects a firm that is significantly higher than competing firms, it also must thoroughly document its decision for award.

Other factors may also be considered, depending on the project and the needs of the tribe. Such factors may include the firm's ability to meet the proposed schedule or past experience the firm has had with the tribe. The tribe must not, however, introduce factors that would unduly prohibit competition or prove prejudicial toward any one firm – e.g., only allowing contractors who have worked with the tribe previously to submit bids.

## **SOLICITING RESPONSES TO THE RFP**

Once the RFP has been developed, the tribe may begin soliciting proposals from qualified firms. In most cases, this involves publishing an announcement of the RFP in a local newspaper or trade newsletter. This announcement should briefly describe the SOW, the Indian preference, the deadline for proposals, and the address and telephone number of the office where interested firms can obtain more information and a copy of the full RFP. It is also acceptable to contact directly or mail copies of the RFP to firms known to the tribe, provided that the RFP is also publicly announced. If the estimated value of the contract is \$25,000 or less, the tribe may solicit responses by telephone and is not required to publish a formal announcement, but must maintain written documentation of the process that it follows.

## **PROPOSAL REVIEW**

Once the tribe receives proposals, the review process begins. The review of proposals should be as objective as possible. The tribe should create a review committee to ensure an objective and fair review of proposals, which requires careful analysis of factors not related to price. At least two or three persons should review each proposal independently and then discuss them jointly. Each reviewer should rate each proposal based on the point system published in the RFP. It is helpful to have a standard proposal evaluation form (see Exhibit 3.3) that provides a record of the score on each rating factor as well as comments that explain the score given.

If more than three proposals are received, it may be helpful to narrow down the field of proposals before committing the time needed to interview firms. The review committee could use the RFP's point system to do this, taking at least the top three proposals for further consideration. On larger or highly sensitive procurements, the tribe may then wish to interview representatives of the firms that have submitted proposals before making an award. These interviews provide the tribe with an opportunity to obtain



clarification of the proposal contents and gain a firsthand impression of the professionals involved. To avoid giving an unfair advantage to any one firm, interviews should be offered to all firms.

The final step is to select a firm. A notification of award should then be sent to the firms that were not selected. Again, the tribe must make the results of its evaluation available to the public on request, to ensure the bidders that the competition was held fairly.

**Exhibit 3.3 — Sample Proposal Evaluation Form**

<b>Proposal Evaluation Form</b>			
Reviewer: _____	Date: _____		
<u>Selection Criteria</u>	<u>Proposal 1</u>	<u>Proposal 2</u>	<u>Proposal 3</u>
Firm experience/qualifications (maximum 20 points) Comments:	_____	_____	_____
Staff experience/qualifications (maximum 20 points) Comments:	_____	_____	_____
Responsiveness to tribe's needs (maximum 15 points) Comments:	_____	_____	_____
Availability to meet schedule (maximum 15 points) Comments:	_____	_____	_____
Price (maximum 15 points) Comments:	_____	_____	_____
Indian Preference (maximum 15 points) Comments:	_____	_____	_____
Total (maximum 100 points)	_____	_____	_____
General Comments:			



## PROCUREMENT OF CONSTRUCTION SERVICES

Once the tribe has developed a detailed SOW, if it plans to use the GC or CM approach to construction, it will be ready to prepare an Invitation for Bids (IFB) or help an individual homeowner prepare the contractor's bid package. An IFB is a package of informative materials that provides guidance to interested contractors regarding how, where and when to submit their bids. In addition to providing the SOW, construction drawings, plans, and specifications in a bid package, it is important that interested contractors have full knowledge of the federal regulations and applicable tribal laws that may affect their bids. Appendix 2 contains important information regarding the contents of the bid package. Tribes should review this Appendix in detail before preparing IFBs.

## SOLICITING RESPONSES

If an individual homeowner will select the contractor, he or she distributes the contractor packages to the contractor. The homeowner may choose the contractors who are to receive packages, but should solicit proposals from at least three contractors (two

are sufficient if in a remote area) to obtain the best price. The homeowner should also instruct contractors to submit their proposals within 30 days – a delay in receiving the bid could lead to scheduling problems for the tribe that is assisting the homeowner. It will often be helpful for the tribe to provide the homeowner with a list of qualified contractors (i.e., contractors whom the tribe knows meet certain preconditions). This list must not serve as the tribe's endorsement of any contractor, and must not limit the homeowner's choice in selecting contractors. The tribe should verify the qualifications of the contractor selected by a homeowner, as this step may be difficult for individual homeowners to perform. Exhibit 3.4 illustrates the tribe's role during the homeowner selected contractor procurement process.

If the tribe will select the contractor, it should advertise the IFB publicly so that interested contractors may request copies. Places to advertise include general circulation newspapers and trade newsletters; it is also acceptable to contact directly or mail copies of the IFB to firms known to the tribe, provided a public announcement is also made. The advertisement should be placed early enough so that contractors have 3 to 4 weeks to prepare bids in response.

### Exhibit 3.4 — Individual Homeowner Selected Procurement and Bid Solicitation

If the homeowner selects the contractor, the procurement process does not require an IFB. Instead, the homeowner issues a "contractor's bid package" to interested contractors. The contractor's response need not be sealed. For ease of presentation, this chapter uses the term "contractor package" to refer either to an IFB or to the contractor's bid package, but there are some important differences to consider in the level of involvement that the tribe and the homeowner each have in the solicitation process. If the homeowner distributes the proposal package, the tribe's role may be limited to assisting with the review of the contractors' proposals and qualifications (moderate owner involvement) or simply ensuring that the selected contractor meets all program compliance requirements (intensive owner involvement). The table below summarizes the tribe's role when owner involvement is low, moderate, or intensive.

When the Homeowner's involvement is:	Low/None	Moderate	Intensive
The tribe will	<input type="checkbox"/> Prepare and issue IFB <input type="checkbox"/> Negotiate price and contract terms <input type="checkbox"/> Obtain homeowner's approval <input type="checkbox"/> Sign contract with contractor	<input type="checkbox"/> Provide advice on locating contractors <input type="checkbox"/> Assist in preparation of contractor proposal package <input type="checkbox"/> Evaluate contractor qualifications <input type="checkbox"/> Help review contractor proposals	<input type="checkbox"/> Assist in preparation of contractor's proposal package <input type="checkbox"/> Review homeowner's selected contractor for compliance with program regulations





On larger projects, the tribe may hold a pre bid conference to brief prospective bidders, explain complicated specifications and requirements, and allow bidders to ask questions about the IFB. This conference should be held as early as possible after the invitation has been issued and before the bids are opened. Documentation presented at the pre bid conference is important and sometimes taping is helpful. Because all potential bidders are invited, pre bid conferences do not provide an unfair advantage to any one bidder; nonetheless, a pre bid conference should never be used as a substitute for a detailed, clearly written IFB.

### PROPOSAL EVALUATION AND AWARD

When the tribe is selecting a contractor, it should evaluate each bid and quotation on the basis of the following four factors:

- Qualifications of the contractor;
- Responsiveness of the bid or proposal;
- Indian preference; and
- Price.

Each of these factors must be considered carefully before an award is made. Other factors should not be considered unless they were advertised in the bid package.

#### Contractor Qualifications

NAHASDA regulations require that awards be made only to qualified contractors. The minimum standards that a contractor must meet to be considered qualified include:

- Adequate financial resources or the ability to obtain such resources as required during the performance of the contract;
- Ability to comply with the required or proposed performance schedule, taking into consideration all existing commitments;
- Satisfactory record of past performance. For contractors who are or have been deficient in

current or recent contracts, consideration should be given to the number of contracts and reason for the deficiency of each;

- Record of integrity and ethical behavior;
- Eligibility to receive an award under applicable laws and regulations. If the contractor is currently on HUD's list of contractors debarred or suspended from receiving federal contracts, he or she is ineligible for further federal contracts until their name is removed from the list. (Contact the local HUD office for a listing of such contractors);
- Possession of the necessary licenses and permits to perform the construction activities; and
- Maintenance of adequate levels of insurance (see box). Actual levels of insurance coverage will depend on the size of the project undertaken by the contractor.

**Contractor Insurance Requirements**

At a minimum, contractors should carry the following types and amounts of insurance:

- Worker's Compensation and Employee's Liability — \$100,000 per person;
- Auto Insurance — for injuries and damages caused by the contractor's vehicle on the job site;
- Comprehensive Public Liability — \$250,000 per person; and
- Property Damage — \$100,000 per accident with an aggregate limit of at least \$300,000.

All of these qualifications must be met in order for a bidder to be considered for an award. Nonetheless, they constitute only a threshold for determining eligibility and tribes/TDHEs may require additional amounts if they choose. Responsiveness and price are the deciding factors in an IFB.

#### Is the Bid Responsive?

Once the tribe determines that a bidder is eligible to participate in the process, it must determine whether the bid itself is responsive to the tribe's needs.







“Responsiveness” refers to the potential that a contractor will fulfill all the requirements of the solicitation.

There are essentially two elements to responsiveness:

- The bid must be completed, executed, and submitted in accordance with the instructions in the solicitation; and
- The bid must comply in all material respects with the terms of the solicitation.

In a formally advertised IFB, any bid that fails to conform to these requirements will usually be deemed unresponsive and rejected (see Exhibit 3.5). Whether the tribe or an individual homeowner selects the contractor, these conditions should not be waived for any bid, because a waiver would make comparison of bids difficult.

There are several additional categories of nonconformity to the requirements of an IFB that would not necessarily cause the bids to be rejected as unresponsive. These fall into the general class of minor informalities or deviations in the bidding process that do not materially affect the standing of the bid. The tribe and individual homeowner should accept bids with conditions like those listed in Exhibit 3.6 unless it has stated in the IFB that these conditions are not acceptable.

**Exhibit 3.5 — Types of Unresponsive Bids**

Category	Example
Differing products or services	Specification requires 5,000 BTU heater; vendor offers 4,500 BTU.
Failure to agree to delivery schedule	Specification requires delivery within 30 days from notice to proceed; vendor offers delivery in 60 days.
Conditions altering the IFB	Vendor reserves right to change price if costs increase.
Indefinite, uncertain, or ambiguous bids	Vendor fails to acknowledge referenced drawings, creating uncertainty as to whether the bid is an unequivocal offer to meet IFB requirements.
Failure to furnish required items	Vendor fails to submit bond or subcontractor lists.
Inaccurate completion of bid and documents	Signature page is missing.
Failure to acknowledge amendments	Vendor does not sign acknowledgment of receipt of amendments.
Discrepancy in accompanying material	Cover letter indicates a shorter bid acceptance period.



**Exhibit 3-6 Minor Informalities That Do Not Disqualify a Bid**

Category	Example
Matter of form or substance	<input type="checkbox"/> Failure to return required number of copies.
De minimis effect	<input type="checkbox"/> Using bid form instead of tribe's form where both have same data.
No prejudice to other bidders	<input type="checkbox"/> Failure to sign wage rate amendment where change in price would only raise bid by \$800 when second lowest bid was \$10,000 higher.
Issue is a matter of responsibility, not responsiveness (cannot be converted to a matter of responsiveness with IFB language)	<input type="checkbox"/> Failure to acknowledge amendment that reduced quantity of items on a unit priced bid.
	<input type="checkbox"/> Failure to acknowledge amendment extending delivery deadline.
	<input type="checkbox"/> Failure to meet requirement that bidder demonstrates successful execution of a contract of similar nature.
	<input type="checkbox"/> Failure to submit a certificate (where information deals with vendors' responsibility and may be acquired after bid opening).

**WHEN ONLY ONE BID IS RECEIVED**

The tribe may receive only one proposal and select the contractor without taking further action, provided that the proposed price is reasonably close to the cost estimate (generally within 10 to 15 percent of the cost estimate for the job). The tribe is still responsible for selecting the contractor. If it receives only one bid in response to an IFB, certain guidelines apply to ensuring that the selection meets the intent of the open competition. Specifically, the tribe may make the award to the single bidder if the bid is fair and reasonable, if re-advertising the IFB would be too time consuming and would result in costly delays, or if the procurement is sole source, i.e., there is only one possible provider. In addition, the tribe must perform a cost analysis of the single bid. A cost analysis includes a detailed review of the cost components of the bid to ensure that proposed costs are reasonable. At a minimum, the tribe should prepare a detailed cost estimate prior to soliciting bids. If the bid is within 10 to 15 percent of the estimate, it is generally considered reasonable.

When a single bid is received or the contract is sole source, profit must be negotiated as a separate item. To establish a fair and reasonable profit, consideration should be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting involved, the quality of the contractor's

record of past performance, and industry standards. Cost analysis and profit negotiation can be tricky, however, especially when the tribe does not have a history of contracts with which it can compare the single bid. To avoid this type of analysis and negotiation – and to ensure that the tribe receives the best service available – it is best to re-advertise non single source contracts if only one bid is received. If the IFB was initially restricted to Indian organizations, it should be opened to all bidders the second time in order to expand competition.

**COST AND PRICE ANALYSIS**

Tribes/TDHEs are required to conduct a price or cost analysis for every procurement action taken. The type, complexity and method of analysis are dependent on the specific situation or facts surrounding the procurement. As a general rule, tribes/TDHEs should develop their own independent cost estimate prior to solicitation.

**Price Analysis**

Price analysis is less detailed than cost analysis and merely takes into account the bottom line price. For small purchases and sealed bidding procurements where there is sufficient competition, price analysis is generally adequate to determine whether the suggested price is fair and reasonable. Some examples of price analysis techniques include:



1. Comparing the proposed price with the independent cost estimate.
2. Comparing the prices received in response to the solicitation.
3. Comparing proposed prices with prices charged in the past for a similar product/scope of work.
4. Comparing the proposed prices with competitive price lists, published market prices, and other indices.

### **Cost Analysis**

Cost analysis is more complicated than price analysis. It involves the verification of the proposed cost, including a breakdown of the individual cost elements, to determine reasonableness. A cost analysis is required when there is insufficient competition, such as a single offer received or the tribe/TDHE is using a sole source procurement. It is also required when the tribe/TDHE is using the competitive proposal method and the candidate is required to submit a cost proposal broken down by element of cost. A cost analysis is also necessary when the tribe/TDHE is negotiating a contract modification or change order, which changes the scope of work previously authorized.

In conducting a cost analysis, tribes/TDHEs must examine the reasonableness of each cost element including profit. The tribe/TDHE should refer to 48 CFR Part 31 Contract Cost Principles and Procedures, for guidance. These regulations contain the cost principles for for-profit organizations, which is generally the type of organization that will be responding to a solicitation. Some examples of cost analysis techniques include:

1. Verifying cost and price data and evaluating cost estimates to determine the necessity for and reasonableness of proposed costs, both direct and indirect.
2. Evaluating the effect of the candidate's current practices on future costs.
3. Comparing the proposed costs with actual costs previously incurred by the same candidate, previous cost estimates received for similar items/work, the methodology used by the candidate with solicitation's basic requirements, and the independent cost estimate.
4. For professional service awards, if adequate price competition is present, the tribe/TDHE may choose to compare the rates of the various candidates, and the independent cost estimate, with the selected candidate's proposed costs and rates.

### **SUMMARY**

The tribe can receive the best selection of proposals by providing a clearly written SOW to all interested contractors and providers of professional services. The tribe can also ensure the best selection by evaluating contractor and professional service proposals in a manner that focuses on contractor/provider qualifications and price. Once the firm or person is selected, however, the tribe and property owner must follow a number of steps to ensure that the project is delivered or performed according to instructions, on time and within budget. These steps comprise construction or contract management, the topic of the next chapter.



## Chapter Four

# CONSTRUCTION MANAGEMENT

Once the contractor has been selected, the property owner must take steps to ensure that the work is performed according to the work write up and that all payments are made for work completed. These steps are at the heart of construction management. They mainly involve the design of a contract that identifies each party's responsibilities, regularly scheduled inspections to identify problems and ensure that the project is proceeding on schedule, and a contract closeout process during which the tribe verifies that all work has been completed to satisfaction before making the final contractor payment.

Each construction management situation will differ depending on the type of job under consideration and the role that the tribe assumes in the construction process. In particular, for the construction of a large, tribally owned multifamily rental housing project or many single family units, the tribe's representatives will negotiate and sign all contracts with the contractor, monitor the construction process, and conduct the contract closeout. On smaller projects, such as single family home rehabilitation projects, the tribe might sign a contract directly with the contractor, with the tribe acting as an advisor.

### ENVIRONMENTAL REVIEW

An environmental review must be completed before acquiring, converting, leasing, repairing or constructing property or committing HUD or local funds used in conjunction with NAHASDA assisted activities. No funds may be committed to the activity or project before completion of the environmental review except as authorized by 24 CFR part 58, such as for the costs of the environmental review and other planning and administrative expenses. The review does not have to be completed prior to HUD approval of an IHP.

NAHASDA assisted activities are subject to the environmental review requirements set forth in the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR parts 18 and 24. These requirements help ensure that the project does not negatively affect the environment and the environment does not have a negative impact on the project or persons served by the project.

### Who Conducts the Environmental Review?

An Indian tribe may choose (but is not required) to assume environmental responsibilities. Costs of the environmental review are an eligible NAHASDA cost. If the tribe assumes environmental review responsibility, HUD will provide for monitoring of the reviews and will help provide training, as set forth in section 105 (a)(2)(b) of NAHASDA and 24 CFR 58.77. If the tribe does not choose to assume the responsibility for an environmental review, HUD will perform the review in accordance with 24 CFR part 50.

An Indian tribe that assumes environmental review requirements must follow certain guidelines. The tribe's certifying officer must attest that he/she is authorized and consents on behalf of the Indian tribe to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as set forth in section 105(c) of NAHASDA. The tribe must follow the requirements of 24 CFR part 58.

### CONTRACT DESIGN AND EXECUTION

Even when the tribe is not a party to the construction contract, it nonetheless is responsible for performing the construction management for the project and



ensuring that the project is completed. The preconstruction conference is the first step in this phase of construction management.

When the contract is prepared, but before it is signed, the property owner and the contractor will get together to review the contract and each party's responsibilities for one last time. At this conference, the tribe and contractor ensure that all contract obligations, work plans, and procedures are fully understood, and that each party has realistic expectations of the results to be achieved. (This is very important, as realistic expectations on all sides can help avoid conflicts and misunderstandings later). Conference participants should then sign a statement called a preconstruction conference report evidencing that all parties understand the job. Once the preconstruction conference report has been signed, the tribe should issue a notice to proceed to the contractor, signed by the property owner (see Exhibit 4.1).

After the conference, the contractor and tribe can execute the contract. This contract is a legally binding document that sets out each party's responsibilities during and after the construction period. Although the type of work required will largely determine the content of the contract, a number of provisions must be included in all contracts. In addition, the contract must be consistent with federal and tribal law and should be reviewed by the tribe's legal counsel prior to execution.

## **MONITORING THE QUALITY OF WORK**

### **Inspections**

Regular inspections are the tribe's best means of ensuring the quality of work and its conformance with the work write up and schedule. These are discussed in detail in Chapter 6.

### **Authorizing Payments**

Control over the disbursements of payments is the means by which programs induce contractors to perform efficiently. The tribe should disburse payments to the contractor promptly on billing, but only after an inspection that verifies that the work has

been completed to the satisfaction of the tribe. If the work is not completed properly, the tribe should withhold payment until all corrections are made. Nonetheless, the tribe should always withhold a portion of each approved payment, called a retainage, from the contractor, to be paid at a later date (usually 30 to 60 days after the completion of the project). The retainage serves as leverage to ensure that the contractor completes the project as quickly as possible and also addresses any subsequent latent defects, so that he or she can receive the full contract payment. On small projects with contractors that have limited working capital, this provision can be waived.

The tribe or TDHE receives its NAHASDA funds for disbursement after it submits a Cash and Management Information (C/MI) System project setup report to HUD and establishes a NAHASDA account at a local depository institution. After going through C/MI, the tribe or TDHE may make fund requests to HUD. HUD may then transfer the funds to the local account within 48 to 72 hours.

### **Adhering to Dwelling Construction and Equipment (DC&E) Costs**

NAHASDA regulations outline limits of funds that can be expended per unit as dwelling construction and equipment (DC&E) costs, which HUD determines and updates based on the amount of a moderate home. DC&E costs include all construction costs of a unit within five feet of the foundation. DC&E costs do not include the following costs: administrative, planning, site acquisition, water and sewer, demolition, financing, site development costs more than five feet from the foundation, or utility development and connection costs.

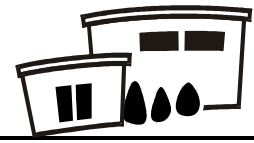
HUD publishes and periodically updates DC&E costs for appropriate geographic areas. The tribe/TDHE is responsible for ensuring that IHBG funds used in construction do not exceed the published DC&E amounts. If a tribe or TDHE determines that published DC&E amounts are not representative of construction costs in its area, it may request a re-evaluation of DC&E amounts and should provide HUD with relevant information for the re-evaluation.



**Exhibit 4.1 – Sample Preconstruction Conference Report and Notice to Proceed**

<b>Preconstruction Conference Report</b>	
<p>I (We) the undersigned, have on this date at _____ participated in a preconstruction conference prior to the signing of a contract for the rehabilitation of my (our) property. I (We) acknowledge that I (we) understand the terms of the contract, the explanation of the work to be performed by the contractor, the roles of the project manager, and my (our) responsibilities during the construction period. I (We) have been given an adequate explanation of the work to my (our) questions, if any, and am (are) aware that assistance will be provided by the staff of the housing rehabilitation program applicable under the program and given the staff's flexibility and time. I (We) further understand and acknowledge that the _____ Tribe's housing rehabilitation program assumes no responsibilities for the work performed and does not warrant any work performed.</p>	
_____ Signature of Property Owner	_____ Date
_____ Signature of Property Owner	_____ Date
<p>I, the undersigned, hereby certify that the preconstruction conference was held on this date between the property owner(s), the project manager, and myself. I understand the contents of the contract, and the procedures for change orders, requests for payments, and inspections. I understand and agree that the work performed must meet the standards of performance required by the _____ Tribe's housing program and established by the program specifications and work write up.</p>	
_____ Signature of Contractor	_____ Date
*****	
<b>Notice to Proceed</b>	
<p>I, the undersigned, hereby authorize the contractor to commence work on the property known as _____ within _____ days of the execution of this document. The property will be available to you to perform the work stated in the contract between _____ a.m. and _____ p.m., Monday through Friday, unless otherwise specified by the property owner. If the contractor does not commence work within the specified time, the owner may, on proper notification, consider the property improvement contractor to be in default.</p>	
_____ Signature of Property Owner	_____ Date





## **Contract Modifications**

Often during the construction period, the need arises to modify the contract to reflect changes in the responsibilities, schedules, payments, or work specifications. Modifications to the contract must have the appropriate technical, commercial, and legal approval and be reflected either by an appropriate amendment of the contract or by special provisions in the contract. The tribe, the contractor, or other parties to the contract may request a contract modification. (Outside agencies with regulatory powers may require a contract modification as well, but their actions are generally channeled through the tribe, if a tribe or a TDHE owns the property).

## **Before Contract Award**

Modifications differ depending on when they occur in the award process. If a modification is made prior to the contract award, it must be acknowledged as a revision to the contractor's bid/proposal and incorporated in the contract. If it is made after the contract is signed, the modification must be acknowledged through a change order. (Clarifications in the contract do not require a change order.)

## **After Contract Award**

Change orders require special execution because they are alterations to a signed contract. Some valid reasons for requesting a change order are:

- The project manager for the tribe requests a change in design or SOW to reflect actual field conditions;
- The contractor requests a change in the aggregate value – e.g., there are added costs due to the performance of work not originally contemplated, accelerated construction scheduling, changed conditions, or other causes; and
- The tribe makes revisions to the scope of the project based on its experience with other tribal operations.

Unless the change in the SOW is major, change orders generally can be issued informally. The contractor, in consultation with the property owner and/or project manager, can prepare a change order as shown in Exhibit 4.2. All three parties should sign the document, which then becomes an amendment to the original contract. The tribe/project manager must be sure to amend the inspection schedule as well, if necessary, to accommodate and monitor the change order.

A related topic involves contracts. During the construction period, it is possible that the contractor and the tribe will disagree on the quality or type of work to be performed, the timing of certain tasks, or other matters. The tribe should resolve the problem quickly. In some cases, the conflict may be settled through a change order. For more serious problems, the owner – whether it is a tribe, a TDHE, or an individual – can call on the services of an arbitrator or refer the problem to a tribal court. The most important goal of conflict resolution is to satisfy all parties to the greatest extent possible so that the project can be completed properly. Unless the tribe is party to the contract, the tribe's role must be deliberate, impartial, and consistent with program guidelines, the SOW and – most importantly – the contract.

## **CLOSEOUT OF CONSTRUCTION CONTRACTS**

The following items should comprise the elements of this closeout process (these steps must be spelled out in the contract so that the contractor understands and has agreed to all of the following obligations):

- Final inspection report by property owner.** This is described in Chapter 6;
- Proposed contract final price estimate.** As part of the final inspection, the project manager or other official will ensure that the value of the work meets the costs outlined in the contract;





**Exhibit 4.2 — Sample Change Order**

Change Order		
Property Owner: _____		
Property Address: _____		
Contract Dated: _____	Change Order # _____	
Contractor: _____		
The following change(s) is/are authorized to the above identified contract:		
<u>Item Number</u>	<u>Description of Change and Work Write up</u>	<u>Cost of Change</u>
The contract amount will be increased/decreased to: \$_____.		
The contract time is ____ extended/ ____ not extended ____ calendar days. The new completion date is _____.		
This amendment is made a part of the Contract, and the parties have hereto set their signatures:		
_____	_____	
Property Owner	Contractor	
_____	_____	
Project Manager	Date	

**Certification of completion and final inspection.** The tribe/tribe's representative, project manager, and the contractor review the contract document to ensure that all items have been addressed in accordance with the contract. If the job is completed satisfactorily, the project manager will issue an acceptance certificate to the contractor stating that the work has been completed properly;

**Holding of contractor retainage.** Even though the acceptance certificate has been issued, the tribe or project manager may choose to hold the retainage in escrow to enforce the contractor's warranty for a specified period of time (usually 30 days for projects of less than \$50,000, or 50 days for larger projects). When the retainage is paid, the contractor acknowledges this on the receipt of final payment.

**Releases of liens and warranty.** The contractor releases all his or her rights of mechanics liens on the property. Additionally, the contractor should provide a warranty of one year on all work performed. (This should be specified in the contract). If the tribe finds any latent defects or incomplete work within the warranty period, it can require that the contractor return to the site to repair or complete the work without charge; and

**NEGOTIATING AND AWARDED PROFESSIONAL SERVICE CONTRACTS**

There is much to be done after selection of the most qualified and reasonable bidder, particularly the negotiation and management of professional services contracts. As with construction contracts, the tribe



should be represented by an attorney in contract negotiations. Often architects and other professionals have industry standard contracts (for example, architects may use a standard AIA contract) for the services they provide. Because such contracts are written in favor of the professionals and do not include required NAHASDA language, they should be reviewed carefully by the tribe's attorney and modified if necessary.

Once all aspects of the contract have been negotiated, the tribe and the bidder should sign the contract. The contract should incorporate all the requirements of the RFP. (The course of negotiations should not permit the bidder to retract or cancel any part of his or her proposal, if that will result in a lowering of the proposal's score.)

## MANAGING THE PROFESSIONAL SERVICES CONTRACT

Although it is not as demanding as managing a construction contract, the tribe must nevertheless establish a system for managing its professional service contracts under NAHASDA. Typically, this is done by agreeing on a schedule of services or products to be delivered under the terms of the contract (such as the example schedule of architectural services provided in Exhibit 4.3). The project manager or other designated staff member of the tribe will need to monitor this schedule, keeping careful written records of any mutually agreed upon amendments made during the course of the contract. The payment of fees can be linked to this schedule as well, which is one way to provide an incentive to the contractor to meet project deadlines. Payments can also be made on a monthly or quarterly basis, based on invoices submitted by the contractor. In the case of construction supervision provided by an architect, the payment is usually made in proportion to the amount of construction completed.

### Exhibit 4.3 — Sample Schedule of Architectural Services

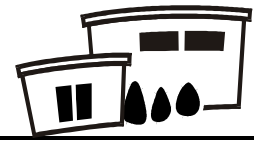
Week 1	Planning session with staff and council members
Week 4	Schematic drawings and plans completed
Week 5	Presentation to tribal council
Week 7	Revised schematic drawings and plans completed
Week 8	Second presentation to tribal council
Week 11	Final drawings and plans for bid package completed
Week 17	Review construction bids, make recommendation
Week 19	Attend preconstruction conference
Weeks 20 40	Supervise and inspect construction

## CLOSEOUT OF PROFESSIONAL SERVICES CONTRACTS

Finally, before making the final payment to the service provider and closing out the contract, the project manager should verify that the service has been provided properly. Some methods can include interviews with project beneficiaries or audits of the provider's records. The same principles as for construction contracts apply here – the tribe must be satisfied with the quality of the contractor's performance, and be able to enforce some form of warranty, when applicable, before closing the contract.

## SUMMARY

Good communication between the tribe and contractor or professional services provider helps to ensure that the construction project is planned and executed as expected, and that all parties are treated equitably. Strong contract documents enumerate both the tribe and contractor's expectations and help to protect both parties against misunderstandings and malfeasance. Expectations can be clarified at pre construction conferences, and through continued monitoring of the contractor or service provider's performance throughout the process.



# Chapter Five

## DAVIS-BACON REQUIREMENTS AND OTHER APPLICABLE LABOR STANDARDS

All recipients of NAHASDA funds are required to uphold certain labor standards with regard to wages, work hours and safety. These standards were created and set forth by law in the Davis-Bacon Act of 1931, and in related acts such as the Contract Work Hours and Safety Standards Act, and the Copeland Act. Therefore, those tribes receiving grant funds through NAHASDA are subject to Davis-Bacon and related requirements.

Section 104(b) of NAHASDA specifically states that all contracts and agreements under NAHASDA must require that Davis-Bacon wage rates are paid to laborers and mechanics employed in the development of affordable housing. What this means is that contracts between the tribe and the general contractor or between the tribe and individual trade contractors must contain the statement that Davis-Bacon wage rates will be required. Davis-Bacon requirements provide for the withholding of funds from contractor payments to ensure compliance.

For NAHASDA projects with existing Section 8 contracts, the contract requires that recipients comply with the employee protection requirements of the Davis-Bacon Act. This is particularly applicable to projects with Section 8 contracts that are being rehabilitated.

Davis-Bacon wage rates are not applicable to prime contracts under \$2,000. The wage rates also are not applicable to apprentices enrolled in a certified apprenticeship program.

### THE DAVIS-BACON ACT

The Davis-Bacon Act requires the payment of prevailing wage rates to all laborers and mechanics on federal construction projects. Davis-Bacon labor standards stipulate the wage payment requirements

for carpenters, electricians, plumbers, roofers, laborers, and other construction work classifications that may be needed for a particular project.

The U.S. Department of Labor determines prevailing wage rates. A Davis-Bacon wage decision is a listing of different work classifications and the minimum wage rates, including fringe benefits, that must be paid to anyone performing work under those classifications.

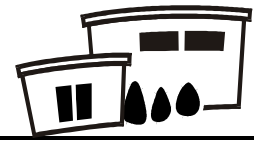
As mentioned above in the introductory paragraphs to this chapter, each contract let on a project either partially or wholly funded by IHBG funds must contain provisions containing labor standards clauses and a Davis-Bacon wage decision. The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages. These clauses obligate the contractor to comply with these labor requirements.

### HUD DETERMINED WAGE RATES

HUD determines standards for prevailing wages for maintenance laborers and mechanics employed in the operation of affordable housing, as well as for architects, technical engineers, draftsmen and technicians employed in the development of affordable housing. Contracts or agreements for assistance, sale or lease under NAHASDA must utilize HUD determined wage rates.

### CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Under NAHASDA, contracts in excess of \$100,000 must comply with the Contract Work Hours and Safety Standards Act (CWHSSA). CWHSSA requires that wages for every mechanic and laborer employed on the job shall be computed on the basis of a



standard 40 hour work week. Employees shall be paid at a rate of not less than one and one half times the basic hourly wage for all hours worked in excess of 40 hours during any week. Failure to pay an employee overtime for each day of a week after the employee has already worked 40 hours is punishable by a fine of \$10 per day per employee.

In addition, CWHSSA requires that no person be required to work on a job site that is considered to be unsanitary, hazardous, or dangerous to the health and safety of an employee. Such conditions are determined by the Department of Labor's Construction Safety and Health standards.

### **COPELAND ACT (ANTI KICKBACK LAW)**

The Copeland Act makes it illegal for anyone to require any laborer or mechanic to kickback any part of their wages. The Copeland Act also requires any employer (contractors and subcontractors) to submit weekly certified payroll reports and statements of compliance.

### **HOW LABOR STANDARDS AFFECT DIFFERENT CONSTRUCTION APPROACHES**

#### **General Contractor**

As discussed in Chapter One, the general contractor often performs a substantial part of the construction project and is responsible for hiring subcontractors to perform specific types of tasks.

If a general contractor is employed by the tribe to build or rehabilitate single family or multifamily housing rental housing,

**OR**

If there is a written agreement with the tribe or developer of single family housing that NAHASDA assistance will be used to help purchasers buy their homes, the following labor standards apply:

- The contract between the tribe and the general contractor must contain a statement that Davis-Bacon requirements are mandatory;
- Contracts between the general contractor and subcontractors must contain a statement that Davis-Bacon requirements are mandatory;
- If the contract between the tribe and the general contractor is in excess of \$100,000, the contractor must comply with the terms of the CWHSSA and assure that laborers are paid overtime when required;
- If contracts between the general contractor and subcontractors are in excess of \$100,000, the subcontractor must comply with the terms of the CWHSSA and assure that laborers are paid overtime when required; and
- No laborers employed by the general contractor or subcontractors may be required to kickback any portion of their wages.

#### **Construction Managers with Subcontractors**

As discussed in Chapter One, the construction manager is either an employee or consultant of the tribe. The construction manager is usually a construction specialist and has responsibility for hiring subcontractors and laborers.

If the construction manager is charged with the construction or rehabilitation of single family or multifamily rental housing, the following labor standards issues must be taken into consideration:

- Contracts between the tribe/developer and subcontractors must contain a statement that Davis-Bacon standards are required;
- If contracts between the tribe and subcontractors are in excess of \$100,000, the subcontractor must comply with the terms of the CWHSSA and assure that laborers are paid overtime when required; and





- No laborers employed by the tribe/developer or subcontractors may be required to kickback any portion of their wages.

If the tribe uses a construction manager to develop single family housing for purchase by individual homeowners, and NAHASDA assistance will be used to help purchasers buy their homes, the following labor standards apply:

- Contracts between the tribe/developer and subcontractors must contain a statement that Davis-Bacon standards are required.

### **Force Account Labor**

If the tribe uses the force account labor approach to construction management, the tribe uses its own employees to serve on the construction crew, and manages the construction process itself.

If the force account labor approach is used in the new construction or rehabilitation of single family or multifamily rental housing, the following labor standards issues must be considered:

- The tribe must use HUD determined wage rates for all laborers employed for the project; and
- No laborers employed by the tribe may be required to kickback any portion of their wages.

### **SUMMARY**

NAHASDA recipients are subject to federal labor standards. The utilization of these standards ensures that those employed in the construction of affordable housing are treated fairly and equitably. The Indian preference requirement guarantees that in many instances, Indian labor will be used for construction activities. Employment of the requirements of the Davis-Bacon Act, the CWHSSA, and the Copeland Act ensures that Indian laborers, tradespeople, and providers of professional services receive market wages for their work and are protected against unfair labor practices.



## Chapter Six

# INSPECTIONS

Regular inspections are the tribe's best means of ensuring the quality of the work and its conformance with the work write up and schedule. Generally, inspections should be performed at least once a week, in the presence of the tribe and the contractor, so that any questions or problems can be addressed directly. All inspection findings should be documented in an inspection report, and a satisfactory inspection, including any required code inspections by authorized building officials, should precede payments to the contractor (see box below).

**Developing Local Inspection Expertise**

The Minnesota Chippewa Tribe Mortgage Company hired two Indian construction specialists as permanent staff. These specialists are certified appraisers with backgrounds in construction. The tribe paid for additional training so that they could perform housing inspections. Families receiving Mortgage Company assistance contract with general contractors on their own; the company's construction specialists review the GC's specifications and other construction documents over the course of the project. After each satisfactory inspection, the GC receives one third of the total payment less any retainage.

The person responsible for performing inspections should be properly trained in construction and inspection techniques and be completely familiar with the original work write up, the construction specifications, and the construction schedule. In addition, the property owner should be aware of the progress and quality of the construction, delays or disputes.

### INSPECTIONS OF REHABILITATION PROJECTS

Each construction project using NAHASDA funds has three types of inspection:

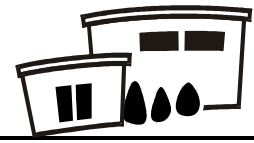
- ❑ **Initial property inspection.** This initial inspection is the first step in determining whether the amount of work required to meet program requirements can be financed with the available funding.
- ❑ **Inspections during work in progress.** These ongoing inspections assure that the construction conforms and complies with the plans, building codes, performance standards, and timelines. Progress inspections must be conducted prior to any payments for construction work.
- ❑ **Closeout inspection.** These final inspections are conducted prior to final payment in order to check compliance with plans, codes and standards.

### Initial Inspection

The initial property inspection is a critical component of the rehabilitation process because it identifies work to be undertaken on the project and becomes the basis for the preparation of bids by contractors. The tribe should ensure that the person who conducts the initial property inspection – either the tribe's own specialist or an outside service provider (see Chapter One) – has direct experience in construction and rehabilitation. In addition, the inspector should be familiar with the tribe's property standards.

The inspector will schedule the inspection at a time when the tribe can participate. The inspector should identify each property standard deficiency with the tribe and list it on an initial inspection report. For each deficiency, the inspector should note the exact location and size of the problem and the materials needed to repair it. This report will serve as the basis of the work write up that recommends the appropriate repairs for each deficiency. This work write up must be based on the tribe's performance standards (see Exhibit 2.2 in Chapter Two). A detailed work write up





must be provided to all interested contractors so they can prepare consistent, comparable bids. The inspector might prepare the work write up for inclusion in the bid package or, as an alternative, the inspector may leave this step for the contractor to propose in the bid. If the tribe follows this option, it must provide contractors with a copy of its performance standards along with the list of deficiencies.

Based on the work write up, the inspector must prepare a cost estimate that the tribe will use to evaluate the reasonableness of each contractor's bids. The cost estimate serves as a guide to whether the bid price from a contractor (or subcontractor) is too high or low when compared with the tribe's best estimate of how much the rehabilitation labor and materials should cost. Tribes should be suspicious of an excessively low bid, as they would be of an excessively high one, because a contractor will invariably have to request more money later in order to finish the job.

The tribe can develop cost estimating standards by using historical data derived from ongoing area rehabilitation projects, or it can use a cost estimating guide. It is generally best to use a cost estimating guide such as E.H. Boeckh, Marshall & Swift Valuation Service, R.S. Means Estimating Service, or a guide of your choice. Tribes should contact local contractors or public libraries for assistance in finding an appropriate guide.

## **ONGOING INSPECTIONS**

Regularly scheduled inspections should be conducted in the presence of the owner, the contractor, and the project's architect (if used on the project). The inspector should visit the construction site on a regular basis. These drop-in inspections assist in identifying any work stoppage and allow the inspector to monitor construction quality and timeliness.

During periodic inspections, the inspector should:

- Determine if the completed work corresponds to the work write-up.
- Advise the owner and contractor of problems and required corrective action and establish date for re-inspection, if necessary.

- Address any need for change orders and mediate any owner/contractor disputes.
- Ensure that all necessary code inspections have been made.
- Prepare and submit documentation for file and processing payments.

Progress inspections should be conducted to assess project development. These periodic inspections should be conducted whenever payment for work is requested, when there is a complaint by the owner or a neighbor, or when a change order is requested. Such inspections also should be conducted before any component of construction is covered up by further construction, e.g. insulation and framing before drywall is installed. Finally, periodic inspections should be conducted at unannounced, unscheduled times.

## **CLOSEOUT INSPECTION**

When the work is completed, the tribe should perform one final, formal inspection of the work before closing the construction contract.

The tribe, a qualified representative of the tribe and, if applicable, the project manager, will inspect the construction to ensure that it has all been completed according to the contract and all specifications. If additional work or corrections must be accomplished, a written punch list that details all items remaining should be drawn up. The punch list should relate to the original SOW. After completion of all punch list items, a final inspection report is prepared and signed. A sample final inspection report is provided in Exhibit 6.1.

## **SUMMARY**

Regular inspections and monitoring of contractor performance is a means to ensure that the construction project proceeds on schedule and that the expected results are achieved. If a tribe develops the capability to inspect construction projects, it can save money in the construction management process, protect its own interests, and allow its members to obtain and market a valuable skill.







**Exhibit 6.1 – Sample Final Inspection Report**

<b>Final Inspection Report</b>	
Property Owner:	_____
Property Address:	_____
Contractor:	_____
<p>I, the undersigned, hereby certify that the contractor has satisfactorily completed the rehabilitation work, including all change orders, as outlined in the contract dated _____ between the property owner and the contractor.</p>	
_____	
Project Manager	
_____	
Date	



## APPENDICES





APPENDIX 1

HOUSING QUALITY STANDARD (HQS) INSPECTION FORM

A. GENERAL INFORMATION

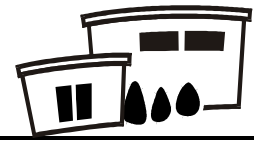
Date of Inspection: \_\_\_\_\_
Address of Inspected Unit: Street: \_\_\_\_\_
City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_
Name of Family: \_\_\_\_\_
Current Address of Family: Street: \_\_\_\_\_
City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_
Current Telephone of Family: \_\_\_\_\_

B. HOW TO FILL OUT THIS CHECKLIST

Proceed through the inspection as follows:

Table with 2 columns: Area and Checklist Category. Includes options for Room by room, Basement or utility room, Outside, Overall and corresponding checklist categories like Living Room, Kitchen, Bathroom, etc.

- Each part of the checklist will be accompanied by an explanation of the item to be inspected.
Important: For each item numbered on the checklist, check one box only (e.g., check one box only for item 1.4 "Security," in the Living Room).
In the space to the right of the description of the item, if the decision on the item is "Fail" write what repairs are necessary.
Also, if "Pass" but there are additional code items or items not consistent with rehab standards or area codes, write these in the space to the right.



1. LIVING ROOM

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
1.1	<b>LIVING ROOM PRESENT</b> Is there a living room?			
1.2	<b>ELECTRICITY</b> Are there at least two working outlets or one working outlet and one working light fixture?			
1.3	<b>ELECTRICAL HAZARDS</b> Is the room free from electrical hazards?			
1.4	<b>SECURITY</b> Are all windows and doors that are accessible from the outside lockable?			
1.5	<b>WINDOW CONDITION</b> Is there at least one window, and are all windows free of signs of severe deterioration or missing or broken out panes?			
1.6	<b>CEILING CONDITION</b> Is the ceiling sound and free from hazardous defects?			
1.7	<b>WALL CONDITION</b> Are the walls sound and free from hazardous defects?			
1.8	<b>FLOOR CONDITION</b> Is the floor sound and free from hazardous defects?			
1.9	<b>LEAD PAINT</b> Are all interior surfaces either <i>free</i> of cracking, scaling, peeling, chipping, and loose paint or <i>adequately treated and covered</i> to prevent exposure of the occupants to lead based paint hazards?			
1.10	<b>WEATHER STRIPPING</b> Is weather stripping present and in good condition on all windows and exterior doors?			
1.11	<b>OTHER</b>			
1.12	<b>OTHER</b>			

Notes: (Give Item #)



**2. KITCHEN**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
2.1	<b>KITCHEN AREA PRESENT</b> Is there a kitchen?			
2.2	<b>ELECTRICITY</b> Is there at least <i>one</i> working electric outlet and <i>one</i> working, permanently installed light fixture?			
2.3	<b>ELECTRICAL HAZARDS</b> Is the kitchen free from electrical hazards?			
2.4	<b>SECURITY</b> Are <i>all</i> windows and doors that are accessible from the outside lockable?			
2.5	<b>WINDOW CONDITION</b> Are all windows free of signs of deterioration or missing or broken out panes?			
2.6	<b>CEILING CONDITION</b> Is the ceiling sound and free from hazardous defects?			
2.7	<b>WALL CONDITION</b> Are the walls sound and free from hazardous defects?			
2.8	<b>FLOOR CONDITION</b> Is the floor sound and free from hazardous defects?			
2.9	<b>LEAD PAINT</b> Are all interior surfaces either <i>free</i> of cracking, scaling, peeling, chipping, and loose paint or <i>adequately treated and covered</i> to prevent exposure of the occupants to lead based paint hazards?			
2.10	<b>STOVE OR RANGE WITH OVEN</b> Is there a working oven and a stove (or range) with top burners that work?			
2.11	<b>REFRIGERATOR</b> Is there a refrigerator that works and maintains a temperature low enough so that food does not spoil over a reasonable period of time?			
2.12	<b>SINK</b> Is there a kitchen sink that works with hot and cold running water?			



**2. KITCHEN**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
<b>2.13</b>	<b>SPACE FOR STORAGE AND PREPARATION OF FOOD</b> Is there space to store and prepare food?			
<b>2.14</b>	<b>WEATHER STRIPPING</b> Is weather stripping present and in good condition on all windows and exterior doors?			
<b>2.15</b>	<b>OTHER</b>			
<b>2.16</b>	<b>OTHER</b>			

Notes: (Give Item #)



**3. BATHROOM**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
3.1	<b>BATHROOM PRESENT</b> Is there a bathroom that includes a working toilet, sink and tub or shower?			
3.2	<b>ELECTRICITY</b> Is there at least <i>one</i> permanently installed light fixture?			
3.3	<b>ELECTRICAL HAZARDS</b> Is the bathroom free from electrical hazards?			
3.4	<b>SECURITY</b> Are <i>all</i> windows and doors that are accessible from the outside lockable?			
3.5	<b>WINDOW CONDITION</b> Are all windows free of signs of deterioration or missing or broken out panes?			
3.6	<b>CEILING CONDITION</b> Is the ceiling sound and free from hazardous defects?			
3.7	<b>WALL CONDITION</b> Are the walls sound and free from hazardous defects?			
3.8	<b>FLOOR CONDITION</b> Is the floor sound and free from hazardous defects?			
3.9	<b>LEAD PAINT</b> Are all interior surfaces either <i>free</i> of cracking, scaling, peeling, chipping, and loose paint, or <i>adequately treated and covered</i> to prevent exposure of the occupants to lead based paint hazards?			
3.10	<b>FLUSH TOILET IN ENCLOSED ROOM IN UNIT</b> Is there a working toilet in the unit for exclusive private use of the tenant?			
3.11	<b>FIXED WASH BASIN OR LAVATORY IN UNIT</b> Is there a working, permanently installed wash basin with hot and cold running water in the unit?			





**3. BATHROOM**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
<b>3.12</b>	<b>TUB OR SHOWER IN UNIT</b> Is there a working tub or shower with hot and cold running water in the unit?			
<b>3.13</b>	<b>VENTILATION</b> Are there operable windows or a working vent system?			
<b>3.14</b>	<b>WEATHER STRIPPING</b> Is weather stripping present and in good condition on all windows and exterior doors?			
<b>3.15</b>	<b>OTHER</b>			
<b>3.16</b>	<b>OTHER</b>			

Notes: (Give Item #)



**4. OTHER ROOMS USED FOR LIVING AND HALLS**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
<b>4.1</b>	<p><b>ROOM CODE and ROOM LOCATION:</b></p> <p>right/left _____</p> <p>front/rear _____</p> <p>floor level _____</p>	<p>ROOM CODES</p> <p>1 = Bedroom or any other room used for sleeping (regardless of type of room)</p> <p>2 = Dining Room, or Dining Area</p> <p>3 = Second Living Room, Family Room, Den, Playroom, TV Room</p> <p>4 = Entrance Halls, Corridors, Halls, Staircases</p> <p>5 = Additional Bathroom</p> <p>6 = Other</p>		
Item #	Description	Yes, PASS	No, FAIL	Repairs Required
<b>4.2</b>	<p><b>ELECTRICITY</b></p> <p>If Room Code = 1, are there at least two working outlets or one working outlet and one working, permanently installed light fixture? If Room Code does not = 1, is there a means of illumination?</p>			
<b>4.3</b>	<p><b>ELECTRICAL HAZARDS</b></p> <p>Is the room free from electrical hazards?</p>			
<b>4.4</b>	<p><b>SECURITY</b></p> <p>Are <i>all</i> windows and doors that are accessible from the outside lockable?</p>			
<b>4.5</b>	<p><b>WINDOW CONDITION</b></p> <p>If Room Code = 1, is there at least one window? And, regardless of Room Code, are all windows free of signs of severe deterioration or missing or broken out panes?</p>			
<b>4.6</b>	<p><b>CEILING CONDITION</b></p> <p>Is the ceiling sound and free from hazardous defects?</p>			
<b>4.7</b>	<p><b>WALL CONDITION</b></p> <p>Are the walls sound and free from hazardous defects?</p>			
<b>4.8</b>	<p><b>FLOOR CONDITION</b></p> <p>Is the floor sound and free from hazardous defects?</p>			



**4. OTHER ROOMS USED FOR LIVING AND HALLS**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
<b>4.9</b>	<b>LEAD PAINT</b> Are all interior surfaces either <i>free</i> of cracking, scaling, peeling, chipping, and loose paint, or <i>adequately treated and covered</i> to prevent exposure of the occupants to lead based paint hazards?			
<b>4.10</b>	<b>WEATHERSTRIPPING</b> Is weather stripping present and in good condition on all windows and exterior doors?			
<b>4.11</b>	<b>OTHER</b>			
<b>4.12</b>	<b>OTHER</b>			

Notes: (Give Item #)



5. ALL SECONDARY ROOMS (Rooms not used for living)

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
5.1	<b>NONE • GO TO PART 6</b>			
5.2	<b>SECURITY</b> Are <i>all</i> windows and doors that are accessible from the outside lockable in each room?			
5.3	<b>ELECTRICAL HAZARDS</b> Are all these rooms free from electrical hazards?			
5.4	<b>OTHER POTENTIALLY HAZARDOUS FEATURES IN ANY OF THESE ROOMS</b> Are all of these rooms free of any other potentially hazardous features? For each room with an "other potentially hazardous feature" explain hazard and means of control of interior access to room.			
5.5	<b>OTHER</b>			
5.6	<b>OTHER</b>			

Notes: (Give Item #)



**6. BUILDING EXTERIOR**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
<b>6.1</b>	<b>CONDITION OF FOUNDATION</b> Is the foundation sound and free from hazards?			
<b>6.2</b>	<b>CONDITION OF STAIRS, RAILS, AND PORCHES</b> Are all the exterior stairs, rails and porches sound and free from hazards?			
<b>6.3</b>	<b>CONDITION OF ROOF AND GUTTERS</b> Are the roof, gutters and downspouts sound and free from hazards?			
<b>6.4</b>	<b>CONDITION OF EXTERIOR SURFACES</b> Are exterior surfaces sound and free from hazards?			
<b>6.5</b>	<b>CONDITION OF CHIMNEY</b> Is the chimney sound and free from hazards?			
<b>6.6</b>	<b>LEAD PAINT: EXTERIOR SURFACES</b> Are all exterior surfaces which are accessible to children under seven years of age <i>free</i> of cracking, scaling, peeling, chipping, and loose paint, or <i>adequately treated or covered</i> to prevent exposure of such children to lead based paint hazards?			
<b>6.7</b>	<b>MOBILE HOMES: TIE DOWNS</b> If the unit is a mobile home, it is properly placed and tied down? If not a mobile home, check "Not Applicable."			
<b>6.8</b>	<b>MOBILE HOMES: SMOKE DETECTORS</b> If unit is a mobile home, does it have at least one smoke detector in working condition? If not a mobile home, check "Not Applicable."			
<b>6.9</b>	<b>CAULKING</b> Are all fixed joints including frames around doors and windows, areas around all holes for pipes, ducts, water faucets or electric conduits, and other areas, which may allow unwanted air flow appropriately caulked.			
<b>6.10</b>	<b>OTHER</b>			
<b>6.11</b>	<b>OTHER</b>			

Notes: (Give Item #)



**7. HEATING, PLUMBING AND INSULATION**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
<b>7.1</b>	<b>ADEQUACY OF HEATING EQUIPMENT</b> a. Is the heating equipment capable of providing adequate heat (either directly or indirectly) to all rooms used for living? b. Is the heating equipment oversized by more than 15%? c. Are pipes and ducts located in unconditioned space insulated?			
<b>7.2</b>	<b>SAFETY OF HEATING EQUIPMENT</b> Is the unit free from unvented fuel burning space heaters, or any other types of unsafe heating conditions?			
<b>7.3</b>	<b>VENTILATION AND ADEQUACY OF COOLING</b> Does this unit have adequate ventilation and cooling by means of operable windows or a working cooling system?			
<b>7.4</b>	<b>HOT WATER HEATER</b> Is hot water heater located, equipped, and installed in a safe manner?			
<b>7.5</b>	<b>WATER SUPPLY</b> Is the unit served by an approvable public or private sanitary water supply?			
<b>7.6</b>	<b>PLUMBING</b> Is plumbing free from major leaks or corrosion that causes serious and persistent levels of rust or contamination of the drinking water?			
<b>7.7</b>	<b>SEWER CONNECTION</b> Is plumbing connected to an approvable public or private disposal system, and is it free from sewer back up?			
<b>7.8</b>	<b>INSULATION</b> Are the attic and walls appropriately insulated for regional conditions?			
<b>7.9</b>	<b>OTHER</b>			
<b>7.10</b>	<b>OTHER</b>			

Notes: (Give Item #)



**8. GENERAL HEALTH AND SAFETY**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
8.1	<b>ACCESS TO UNIT</b> Can the unit be entered without having to go through another unit?			
8.2	<b>EXITS</b> Is there an acceptable fire exit from this building that is not blocked?			
8.3	<b>EVIDENCE OF INFESTATION</b> Is the unit free from rats or severe infestation by mice or vermin?			
8.4	<b>GARBAGE AND DEBRIS</b> Is the unit free from heavy accumulation of garbage or debris inside and outside?			
8.5	<b>REFUSE DISPOSAL</b> Are there adequate covered facilities for temporary storage and disposal of food wastes, and are they approved by a local agency?			
8.6	<b>INTERIOR STAIRS AND COMMON HALLS</b> Are interior stairs and common halls free from hazards to the occupant because of loose, broken or missing steps on stairways, absent or insecure railings; inadequate lighting, or other hazards?			
8.7	<b>OTHER INTERIOR HAZARDS</b> Is the interior of the unit free from any other hazards not specifically identified previously?			
8.8	<b>ELEVATORS</b> Where local practice requires, do all elevators have a current inspection certificate? If local practice does not require this, are they working and safe?			
8.9	<b>INTERIOR AIR QUALITY</b> Is the unit free from abnormally high levels of air pollution from vehicular exhaust, sewer gas, fuel gas, dust, or other pollutants?			



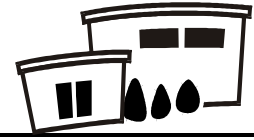


**8. GENERAL HEALTH AND SAFETY**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
<b>8.10</b>	<b>SITE AND NEIGHBORHOOD CONDITIONS</b> Are the site and immediate neighborhood free from conditions, which would seriously and continuously endanger the health or safety of the residents?			
<b>8.11</b>	<b>LEAD PAINT: OWNER CERTIFICATION</b> If the owner of the unit is required to treat or cover any interior or exterior surfaces, has the certification of compliance been obtained? If the owner was not required to treat surfaces, check "Not Applicable."			
<b>8.12</b>	<b>OTHER</b>			
<b>8.13</b>	<b>OTHER</b>			

Notes: (Give Item #)



## APPENDIX 2

### IFB LANGUAGE REGARDING CONTRACTOR REQUIREMENTS

Indian tribes/TDHEs should explicitly state the requirements for contractors in their Invitations for Bids (IFB) and Requests for Proposals (RFP). These requirements, which are subsequently written into contracts and subcontracts, govern the relationship between the ownership entity and its contractors. The inclusion of some of these requirements, such as Indian preference, are established by NAHASDA regulations; others are recommended construction practices that will help ensure successful project completion.

#### INDIAN PREFERENCE

Tribes/TDHEs may choose from two methods to enforce Indian preference. They can limit the bids to qualified Indian organizations and Indian owned enterprises, or they can factor in the preference by allowing pricing margins for Indian bidders.

#### SUBCONTRACTING PLANS

The tribe/TDHE should include a description of the basis for subcontractor selection in its IFB. The penalties for not employing Indian preference in subcontracting, including termination of the same contract, must be clearly outlined. To implement its subcontracting plan, the tribe/TDHE should establish and maintain a list of qualified Indian enterprises and organizations by specialty and provide it to contractors developing bid packages. The tribe/TDHE must provide the contractor with information on the requirements of this subcontracting statement and further identify the factors that will be used by the Indian tribe/TDHE in judging the statement's adequacy.

#### CONSTRUCTION DRAW PROCEDURES

The tribe/TDHE can make requests to HUD to transfer funds to the local account to pay bills, provided that the funds requested are for the minimum reasonable amount and for expenses that will be incurred immediately. The tribe/TDHE must specify procedures, consistent with C/MI, by which the contractor will bill it for services rendered, and include these procedures in the bid package.

#### LICENSING REQUIREMENTS

If the SOW calls for tasks that require State or local licenses, the contractor or subcontractor must be able to demonstrate that he or she has the appropriate licenses and certifications. Tasks that generally require licenses include the installation of plumbing, electrical, and heating and ventilation systems. Contractors and subcontractors should also demonstrate certified levels of proficiency in their trade (for example, a master carpenter's certification). All general contractors must be licensed by the state in which the work is to be performed.

#### BONDING REQUIREMENTS

Several types of bonds may be used to protect the interests of the tribe/TDHE and the federal government. In general, these bonds reduce the risks associated with contractors backing out of bids, not paying their material and labor suppliers, or walking away from construction projects. Generally, all larger contracts (contracts for more than \$100,000) include one or more of the following bonding requirements:

- A bid guarantee is used to ensure that the contractor will, if awarded the contract, carry out the required contract terms. The minimum bid guarantee should be equal to 5 percent of the bid price and should be in the form of a bid bond, cashier's check, or certified check and must accompany the bid;
- A payment bond is used to ensure that all material suppliers and subcontract labor bills are paid by the contractor. The payment bond must be equal to 100 percent of the bid price; and/or



- A performance bond ensures that the contractor will complete the project and not “walk off” if it suddenly becomes unprofitable. The bond shall also be equal to 100 percent of the bid price.

Although recommended for all contracts, these federal bonding requirements may be too costly and difficult to comply with. Consequently, in lieu of a performance and payment bond, tribes/TDHEs may allow contractors to establish irrevocable letters of credit with local lenders for a substantial portion of the contract. Alternatives to forms of the bonding requirements discussed above should be approved by HUD. The requirements chosen by the tribe must be clearly stated in the bid package.

**INSURANCE REQUIREMENTS**

Although it is not a NAHASDA requirement, it is prudent that the tribe require all contractors to have minimum levels of insurance coverage. Suggested coverage includes workers’ compensation, liability, and property damage.

**LIQUIDATED DAMAGES**

Liquidated damages are a charge incurred by the contractor when a project does not meet specified contract deadlines. A typical liquidated damages charge may be \$25 per day on a single rehabilitation project or \$250 to \$500 per day for a larger new construction project. The amount of the liquidated damages may not exceed the costs that might reasonably be expected as a result of the contractor’s delay.

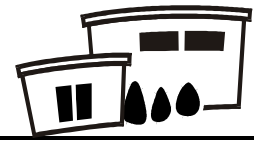
**RETAINAGE**

Retainage is an amount of the payment held by the tribe/TDHE for a period of time after the corresponding portion of the construction is complete, to ensure that the job is complete with no latent defects. Typically 10 percent of each periodic payment (5 percent on larger projects) made for the completion of part of the construction is retained in escrow until the final payment is made at contract closeout. Before the retainage is released, the contractor must provide copies of guarantees, warranties, and releases of liens from subcontractors, as well as completing all punch list items (i.e., completing or correcting all deficient work identified in a final inspection of the job). For smaller rehabilitation jobs, where it is likely that latent defects may arise after completion of all work, it is advisable to hold the retainage for an additional 30 to 60 days.

**INSPECTION PROCEDURES**

The tribe’s/TDHE’s schedule for inspections, and the relation of inspections to payments, should be based on Chapter Six. They should be explained in the bid package so that contractors understand their obligations.

The following checklist should assist NAHASDA grantees and subgrantees in developing a complete IFB.



APPENDIX 3

SAMPLE CHECKLIST FOR AN INVITATION FOR BIDS (IFB)

**I. Instructions to Bidders**

- a. General description of project.
- b. Time, date, and place where bids should be submitted. (A bid opening is generally held at the same place shortly after the deadline).
- c. Number of copies to be submitted.
- d. Bid guarantee and requirements.
- e. Identification of required submissions, such as standardized bid forms, subcontracting plans to provide Indian preference, and insurance certifications.

**II. SOW**

- a. Detailed plans for engineering and architectural work, drainage, grading, erosion, and landscaping.
- b. Detailed and general specifications for all construction activities, based on the tribe's written construction/rehabilitation standards.
- c. Special provisions related to the issuance of permits for water, sewer, and road construction and environmental matters. (Often permits are issued with conditions that the contractor must understand.)

**III. General Provisions**

- a. Indian preference requirements in the selection of contractors.
- b. Required tribal subcontracting plans to provide Indian preference.
- c. Payment and performance bond requirements.
- d. State or local contractor licensing requirements.
- e. Contractor insurance requirements.
- f. Applicability of labor regulations (Davis-Bacon).
- g. Required contract provisions as outlined in 24 CFR 85.36, 24 CFR 1000.52, and 48 CFR 52.
- h. Explanation of liquidated damages.
- i. Certification of inability to meet Indian preference (if applicable).
- j. Construction draw procedures.
- k. Retainage requirements (typically 10 percent of requested amounts are withheld until project completion).
- l. Inspection procedures.

**IV. Detailed Schedule for Completion of Work (based on each particular project)**

**V. Submission Requirements**

- a. Completed bid form with detailed breakdown of costs.
- b. Bid bond, cashier's check, or certified check.
- c. Evidence of required insurance
- d. Evidence of required licensure.
- e. Statement regarding Indian preference in subcontracting.
- f. List of proposed subcontractors (if available).
- g. Evidence that performance and payment bonds can be secured in a timely manner.
- h. Other items as may be required by the tribe recipient or tribes/TDHEs.
- i. Complete financial statements.
- j. Summary of experience with similar projects.
- k. Listing of other commitments that may conflict with the proposed project.

Note: The above is primarily based on a new construction model. With modification, however, it may be used for rehabilitation projects.

# ***THE NAHASDA DEVELOPMENT MODEL SERIES***

## ***Asset and Property Management***



**SPONSORED BY:**

U.S. Department of Housing and Urban Development  
Office of Native American Programs

**UNDER CONTRACT WITH:**

ICF Consulting

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July 26, 1999



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# Chapter One

## WHAT IS PROPERTY AND ASSET MANAGEMENT?

### ASSET MANAGEMENT

An asset is something that can increase in value over time and is worthy of investment. One role of the tribe is to maximize the value of housing assets. Tribes have an obligation to provide good management for their dwellings. Two key means of doing this are to ensure the proper maintenance and financial stability of the property. To monitor the maintenance and financial performance of the property, the tribe may assume the responsibility for day to day operations of the property or contract out this responsibility to a firm that specializes in handling the day to day operations of apartment buildings and single family dwellings. Whichever method it chooses, the tribe should never lose sight of the fact that it is ultimately its responsibility to assure that the buildings are well managed and maintained.

If a tribe chooses to contract with an independent firm to manage the day to day operations of the properties, the tribe still has to oversee the management firm because it retains ultimate responsibility for the operation of the housing. The monitoring and oversight performed by the tribe or tribally designated housing entity (TDHE) is known as asset management.

### PROPERTY MANAGEMENT

Property management for rental housing is performed either by the tribe or a separate individual or organization designated by the tribe. Common forms of property management are management by the tribe/TDHE in-house or by professional property management firms. The organization/company that takes this role assumes certain responsibilities and should perform certain functions. The management entity should be sensitive to the needs and concerns of the tenants.

The primary responsibility of the property manager is to carry out the day to day operations of dwellings. This includes making certain that the common areas are kept clean, that garbage is removed, that pests and rodents are kept to a minimum, and that the exterior grounds are maintained in a clean and safe manner. In addition, the property manager is responsible for ensuring that the dwelling systems are in working order, including the heating, water supply systems, gas, electricity, air ventilation, etc.

The property manager must ensure that repairs are made on a timely basis. These include repairs to plumbing, electrical, carpentry, the roof and windows and other building systems. The property manager must perform actions to reasonably assure resident safety by maintaining locks, doors, and common area lighting. Property management tasks include overseeing rehabilitation of dwellings, when necessary, and preparation of vacant units for occupancy by new tenants.

The property manager must perform financial management tasks so that the dwellings operate efficiently. These tasks include rent collection, accounting for other types of revenue, payment of bills and documenting all expenses incurred on behalf of the dwellings, both directly and indirectly. Other financial management tasks include cash and cost management, and budget preparation and implementation. Property managers should prepare periodic financial reports to provide the tribe with information needed to make sound financial decisions regarding the operation of the dwellings.

Property managers may also be responsible for leasing rental units to tenants. This often includes providing orientation on the dwelling and/or individual unit to the tenants. The manager must keep organized records for each tenant that includes





information on the following: household composition, household income, leases, rent payment records, unit maintenance records, and correspondence. Property managers are responsible for seeing that tenants pay their rent and that they take appropriate measures if tenants do not do so.

Finally, it is advisable for property managers to encourage tenant participation in the operation of dwellings. Tenants may be encouraged to join tenant organizations. Under certain circumstances, property management companies provide various services to tenants. They should try to the greatest extent possible to ensure tenant satisfaction. (See Exhibit 1-1 for a list of areas commonly addressed by property management companies.)

**Exhibit 1.1 — Common Areas of Property Management Responsibility**

<p><b>Marketing</b></p> <p><b>Leasing and Occupancy</b></p> <ul style="list-style-type: none"><li>➤ Tenant eligibility</li><li>➤ Leases and house rules</li><li>➤ Tenant orientation</li></ul> <p><b>Maintenance and Security</b></p> <ul style="list-style-type: none"><li>➤ Routine maintenance</li><li>➤ Preventive maintenance</li><li>➤ Vacant unit preparation</li><li>➤ General appearance</li><li>➤ Inspections</li><li>➤ Inventory and equipment controls</li><li>➤ Procurement of supplies</li><li>➤ Security</li><li>➤ Energy conservation</li><li>➤ Contracting</li></ul> <p><b>Legal</b></p>	<p><b>Financial Management</b></p> <ul style="list-style-type: none"><li>➤ Rent collection</li><li>➤ Accounting for revenue and expenses</li><li>➤ Budget preparation and management</li><li>➤ Cash controls</li><li>➤ Cost monitoring</li><li>➤ Accounts receivable/payable</li><li>➤ Financial reports</li></ul> <p><b>Risk Management</b></p> <p><b>Tenant Relations</b></p> <ul style="list-style-type: none"><li>➤ Disputes</li><li>➤ Services</li><li>➤ Activities</li></ul> <p><b>Owner Relations</b> (if applicable for non-tribal owner)</p> <p><b>Relations with Regulatory Agencies</b></p> <ul style="list-style-type: none"><li>➤ Compliance with rent and occupancy standards</li><li>➤ Environmental issues</li></ul>
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## Chapter Two

# PROPERTY OWNERSHIP AND RESPONSIBILITY FOR OVERSIGHT

The participation of the tribe, and by extension, the Asset Manager, is critical to the success of property operations. Deciding who will provide property management is a very important decision. Tribes/TDHEs can manage their own properties or hire a company to do it. If the tribe/TDHE chooses to manage its own housing stock, it should ensure that its staff is sufficiently trained. If another other entity manages property, the tribe should make certain the entity is experienced in property and asset management.

### ASSET MANAGEMENT ACTIVITIES

The participation of the owner or tribe/TDHE is critical to the success of management. When housing administration and monitoring is spread out and/or the administrative body takes the responsibility to regulate property management activities, the housing stock suffers.

Successful asset management incorporates several activities:

- Establishing parameters for the management of individual buildings, developments or dwellings;
- Determining the best form of property management;
- Monitoring the physical and financial performance of the housing stock;
- Helping to establish budgets and financial plans; and
- Helping to determine priorities for physical improvements to the stock.

If a tribe/TDHE contracts with professional property management, it should be willing to assume the role of a regulatory body. The tribe may wish to designate

a person or persons on staff who have some background in housing – building systems, construction, maintenance, occupancy regulations, and accounting – to perform asset management functions on a regular basis.

Types of tasks commonly performed by asset managers are:

- Development of a database or maintenance of regular files with information on all units in the portfolio;
- Division of the portfolio into manageable segments. Budget information, and reports of physical conditions should be accumulated and retained for each of the buildings or developments in each portfolio segment;
- Development of criteria for the management of each portfolio segment;
- Review of financial reports and reports on physical inspections;
- Development of guidelines for property insurance coverage, in accordance with NAHASDA regulations;
- Monitoring of general contract compliance for contracts between the tribe and management entities, general contractors, trade contractors, and service providers; and
- Approval of extraordinary expenses, or expenses over a set dollar limit.

The maintenance and operation of units in accordance with NAHASDA is the tribes contractual obligation connected with receipt of Indian Housing Block Grant (IHBG) funds. It is the tribe's ultimate responsibility to ensure that these contract obligations



are met, regardless of who actually manages the day to day operations of the housing stock.

## **ASSET MANAGEMENT CAPABILITIES**

In the case of housing regulated by the Native American Housing Assistance and Self Determination Act (NAHASDA), the tribe/TDHE should designate a committee or an individual who is knowledgeable in the field of housing construction, development or management to review the performance of its property management department. The tribe/TDHE should have a basic understanding of the following areas:

- Occupancy requirements;
- Tenant certifications;
- Rent levels;
- Applicable labor laws;
- Federal procurement law;
- Construction and project standards;
- Preventive and ongoing maintenance practices;
- Accounting procedures and financial reports;
- Risk management;
- Personnel issues; and
- Reporting and environmental requirements of regulatory agencies.

## **SELECTING A PROPERTY MANAGEMENT FIRM**

If the tribe decides to contract with a property management company to manage the day to day operations of the housing stock, the tribe/TDHE should use a logical selection process in order to make the best possible choice. The tribe/TDHE may wish to establish a committee to assist in the selection process, preferably one that includes tenants. The selection committee should:

- Prepare a request for proposal in which management services are requested for a certain set of dwellings;
- Identify potential management contractors by interfacing with government agencies, housing consultants, local area housing and community development groups, and other owners of affordable housing;

- Invite selected firms to submit a proposal;
- Interview firms;
- Check the firms' references;
- Analyze the proposals, interviews and references; and
- Make a final selection.

## **The Management Contract**

One of the ways to ensure continued responsiveness of a property management entity is to establish a tight contractual relationship between the owner and the company that is legally enforceable. The management contract should stipulate the terms of the contract and fee for property management services. It should enumerate the responsibilities of the owner or asset management (tribal leadership, tribal housing committee, or TDHE) and those of the property management firm, and should list what duties the property management firm must perform, the basis upon which it will be ultimately evaluated. Furthermore, the contract should establish the limits of both parties.

The management contract should establish reporting requirements of the property management firm and in some cases, the format in which these reports should be submitted.

The contract should also establish the performance standards for the property management firm. It should state exactly what is expected of the firm, the duties it is to perform and minimum performance standards.

One of the most important sections of the management contract is the enforcement provision, which gives the tribe recourse if the property management firm does not meet minimum performance standards or does not otherwise comply with the terms of the contract. Traditionally, if a property management firm is in noncompliance, the tribe may issue a written warning to the firm that describes the violation and requires correction by a certain date. The contract includes a cancellation



clause that is enforced should continued violation occur on the part of the management firm.

### **Monitoring the Performance of the Property Management Firm**

Once a management contract is awarded, asset managers begin the process of monitoring the property management entity's performance. This includes reviewing financial reports on the housing stock, reviewing reports on the physical status of the stock, making periodic, random site visits, and speaking directly with tenants.

Asset managers should review the performance of the housing stock to determine:

- Whether or not the property manager is adhering to the housing stock's operating budget, and if not, why?
- Whether or not the tenant accounts receivables are increasing;
- Whether or not disbursements of funds for operating expenses appear to be legitimate;
- Whether or not the units (1937 Act) are being maintained in accordance with NAHASDA requirements;
- Whether or not the budget is adequate to maintain/operate the existing 1937 Act units.
- Whether or not routine maintenance is being performed in a timely manner;
- Whether or not the physical appearance of the housing stock is improving, remaining the same, or deteriorating;

- Whether or not the property manager is adhering to NAHASDA guidelines; and
- Whether or not the tenants are satisfied with the condition of their dwellings.

In all instances where the answers to any of the above questions reveal a negative response, the reviewer should determine the reason and recommend actions to change the direction the program is headed.

Tribal asset managers will want to ensure that the organization of the property management entity is straightforward and logical, with a clear chain of command.

Property management staff should be qualified and sensitive to the needs of the tribal members. The property management firm should have a written personnel policy, and the asset manager will review it. At a minimum, the company should have operating procedures and written manuals that address topics relevant to the operation of housing assisted under NAHASDA. Finally, the property management firm should provide training to its staff on tenant relations, bookkeeping practices, building technologies, and maintenance techniques. To the extent that the asset manager reviews the inner workings of the property management company, it may be assured that the company is providing satisfactory services to the tribe's assisted housing stock, physical stock and tenant satisfaction.



## Chapter Three

# OPTIONS FOR FINANCING PROJECT OPERATIONS

NAHASDA provides general guidelines for the development and operation of housing. NAHASDA funds are allocated to each tribe/TDHE based on Formula Current Assisted Stock (FCAS) and need. This is described in detail in the Native American Housing Assistance and Self Determination Act of 1996 and the Final Rule at 24 CFR Part 1000. The tribe will receive IHBG funds based on this allocation formula and will be required to spend these funds based on the Indian Housing Plan (IHP) it submits to HUD. As part of the NAHASDA requirements, tribes must maintain their existing 1937 Act housing stock.

HUD's formula for allocating funds to the tribe will also be based on the amount of available funds that Congress appropriates for NAHASDA each year. Therefore, the total amount of funds received may not be sufficient to address all the tribe's housing needs. The tribe will need to plan carefully how it will use its resources to address these needs.

### OPERATING EXISTING HOUSING VERSUS DEVELOPING NEW HOUSING

Chances are that the amount of funds allocated to the tribe will not be sufficient to address tribal housing needs. The tribe will need to determine how best to use the available funds.

How does the TDHE decide to address the needs of its constituents through its IHP? It will want to make the best use of available resources and assist the greatest number of households possible. Continuing with the example above, further inspections reveal that maintaining and modernizing the existing stock will cost substantially less than the construction of new housing units. Therefore, the tribe/TDHE may decide to build new homes using other funds and use its NAHASDA allocation for operating and maintaining its existing housing.

### ALLOCATION OF FUNDS FOR EXISTING HOUSING

Under NAHASDA, the formula for determining the allocation of funds for existing housing includes two components:

- Operating subsidy for low rent housing, Section 8 units, and Mutual Help and Turnkey units owned and operated by the tribe. The number of each of these units is multiplied by the FY 1996 national per unit subsidy for the particular type of unit, by an adjustment factor for inflation, and by a local area cost adjustment factor.
- Modernization subsidy for low rent, Mutual Help, and Turnkey III is multiplied by a national per unit amount of allocation for FY 1996 modernization for the specific type of unit, by an adjustment factor for inflation and by a local area cost adjustment factor.

### DETERMINING THE NEEDS OF THE TRIBE'S CURRENT ASSISTED STOCK

It is a statutory requirement that the tribe have good information regarding the status of its existing assisted stock, so that it can establish a viable operating plan. The tribe/TDHE's IHP must include a description of the manner in which the recipient will protect and maintain its 1937 Act housing stock, as well as any existing and anticipated housing rehabilitation programs needed to maintain the viability of the stock.

The NAHASDA formula for determining the allocation of funds for existing housing is a good place to start to help determine the amount of funds needed for maintenance and operations. In addition, the tribe or TDHE should have data on the costs of operating its



existing stock from previous years. Historical costs are a good basis for determining future costs. The tribe should supplement the historical cost data with information obtained from thorough inspections of all assisted units.

Who is responsible for maintaining the existing stock? The tribe/TDHE is required to operate and maintain all of the tribe's current assisted rental housing. If the tribe/TDHE has a contract with a homeowner under the Mutual Homeownership Occupancy Agreement (MHOA), however, that homeowner is responsible for maintaining the unit in accordance with unit quality standards set forth by the tribe. The tribe/TDHE has the responsibility to enforce these provisions.

### **Developing a Budget**

Using historical cost data and information on the condition of its units, the tribe can develop a baseline budget that will demonstrate how much it will cost to adequately maintain and operate its units. It is important to have this information, because if the amount of projected expenses exceeds the amount of anticipated revenue, the tribe will need to determine how to maximize its revenues and address priority items, or seek out additional sources of revenue.

How is a budget for operating and maintaining housing developed? The first step is to enumerate all the possible categories of anticipated sources of income and expenses. Exhibit 3-1 is an extensive list of types of income and expenses frequently associated with the operation of rental housing. (It includes categories that are common to all types of housing.)

The tribe may not keep records on a per unit or per development basis, but it should have records to document revenues and expenses associated with the operation of its assisted housing stock. A breakdown of these expenses should be provided in the tribe/TDHE's audited financial statements.

The budget cannot rely solely on historical cost data. Budgets should be adjusted in line with current inflation. In addition, it should be adjusted based on the prioritized needs of the housing stock.

### **Data from Inspections**

Thorough inspections of the housing stock can provide the tribe/TDHE with information that should be incorporated into the budget.

The inspector should use a preprinted inspection form with room for notes on the condition of each component of every room of the dwelling, as well as dwelling systems and exterior conditions. For each component, the instructor should rate the condition as satisfactory or unsatisfactory, and if the condition is unsatisfactory, the inspector should note if the condition is of an emergency nature. A sample inspection form is provided in the Appendix to this guidebook.

Once the inspections have been completed, the tribe/TDHE's property management or asset management staff should prioritize all of the units' deficiencies into the following categories:

- Emergency repair needs/maintenance;
- Emergency repair needs/capital replacements;
- Routine repair needs/maintenance; and
- Routine repair needs/capital replacements.

Emergency repairs require immediate action and are designated separately. Repair needs of an emergency nature are those that negatively affect the health and safety of the tenants or the structural integrity of the dwelling. Routine repair needs are items that should be addressed through regularly scheduled maintenance. Maintenance and capital replacements are considered separately because routine maintenance items are generally addressed in an operating budget. Customarily, capital replacement items are handled differently.



Exhibit 3.1 — Typical Revenues and Expenditures for Rental Housing

INCOME	EXPENSES (Continued)
<p>Rental Income</p> <ul style="list-style-type: none"> <li>➤ Tenant rent</li> <li>➤ Rent on commercial spaces (if applicable)</li> <li>➤ Subsidy payments from tribe</li> <li>➤ Less: Vacancies</li> <li>➤ NAHASDA</li> </ul> <p>Financial Revenue</p> <ul style="list-style-type: none"> <li>➤ Interest income from operations</li> <li>➤ Interest income from reserves</li> </ul> <p>Other Revenue</p> <ul style="list-style-type: none"> <li>➤ Late fees</li> <li>➤ Damages and cleaning fees</li> <li>➤ Vending machines (if applicable)</li> <li>➤ Miscellaneous</li> </ul>	<p>Operating and Maintenance Expenses</p> <ul style="list-style-type: none"> <li>➤ Janitorial salaries</li> <li>➤ Cleaning supplies</li> <li>➤ Cleaning contract</li> <li>➤ Exterminating contract</li> <li>➤ Garbage and trash removal</li> <li>➤ Security payroll</li> <li>➤ Security contract</li> <li>➤ Grounds payroll</li> <li>➤ Grounds supplies</li> <li>➤ Grounds contract</li> <li>➤ Snow removal</li> <li>➤ Repairs payroll</li> <li>➤ Repair supplies</li> <li>➤ Repair contracts</li> <li>➤ Heating and cooling repairs</li> <li>➤ Vehicle and equipment repairs</li> <li>➤ Miscellaneous maintenance expenses</li> </ul>
<p><b>EXPENSES</b></p> <p>Administrative Expenses</p> <ul style="list-style-type: none"> <li>➤ Advertising (if applicable)</li> <li>➤ Tenant concessions</li> <li>➤ Office salaries</li> <li>➤ Office supplies</li> <li>➤ Management fee (if applicable)</li> <li>➤ Main Management and staff salaries</li> <li>➤ Rent for staff units (if applicable)</li> <li>➤ Legal</li> <li>➤ Audit</li> <li>➤ Bookkeeping/Accounting</li> <li>➤ Telephone</li> <li>➤ Employee training</li> <li>➤ Tenant recreation</li> <li>➤ Miscellaneous administrative</li> </ul> <p>Utilities</p> <ul style="list-style-type: none"> <li>➤ Electricity</li> <li>➤ Water</li> <li>➤ Gas</li> <li>➤ Sewer</li> <li>➤ Fuel/oil/coal</li> </ul>	<p>Taxes and Insurance</p> <ul style="list-style-type: none"> <li>➤ Real estate taxes (if applicable)</li> <li>➤ Employee payroll taxes</li> <li>➤ Miscellaneous taxes, licenses, permits</li> <li>➤ Property and liability insurance</li> <li>➤ Flood insurance</li> <li>➤ Automobile insurance</li> <li>➤ Fidelity bond</li> <li>➤ Social security</li> <li>➤ Employee benefits</li> <li>➤ Other insurance</li> </ul> <p>Financial Expenditures</p> <ul style="list-style-type: none"> <li>➤ Mortgage payments</li> <li>➤ Loan payments</li> <li>➤ Service charges</li> </ul> <p>Reserve for Replacement Deposits</p>





## Budgeting for Capital Replacements and Improvements

Capital replacement items should be included in a separate capital replacement or improvement budget. These budgets typically include the following replacement items:

- Appliances;
- Carpet;
- Window coverings;
- Heating or cooling systems;
- Roof, gutters and downspouts;
- Exterior walls/siding;
- Kitchen cabinets, counter tops and sinks;
- Bath tubs, bathroom sinks, toilets, tub or shower enclosures;
- Domestic galvanized water heaters;
- Asphalt or concrete;
- Windows; and
- A variety of other substantial components of the dwelling.

The budget for capital repairs and improvements helps the housing manager to determine how much of the housing stock's regular operating budget should be set aside on a monthly basis. Property managers traditionally establish a separate Reserve for Replacement bank account in which funds are aggregated to address periodic capital needs on an ongoing basis.

## SOURCES OF FUNDS FOR HOUSING OPERATIONS

Once the needs of the stock have been documented and the tribe knows the amount of resources necessary to adequately operate the housing, the tribe must determine what resources it has available.

The common sources of revenue are rents paid by tenants, and housing assistance provided by the tribe's NAHASDA allocation. In addition, some tribal housing may be subsidized by a variety of other federal, state or local programs. In many cases, however, the tribe's resources will not be sufficient to fund the baseline operating budget. If this is the case, the tribe may have several options.

## Tenant Rents

Under NAHASDA, tenants of housing receiving NAHASDA assistance may not pay rent in excess of 30 percent of their adjusted monthly household income. In order to maximize scarce NAHASDA resources and revenue from tenants without making the housing unaffordable, the tribe should consider the following:

- If tenants are not paying their rent, is the tribe, TDHE, or property manager taking appropriate action to remedy this situation?
- Are tenants required to pay 30 percent of their adjusted monthly household income toward rent, or less? If they are required to pay less, could they afford to pay 30 percent?
- Are tenants whose income increases required to pay more rent?

Answering these questions may help the tribe determine how to allocate IHBG funds in the most equitable manner, and generate additional revenue which will help to operate the housing stock more efficiently.

## Revising the IHP

When the tribe compiles its IHP, before it determines its budget for new construction, it may want to consider allocating more IHBG funds to the operation and maintenance of existing housing. If operating and maintaining the existing housing stock would serve the greatest number of low-income tribal members, this would probably be the most sensible use of IHBG funds.



### **Other Sources of Housing Assistance**

If the tribe must rely solely on tenant rent payments and NAHASDA allocations to support its housing programs, it may want to research other sources of federal, state, and local assistance that may be available. Various states, counties and cities offer rental assistance for families whose household income is below 80 percent of the area median income. Tribes may encourage its members to get on waiting lists for this assistance if they are eligible for these programs. The tribe should also determine if state or local subsidies are available for the operation and maintenance of existing housing for which the tribe might be eligible. Most federal programs encourage recipients to leverage other sources of funds.

### **Revising the Operating Budget**

If tenants are paying their rents and cannot afford to pay more, and if no other sources of funds are available, the tribe may have no option other than to revise its baseline operating budget downward. This is when the information obtained from the individual unit inspections will be very useful. There may be ways to cut back on some of the administrative expenses. The TDHE may be administratively top heavy, and some functions might be consolidated without compromising the quality of services provided by the entity.



# Chapter Four

## DAY TO DAY

### PROPERTY OPERATIONS — RENTAL HOUSING

The day will come when all the hard work of planning and carrying out the rental development project is finished and the housing is ready for its new tenants. This is when the property management tasks begin. As with the other stages in development, this phase of the project requires advanced planning.

The tribe's approach to property management should be indicated in a property management plan. This plan should include policies and procedures for:

- Leases, tenant selection, and occupancy;
- Property maintenance;
- Accounting; and
- Administration and recordkeeping.

Although desirable, a property management plan is not a requirement for funding an Indian Housing Plan under NAHASDA. However, good property management practices are essential to protecting investments in rental housing because they help to ensure that the property is physically and financially sound throughout its useful life.

Property management plans should include approaches to the issues described below. For additional information on this subject, please refer to the rental housing model in this series.

#### LEASES, TENANT SELECTION AND OCCUPANCY

##### Lease Policies and Procedures

The lease between the landlord and the tenant is a very important document, as it delineates the rights and responsibilities of both parties. If properly written, it provides protections and restrictions for both sides.

Most owners of a portfolio of properties such as tribes use a single lease form, or boilerplate, which sets forth the requirements of at least a minimum number of issues. Generally, such agreements include the following components:

1. Name of the owner or ownership entity, the tenant and co-tenants;
2. Term (applicable dates of the lease);
3. The amount of rent to be paid by the tenant and other charges, if applicable;
4. Amount of security deposit – payment and refund terms;
5. Date rental payments are due, and explanation of penalties;
6. Services included in the rent;
7. Explanation of the types of use restrictions for the dwelling, including:
  - a. The maximum (or minimum) number of occupants
  - b. The use of the dwelling (residential, commercial, etc.)
  - c. Whether or not pets are allowed, and if so, the maximum number, type and size of pets allowed;
  - d. Subleasing the premises;
  - e. Allowable noise levels and times;
  - f. Guests, overnight and otherwise, and which party is responsible for their actions;
  - g. Decoration and alteration to the unit;



- h. Common areas of the building;
- i. Storage; and
- j. Parking.

8. Conditions for lease terminations.

In addition, the lease explains who is responsible for maintenance of the common areas of the building and the units, when repairs are the financial responsibility of the tribe/TDHE and when they are the responsibility of the tenant. It often contains provisions for remuneration to the tribe for damages caused by the tenant and usually includes a clause that explains the limits of the tribe's liability.

At a minimum, the following lease policies should be addressed in the property management procedures:

- Length of lease period.** The lease period should be at least one year, unless the tenant and tribe agree on a shorter period;
- Prohibited lease terms.** The lease for rental units may not include terms that relate to the following:
  - Treatment of the tenant's personal property;
  - Excusing the tribe from certain responsibilities;
  - The tenant's waiver of legal notice or legal proceedings;
  - The tenant's waiver of a jury trial or right to appeal a court decision; and
  - Charges to the tenant for the cost of legal actions regardless of outcome.
- Termination of tenancy.** The tribe cannot terminate the tenancy or refuse to renew the lease of a tenant in an IHBG-funded project except for serious and repeated lease violations, such as nonpayment of rent.
- Maintenance.** The tribe which owns a IHBG funded rental project has ultimate responsibility for maintaining the premises (including units funded by the 1937 Act) in compliance with the tribe/TDHE's property standards (such as the

HUD's Section 8 Housing Quality Standards) and local code, and cannot transfer that responsibility to the tenant through the lease.

### Tenant Selection

HUD programs generally require that the owner of a HUD funded or insured project prepare written tenant selection policies. These policies should be included in the property management plan. In NAHASDA rental projects, there is no restriction on the type of Indian household that can be assisted. Whether the household is composed of an individual or family is irrelevant, provided the household is low-income (has an annual income of 80 percent or less of the median income for the area).

The tribe/TDHE should have a written tenant selection plan that enumerates criteria for the acceptance of applicants. The criteria should be consistently applied across the board to avoid discrimination or lawsuits.

Under NAHASDA, the IHP may set out a preference for the provision of housing assistance to Indian families who are members of the Indian tribe or to other Indian families if the recipient of IHBG funds has adopted this preference.

### Occupancy

The tribe should address a number of policies and procedures with regard to occupancy. These include:

- The process for setting initial rents and making changes in those rents in conformance with the NAHASDA regulatory requirements.
- Income eligibility requirements; and
- Tenant preferences.

Tenant income must be ascertained and proven prior to occupancy in housing developed or assisted under NAHASDA. The tribe may require that tenants' incomes be recertified on an annual basis. Eligibility income must be calculated in a manner consistent with tribal requirements.

Under NAHASDA, if the incomes of specific tenants rise over the required thresholds, the tenants may



continue to live in the project. The tribe may want to have guidelines to minimize the number of moderate income residents residing in its properties.

## **PROPERTY MAINTENANCE**

Maintenance of projects is very important in order to extend the useful life of the project. By maintaining projects in good repair, the tribe will protect and maximize the investment of IHBG funds and 1937 Act funds.

### **General Property Appearance**

It is important that the general appearance of the property is satisfactory. This includes items such as keeping the common areas of the property and the exterior areas clean. These areas should be kept free of debris. In addition, the aesthetic appearance of the property should be maintained as well to ensure that painted surfaces are not peeling and are free of graffiti, mailboxes are presentable, etc.

### **Work Scheduling**

Maintenance of dwelling units is an ongoing process. Particularly as buildings age, problems occur continually, and should be addressed as expeditiously as possible. The property manager should be adept at prioritizing work that needs to be done in a flexible schedule that allows for emergency situations to be addressed.

Some general guidelines for property managers when scheduling repairs are as follows:

- Emergency maintenance items should be addressed immediately;
- Maintenance items that are not emergencies should be handled in order of priority. If there is no priority, management should address repair requests in the order received or by area;
- The timely preparation of vacant units prevents unnecessary loss of rent revenue and prevents vandalism and allows for tenants on the waiting list to have access to housing more quickly and helps prevent vandalism;

- Preventive maintenance items need to be scheduled on a timely basis to ensure that dwelling systems are in good working order; and
- Maintenance staff can facilitate the performance of work done by outside contractors by preparing the dwelling units and removing any leftover debris.

### **Preventive Maintenance**

To ensure that dwelling or building systems are in working order and to prolong their estimated useful life, certain preventive maintenance tasks should be performed. Such items include periodic cleaning of roofs, gutters and downspouts, preparation of heating systems for winter, servicing locks, checking site drainage systems and other tasks which should be performed on a seasonal or regular basis.

The property manager should prepare a schedule for preventive maintenance on an annual basis.

### **Inspections**

It is recommended that units be inspected on an annual basis in order to determine if they have any physical problems that may be hazardous to tenants or may cause damage to the structure. Any condition that does not meet the tribe's property standards should prompt the property manager to schedule necessary repairs. Property managers should have written inspection forms that document unit conditions and are kept on file. More frequent unit inspections should be scheduled for new tenants and those tenants who are not following the rules.

The property manager should also inspect vacant units to determine what work the unit needs prior to occupancy by a new tenant.

In order to determine the condition of the site exterior and surrounding area, property managers should perform periodic site inspections, and have any substandard items addressed by maintenance personnel.

### **Inventory and Equipment Controls**

If the tribe, TDHE or Property Management Company has a maintenance department, the crew should keep



enough supplies and equipment on hand so that maintenance and repairs can be performed efficiently. All equipment should be catalogued and serviced as necessary. The crew should periodically take inventory of all materials on hand to prevent disappearance and unnecessary work delays.

### **Procurement and Supply Inventory**

Property management organizations or tribal housing maintenance crews should have sound procedures for purchasing equipment and supplies. Staff should determine what sources are available for the purchase of supplies and equipment, as well as relative quality and pricing. Obviously, the key to good purchasing procedures is to determine where to get the best materials at the lowest prices and buying it in advance of need. Property management companies should keep a list of vendors for commonly used materials and equipment, with current brochures and price lists.

If the tribe performs property management services, it is important that the maintenance department put a system into practice that safeguards against loss or theft of the materials purchased. For instance, it is common practice for a property management organization to institute a purchase order system. A purchase order is essentially a pre-authorization for the purchase of a particular item(s). All procurement (purchase of goods or services) must be carried out in accordance with NAHASDA regulations and 24 CFR Part 85.

### **Security**

Property managers should ensure the security of the tenants to the greatest extent possible. The potential effect the property manager has on tenant safety is limited because he/she can only control certain factors, but these factors deserve much consideration. Property managers should:

- Maintain doors, windows, and locks;
- Provide and maintain adequate lighting;
- Ensure integrity of fences and barriers; and

- Minimize landscaping and structural attributes that obscure exterior doorways (and provide hiding places for unwanted visitors).

### **Energy Conservation**

Property managers can help minimize the cost of utilities in dwellings with electric lighting, heating/cooling systems, utility powered appliances, and a water supply by taking measures to decrease consumption without causing discomfort to the tenants. Certain dwelling systems are more cost effective and energy efficient than others are; however, when system replacement costs are prohibitive consumption can be decreased through proper systems maintenance. Insulation, weather stripping, and minor plumbing repairs are low cost examples of energy saving measures.

### **Contracting Procedures**

When the maintenance staff of a tribe/TDHE, or property management firm cannot perform a particular service or repair, this necessitates contracting out the work to a separate company. Contracting for these services is a key task of property managers.

Tribes/TDHEs must meet federal contracting and procurement requirements when using IHBG funds. For a description of required contracting and procurement procedures, please refer to the Construction Issues model in this series.

In brief, when a property manager decides to use a contractor to repair a particular item, depending on the cost of the job, he or she must follow some or all of these procedures:

- Develop a scope of work;
- Solicit bids;
- Analyze bids; and
- Select the best contractor for the job on the basis of the bids received and past experience.





## ACCOUNTING

Federal grant recipients must meet the accounting requirements of the Office of Management and Budget (OMB) Circular A-87 and A-133 and the Requirements of 24 CFR Part 85, specifically subparts 85.6, 85.12, 85.20, 85.22, 85.26, 85.35, 85.36, 85.43, 85.44, 85.51, and 85.52. Whoever is in charge of the day to day operations of dwellings funded or assisted by NAHASDA – a tribe/TDHE, or property management firm – must, at a minimum, adhere to these requirements.

It is very important for a property manager to keep good accounting records. If at all possible, accounting records should be recorded for separate buildings or developments, in order to provide a way of accurately matching revenue and corresponding expenses. This kind of breakdown facilitates financial analysis and budget preparation, because it enables the tribe and property manager to determine which developments or buildings are financially sound, and which have financial problems.

The property manager should always record transactions in the most logical manner possible, so that all journals, ledgers, and financial statements are comprehensible. *Every transaction should be recorded, no matter how immaterial it may seem.* Records of all transactions should be kept on file so that they may be verified for legitimacy at a later date.

### Rent Collection

Property managers are generally responsible for collecting rents. Whether the tribe, the TDHE, the property management firm, or the bank collects rents, it is recommended that various rules be established. These include rules governing payment due dates, required methods of payment, penalties and interest, and handling rent delinquencies.

The tribe should establish due dates for the payment of rents and other charges, which are typically enforced by the property manager. For the dwellings to operate smoothly, bills for supplies, materials, and services must be paid on a continuous basis; therefore, tenants should be required to pay rent by a certain date every month.

The property manager stipulates in what form tenants may pay their rent: by cash, check, credit card, or electronic bank transfer. It is customary for property managers to charge a late fee if tenants pay beyond a date stated in the contract.

Although this is an unpleasant subject, property managers have to establish how to deal with tenants who are chronic late payers, and those who do not pay at all. Although the tribe may be reluctant to sanction tribal members who do not pay rent, particularly households with very low incomes, its federal resources are limited, its needs are great, and it has to determine how to maximize these resources as efficiently and effectively as possible. If there are not consequences for nonpayment of rent, those who do pay rent are effectively penalized. Therefore, the tribe may want the property manager to follow the eviction procedures set forth in the tribal code, if applicable, or state civil code, or some modified approach. At the very least, every month after a certain date, the property manager should send reminder letters to tenants who have not yet paid their rent.

### Treatment of Revenue

The property manager should record and thoroughly document all revenue generated by the housing stock, and should record revenue according to various accounts codes, so that it is possible to determine its source. The following are some examples of common revenue classifications: rent paid by tenants, rent from commercial space, late charges, laundry income, damages and cleaning fees, reimbursements for repairs, and reimbursements for legal fees.

The property manager records rent received on a tenant by tenant basis and keeps detailed tenant payment records. The property manager should also keep separate records of each type of revenue received.

### Expenses

The property manager should account for any and all expenses incurred on behalf of the dwellings, buildings, and/or developments, no matter how insignificant. All expenses should be documented by





written receipts. This is particularly important for property management companies that have large portfolios, so that they can distinguish between the expenses of particular dwellings and corporate expenses.

As is the case for revenue, expenses should be recorded by category. By breaking down expenses, it is easier to analyze and control costs, and to determine the source of financial problems.

### Budget Preparation and Management

A tribe may prepare one budget for all of its housing stock, or separate budgets for separate developments or units. If the tribe or TDHE contracts with a property management firm to manage its housing stock, the property management firm would either be responsible for preparing the budget or for supplying the tribe with important data on projected revenue and expenses.

Budgets should be prepared on an annual basis. Doing so forces the tribe and property management firm to plan for the coming year including the level of service to be provided to the housing stock, the amount of planned maintenance and repair, and preventive maintenance. It also allows the tribe and property manager to look at projected income and determine whether or not there will be sufficient income to cover expenses, and if not, whether or not rents must be increased or alternate ways should be explored to raise the necessary cash. It also helps the tribe in the development of its IHP.

The budget is a guide and an indicator that lets the tribe and the property management firm know how well the housing stock is "performing," particularly in comparison to what was anticipated. Budgets should be prepared with care, using as much historical cost information and current data as possible.

### Cash Controls

The property manager is responsible for establishing safeguards for the funds belonging to the tribe's housing stock. To safeguard tenants and minimize possibilities for fraud, the property manager should record receipt of all rents on a tenant by tenant basis.

Some common methods property managers use to safeguard funds are:

- Requesting that, whenever possible, rents are paid by check or electronic funds transfer, rather than by cash;
- Producing written receipts for all revenue received;
- Depositing cash in the bank daily, or if this is not practicable, by keeping it in a safe or lockbox; and
- Splitting functions, so that the person who receives revenue and prepares receipts is not the same person who prepares bank deposits.

### Monitoring Costs

As discussed earlier in Procurement and Supply Inventory, it is an important part of property management to purchase goods and services of high quality at the lowest possible prices.

Management should periodically check prices on commonly used supplies, material and equipment to determine if they may purchase the same items elsewhere for less. The same holds true for regular service providers.

### Accounts Receivable/Payable

The property manager is responsible for keeping track of all amounts owed in connection with the housing stock, particularly rents. The budget shows how much revenue is expected. The property manager's record of cash received and *accounts receivable* – amounts expected but not yet received – provides a picture of how the housing stock is performing against what was originally projected.

Property managers customarily pay bills for the housing stock periodically during the month. They generally do not pay them the moment they are received. Typically, at the end of each month, there are bills that have not yet been paid. These constitute the housing stock's outstanding obligations or *accounts payable*. The total amount of bills paid during the month, plus the accounts payable, may be



measured against the budget to determine the level of the housing stock's expenses versus what was originally projected.

### **Financial Reports**

In order for the tribe or the tribe's asset manager to have an accurate picture of the financial performance of the tribal housing stock, the property management firm should generate and circulate certain financial reports. These reports should be prepared on either a weekly, monthly, quarterly or annual basis.

The tribe or tribal asset manager, such as the TDHE, may not need to see every report prepared by the property management firm, but should look at a few key reports. The following is a listing of some of the most commonly used financial reports:

#### **On a monthly basis**

- Tenant Accounts Receivable Report;
- Month to Date Check Register;
- Accounts Payable Report;
- Sources and Uses of Cash;
- Vacancy Report;
- Profit and Loss Statement (with variance to budget);

#### **On a quarterly basis**

- Balance Sheet

#### **On an annual basis**

- Trial Balance
- Audited Financial Statements

The property manager looks at certain reports on a weekly basis, such as the Tenant Accounts Receivable report, Month to Date check register, and Accounts Payable report. These reports are looked at frequently so the property manager can determine which tenants have not paid their rent and what bills have not been paid in case there is situation which must be addressed immediately. The property manager analyzes the other reports on a monthly basis to obtain an overall picture of the financial health of the housing stock.



## Chapter Five

### OPTIONS FOR MANAGING OWNER-OCCUPIED HOUSING

Generally, tribes' current assisted housing stock is single family housing, either semi-detached or detached. The asset and property management responsibilities for operating both single family and multifamily rental housing are described in Chapters Two through Four.

Under NAHASDA, tribes/TDHEs may use funds to assist renters to become homeowners, and to subsidize homeowner payments. The owners themselves are the property managers of their individual dwellings.

For additional information on the management of single family housing, please refer to the Homeownership model in this series.

#### TRIBAL INSPECTION AND MAINTENANCE OF ASSISTED OWNER OCCUPIED UNITS

Tribes may use IHBG funds to rehabilitate owner occupied single family homes. But it may not be the best use of funds to subsidize homeownership and also pay for substantial rehabilitation. In the long run, it may be more cost effective if the tribes maintain an ongoing role in the operation of the housing.

The tribe/TDHE may decide to have its property manager perform periodic inspections of both the interior and exterior of the owner occupied assisted housing stock. The inspections would provide the tribe with information on routine maintenance problems and repair needs. Rather than paying for substantial rehabilitation of these dwellings every five, ten or fifteen years, it may be less expensive for the tribe to provide regular maintenance services. These services could be provided free of charge, or on a sliding scale based on homeowner income. Regular repair and upkeep of the housing may eliminate the need for costly rehabilitation, or at least may postpone this need.

Another option is for tribes to continue to hold homeowners responsible for maintaining the interior of their dwelling, but could provide exterior maintenance of walls, windows, roofs, doors and systems that are located outside of the home.

#### EDUCATING HOMEOWNERS ON MAINTAINING THEIR HOMES

The tribe may not have sufficient funds to inspect and/or maintain assisted owner occupied dwellings. A less costly alternative would be for the tribe to develop an educational outreach program designed to give homeowners the skills to make certain types of repairs and perform preventive maintenance for themselves.

#### MATERIALS AND EQUIPMENT

If homeowners had maintenance and repair skills, but could not afford materials, tribes could provide materials free or at a reduced cost. The tribe would save on labor costs, while empowering homeowners to adequately maintain their homes.

The tribe may find that an investment of IHBG funds to establish a tool lending library would be both welcome and worthwhile. Homeowners might have the knowledge to perform maintenance, repairs, and even rehabilitation but not have access to equipment.

A tool lending library would enable homeowners to borrow equipment. Borrowers could sign a document acknowledging that the equipment must be returned in good repair, and perhaps leave some kind of material or monetary deposit.

# APPENDIX

## UNIT INSPECTION FORM

# Inspection Form

Section 8 Tenant-Based Assistance  
Rental Certificate Program & Rental Voucher Program

U.S. Department of Housing  
and Urban Development  
Office of Public and Indian Housing

OMB Approval No. 2577-0169 (exp. 4/30/2001)

Public reporting burden for this collection of information is estimated to average 3 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This collection of information is authorized under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). The information is used to determine if a unit meets the housing quality standards of the section 8 rental assistance program.

HA:	Tenant ID No:	Date of Request:
Inspector:	Date Last Inspection:	Date of Inspection:
Neighborhood/Census Tract :	Type of Inspection: <input type="checkbox"/> Initial <input type="checkbox"/> Special <input type="checkbox"/> Reinspection	Project No:

## A. General Information

Street Address of Inspected Unit:				Housing Type: (check as appropriate) <input type="checkbox"/> Single Family Detached <input type="checkbox"/> Duplex or Two Family <input type="checkbox"/> Row House or Town House <input type="checkbox"/> Low Rise: 3,4 Stories, Including Garden Apartment <input type="checkbox"/> High Rise; 5 or More Stories <input type="checkbox"/> Manufactured Home <input type="checkbox"/> Congregate <input type="checkbox"/> Cooperative <input type="checkbox"/> Independent Group Residence <input type="checkbox"/> Single Room Occupancy <input type="checkbox"/> Shared Housing <input type="checkbox"/> Other:(Specify)			
City:	County:	State:	Zip:				
Name of Family:		Current Telephone of Family:					
Current Street Address of Family:							
City:	County:	State:	Zip:				
Number of Children in Family Under 6		Number of Children in Family With Elevated Blood Lead Level					
Name of Owner or Agent Authorized to Lease Unit Inspected:			Telephone of Owner or Agent:				
Address of Owner or Agent:							

## B. Summary Decision on the Unit

(to be completed after the form has been filled in)

### Section 8 Housing Quality Standard Pass or Fail

**1. Fail** If there are any checks under the column headed "Fail" the unit fails the Section 8 minimum housing standard. Discuss with the owner the repairs noted that would be necessary to bring the unit up to the standard.

**2. Inconclusive** If there are no checks under the column headed "Fail" and there are checks under the column headed "Inconclusive," obtain additional information necessary for a decision (question owner or tenant as indicated in the item instructions given in this checklist). Once additional information is obtained, change the rating for the item and record the date of verification at the far right of the form.

**3. Pass** If neither (1) nor (2) above is checked, the unit passes the Section 8 minimum standards. Any additional conditions described in the right hand column of the form should serve to (a) establish the precondition of the unit, (b) indicate possible additional areas to negotiate with the owner, (c) aid in assessing the reasonableness of the rent of the unit, and (d) aid the tenant in deciding among possible units to be rented. The tenant is responsible for deciding whether he or she finds these conditions acceptable.

**Unit Size:** Count the number of bedrooms for purposes of the FMR or Payment Standard. Record in the box provided.

**Year Constructed:** Enter from Line 5 of the Request for Lease Approval form. Record in the box provided.

**Number of Sleeping Rooms:** Count the number of rooms which could be used for sleeping, as identified on the checklist. Record in the box provided.

## C. How to Fill Out This Checklist

Complete the checklist on the unit to be occupied (or currently occupied) by the tenant. Proceed through the inspection as follows:

Area	Checklist Category
room by room	1. Living Room 2. Kitchen 3. Bathroom 4. All Other Rooms Used for Living
basement or utility room	5. All Secondary Rooms Not Used for Living 6. Heating & Plumbing
outside	7. Building Exterior
overall	8. General Health & Safety

Each part of the checklist will be accompanied by an explanation of the item to be inspected.

**Important:** For each item numbered on the checklist, **check one box only** (e.g., check one box only for item 1.4 "Security," in the Living Room.)

In the space to the right of the description of the item, if the decision on the item is: "Fail" write what repairs are necessary; If "Inconclusive" write in details.

Also, if "Pass" but there are some conditions present that need to be brought to the attention of the owner or the tenant, write these in the space to the right.

If it is an annual inspection, record to the right of the form any repairs made since the last inspection. If possible, record reason for repair (e.g., ordinary maintenance, tenant damage).

If it is a complaint inspection, fill out only those checklist items for which complaint is lodged. Determine, if possible, tenant or owner cause.

Once the checklist has been completed, return to Part B (Summary Decision on the Unit).

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# 1. Living Room

## 1.1 Living Room Present

Note: If the unit is an efficiency apartment, consider the living room present.

## 1.2 Electricity

In order to qualify, the outlets must be present and properly installed in the baseboard, wall or floor of the room. Do not count a single duplex receptacle as two outlets, i.e., there must be **two** of these in the room, or **one** of these **plus a permanently installed ceiling or wall light fixture**.

Both the outlets and/or the light must be working. Usually, a room will have sufficient lights or electrical appliances plugged into outlets to determine workability. Be sure light fixture does not fail just because the bulb is burned out.

Do not count any of the following items or fixtures as outlets/fixtures: Table or floor lamps (these are **not** permanent light fixtures); ceiling lamps plugged into socket; extension cords.

If the electric service to the unit has been temporarily turned off check "Inconclusive." Contact owner or manager after inspection to verify that electricity functions properly when service is turned on. Record this information on the checklist.

## 1.3 Electrical Hazards

Examples of what this means: broken wiring; noninsulated wiring; frayed wiring; improper types of wiring, connections or insulation; wires lying in or located near standing water or other unsafe places; light fixture hanging from electric wiring without other firm support or fixture; missing cover plates on switches or outlets; badly cracked outlets; exposed fuse box connections; overloaded circuits evidenced by frequently "blown" fuses (ask the tenant).

Check "Inconclusive" if you are uncertain about severity of the problem and seek expert advice.

## 1.4 Security

"Accessible to outside" means: doors open to the outside or to a common public hall; windows accessible from the outside (e.g. basement and first floor); windows or doors leading onto a fire escape, porch or other outside place that can be reached from the ground.

"Lockable" means: the window or door has a properly working lock, or is nailed shut, or the window is not designed to be opened. A storm window lock that is working properly is acceptable. Windows that are nailed shut are acceptable only if these windows are not needed for ventilation or as an alternate exit in case of fire.

## 1.5 Window Condition

Rate the windows in the room (including windows in doors).

"Severe deterioration" means that the window no longer has the capacity to keep out the wind and the rain or is a cutting hazard. Examples are: missing or broken-out panes; dangerously loose cracked panes; windows that will not close; windows that, when closed, do not form a reasonably tight seal.

If more than one window in the room is in this condition, give details in the space provided on the right of the form.

If there is only "moderate deterioration" of the windows the item should "Pass." "Moderate deterioration" means windows which are reasonably weather-tight, but show evidence of some aging, abuse, or lack of repair. Signs of deterioration are: minor crack in window pane; splintered sill; signs of some minor rotting in the window frame or the window itself; window panes loose because of missing window putty. If more than one window is in this condition, give details in the space provided on the right of the form.

## 1.6 Ceiling Condition

"Unsound or hazardous" means the presence of such serious defects that either a potential exists for structural collapse or that large cracks or holes allow significant drafts to enter the unit. The condition includes: severe bulging or buckling; large holes; missing parts; falling or in danger of falling loose surface materials (other than paper or paint).

Pass ceilings that are basically sound but have some nonhazardous defects, including: small holes or cracks; missing or broken ceiling tiles; water stains; soiled surfaces; unpainted surfaces; peeling paint (for peeling paint see item 1.9).

## 1.7 Wall Condition

"Unsound or hazardous" includes: serious defects such that the structural safety of the building is threatened, such as severe buckling, bulging or leaning; damaged or loose structural members; large holes; air infiltration.

Pass walls that are basically sound but have some nonhazardous defects, including: small or shallow holes; cracks; loose or missing parts; unpainted surfaces; peeling paint (for peeling paint see item 1.9).

## 1.8 Floor Condition

"Unsound or hazardous" means the presence of such serious defects that a potential exists for structural collapse or other threats to safety (e.g., tripping) or large cracks or holes allow substantial drafts from below the floor. The condition includes: severe buckling or major movements under walking stress; damaged or missing parts.

Pass floors that are basically sound but have some nonhazardous defects, including: heavily worn or damaged floor surface (for example, scratches or gouges in surface, missing portions of tile or linoleum, previous water damage). If there is a floor covering, also note the condition, especially if badly worn or soiled.

## 1.9 Lead Paint

If the unit was built in 1978 or after, has no child under six, is a 0-BR or elderly unit, or has lead free certification by a qualified inspector, check "NA" and do not inspect painted surfaces.

This requirement applies to painted surfaces within the unit and the entrance and hallway providing access to a unit in a multi-unit building. This requirement applies to **large** surfaces such as ceilings, floors, doors, and walls with more than two square feet of defective (cracking, scaling, chipping, peeling, or loose) paint. This requirement also applies to defective paint on more than 10% of the total surface area of **small** surfaces such as window sills, baseboards and trim. In order to fail, the paint must be noticeably loose and separating from the surface material and the area of defective paint must exceed the above stated surface area thresholds.

If there is a child under six with an elevated blood lead level, there is an additional requirement: both **intact** and defective paint on protruding chewable surfaces such as corners, window sills, window frames, doors and door frames up to five feet from the floor that are readily accessible to children under six must be tested for lead using an XRF or lab analysis of paint samples. Instead of testing intact or nonintact paint, the HA may opt to let the owner treat all defective paint on these chewable surfaces.

If lead is found, the surfaces must be treated in accordance with the instructions in the Inspection Manual.

# 1. Living Room

For each numbered item, check one box only.

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date of final approval
		Yes, Pass	No, Fail	Inconclusive		
<b>1.1 Living Room Present</b>	Is there a living room?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>1.2 Electricity</b>	Are there at least two working outlets or one working outlet and one working light fixture?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>1.3 Electrical Hazards</b>	Is the room free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>1.4 Security</b>	Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>1.5 Window Condition</b>	Is there at least one window, and are all windows free of signs of severe deterioration or missing or broken out panes?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>1.6 Ceiling Condition</b>	Is the ceiling sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>1.7 Wall Condition</b>	Are the walls sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>1.8 Floor Condition</b>	Is the floor sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>1.9 Lead Paint</b>	Are all painted surfaces exceeding the surface area thresholds free of defective paint or adequately treated?  If there is a child under 6 with an elevated blood lead level, have the intact and nonintact paint on protruding chewable surfaces which are up to 5 feet from the ground and readily accessible to children under 6 been tested and found to be lead-free or adequately treated? Or, instead of testing intact and nonintact painted chewable surfaces, has the HA authorized the owner to treat chewable surfaces and have these surfaces been adequately treated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Not Applicable	

**Additional Comments:** (Give Item Number)



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## 2. Kitchen

### 2.1 Kitchen Area Present

Note: A kitchen is an area used for preparation of meals. It may be either a separate room or an area of a larger room (for example, a kitchen area in an efficiency apartment).

### 2.2 - 2.9 Explanation for these items is the same as that provided for "Living Room" with the following modifications:

#### 2.2 Electricity

Note: The requirement is that at least one outlet and one permanent light fixture are present and working.

#### 2.5 Window Condition

Note: The absence of a window does not fail this item in the kitchen. If there is no window, check "Pass."

### 2.10 Stove or Range with Oven

Both an oven and a stove (or range) with top burners must be present and working. If either is missing and you know that the owner is responsible for supplying these appliances, check "Fail." Put check in "Inconclusive" column if the tenant is responsible for supplying the appliances and he or she has not yet moved in. Contact tenant or prospective tenant to gain verification that facility will be supplied and is in working condition. Hot plates are not acceptable substitutes for these facilities.

An oven is not working if it will not heat up. To be working a stove or range must have all burners working and knobs to turn them off and on. Under "working condition," also look for hazardous gas hook-ups evidenced by strong gas smells; these should fail. (Be sure that this condition is not confused with an unlit pilot light -a condition that should be noted, but does not fail.)

If both an oven and a stove or range are present, but the gas or electricity are turned off, check "Inconclusive." Contact owner or manager to get verification that facility works when gas is turned on. If both an oven and a stove or range are present and working, but defects exist, check "Pass" and note these to the right of the form. Possible defects are marked, dented, or scratched surfaces; cracked burner ring; limited size relative to family needs.

A microwave oven may be substituted for a tenant-supplied oven and stove (or range).

A microwave oven may be substituted for an owner-supplied oven and stove (or range) if the tenant agrees and microwave ovens are furnished instead of ovens and stoves (or ranges) to both subsidized and unsubsidized tenants in the building or premises.

### 2.11 Refrigerator

If no refrigerator is present, use the same criteria for marking either "Fail" or "Inconclusive" as were used for the oven and stove or range.

A refrigerator is not working if it will not maintain a temperature low enough to keep food from spoiling over a reasonable period of time. If the electricity is turned off, mark "Inconclusive." Contact owner (or tenant if unit is occupied) to get verification of working condition.

If the refrigerator is present and working but defects exist, note these to the right of the form. Possible minor defects include: broken or missing interior shelving; dented or scratched interior or exterior surfaces; minor deterioration of door seal; loose door handle.

### 2.12 Sink

If a permanently attached kitchen sink is not present in the kitchen or kitchen area, mark "Fail." A sink in a bathroom or a portable basin will not satisfy this requirement. A sink is not working unless it has running hot and cold water from the faucets and a properly connected and properly working drain (with a "gas trap"). In a vacant apartment, the hot water may have been turned off and there will be no hot water. Mark this "Inconclusive." Check with owner or manager to verify that hot water is available when service is turned on.

If a working sink has defects, note this to the right of the item. Possible minor defects include: dripping faucet; marked, dented, or scratched surface; slow drain; missing or broken drain stopper.

### 2.13 Space for Storage, Preparation, and Serving of Food

Some space must be available for the storage, preparation, and serving of food. If there is no built-in space for food storage and preparation, a table used for food preparation and a portable storage cabinet will satisfy the requirement. If there is no built-in space, and no room for a table and portable cabinet, check "Inconclusive" and discuss with the tenant. The tenant makes the final determination as to whether or not this space is acceptable.

If there are some minor defects, check "Pass" and make notes to the right. Possible defects include: marked, dented, or scratched surfaces; broken shelving or cabinet doors; broken drawers or cabinet hardware; limited size relative to family needs.

## 2. Kitchen

For each numbered item, check one box only.

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date of final approval
		Yes, Pass	No, Fail	Inconclusive		
<b>2.1 Kitchen Area Present</b>	Is there a kitchen?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>2.2 Electricity</b>	Are there at least one working outlet and one working, permanently installed light fixture?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>2.3 Electrical Hazards</b>	Is the kitchen free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>2.4 Security</b>	Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>2.5 Window Condition</b>	Are all windows free of signs of deterioration or missing or broken out panes?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>2.6 Ceiling Condition</b>	Is the ceiling sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>2.7 Wall Condition</b>	Are the walls sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>2.8 Floor Condition</b>	Is the floor sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>2.9 Lead Paint</b>	Are all painted surfaces exceeding the surface area thresholds free of defective paint or adequately treated?  If there is a child under 6 with an elevated blood lead level, have the intact and nonintact paint on protruding chewable surfaces which are up to 5 feet from the ground and readily accessible to children under 6 been tested and found to be lead-free or adequately treated? Or, instead of testing intact and nonintact painted chewable surfaces, has the HA authorized the owner to treat chewable surfaces and have these surfaces been adequately treated?	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Not Applicable	
<b>2.10 Stove or Range with Oven</b>	Is there a working oven, and a stove (or range) with top burners that work?  If no oven and stove (or range) are present, is there a microwave oven and, if microwave is owner-supplied, do other tenants have microwaves instead of an oven and stove (or range)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>2.11 Refrigerator</b>	Is there a refrigerator that works and maintains a temperature low enough so that food does not spoil over a reasonable period of time?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>2.12 Sink</b>	Is there a kitchen sink that works with hot and cold running water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>2.13 Space for Storage, Preparation, and Serving of Food</b>	Is there space to store, prepare, and serve food?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

**Additional Comments:** (Give Item Number)(Use an additional page if necessary)

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## 3. Bathroom

### 3.1 Bathroom Present

Most units have easily identifiable bathrooms (i.e., a separate room with toilet, washbasin and tub or shower). In some cases, however, you will encounter units with scattered bathroom facilities (i.e., toilet, washbasin and tub or shower located in separate parts of the unit). At a minimum, there must be an enclosure around the toilet. In this case, count the enclosure around the toilet as the bathroom and proceed with 3.2-3.9 below, with respect to this enclosure. If there is more than one bathroom that is normally used, rate the one that is in best condition for Part 3. If there is a second bathroom that is also used, complete Part 4 of the checklist for this room. (See Inspection Manual for additional notes on rating the second bathroom.)

### 3.2 - 3.9 Explanation for these items is the same as that provided for "Living Room" with the following modifications:

#### 3.2 Electricity

Note: The requirement is that at least one permanent light fixture is present and working

#### 3.3 Electrical Hazards

Note: In addition to the previously mentioned hazards, outlets that are located where water might splash or collect are considered an electrical hazard.

#### 3.5 Window Condition

Note: The absence of a window does not fail this item in the bathroom (see item 3.13, Ventilation, for relevance of window with respect to ventilation). If there is no window, but a working vent system is present, check "Pass."

#### 3.7 Wall Condition

Note: Include under nonhazardous defects (that would pass, but should be noted) the following: broken or loose tile; deteriorated grouting at tub/wall and tub/floor joints, or tiled surfaces; water stains.

#### 3.8 Floor Condition

Note: Include under nonhazardous defects (that would pass, but should be noted) the following: missing floor tiles; water stains.

### 3.10 Flush Toilet in Enclosed Room in Unit

The toilet must be contained within the unit, be in proper operating condition, and be available for the exclusive use of the occupants of the unit (i.e., outhouses or facilities shared by occupants of other units are not acceptable). It must allow for privacy.

Not working means: the toilet is not connected to a water supply; it is not connected to a sewer drain; it is clogged; it does not have a trap; the connections, vents or traps are faulty to the extent that severe leakage of water or escape of gases occurs; the flushing mechanism does not function properly. If the water to the unit has been turned off, check "Inconclusive." Obtain verification from owner or manager that facility works properly when water is turned on.

Comment to the right of the form if the toilet is "present, exclusive, and working," but has the following types of defects: constant running; chipped or broken porcelain; slow draining.

If drain blockage is more serious and occurs further in the sewer line, causing backup, check item 7.6, "Fail," under the plumbing and heating part of the checklist. A sign of serious sewer blockage is the presence of numerous backed-up drains.

### 3.11 Fixed Wash Basin or Lavatory in Unit

The wash basin must be permanently installed (i.e., a portable wash basin does not satisfy the requirement). Also, a kitchen sink used to pass the requirements under Part 2 of the checklist (kitchen facilities) cannot also serve as the bathroom wash basin. The wash basin may be located separate from the other bathroom facilities (e.g., in a hallway).

Not working means: the wash basin is not connected to a system that will deliver hot and cold running water; it is not connected to a properly operating drain; the connectors (or vents or traps) are faulty to the extent that severe leakage of water or escape of sewer gases occurs. If the water to the unit or the hot water unit has been turned off, check "Inconclusive." Obtain verification from owner or manager that the system is in working condition.

Comment to the right of the form if the wash basin is "present and working," but has the following types of minor defects: insufficient water pressure; dripping faucets; minor leaks; cracked or chipped porcelain; slow drain (see discussion above under 3.10).

### 3.12 Tub or Shower in Unit

Not present means that neither a tub nor shower is present in the unit. Again, these facilities need not be in the same room with the rest of the bathroom facilities. They must, however, be private.

Not working covers the same requirements detailed above for wash basin (3.11).

Comment to the right of the form if the tub or shower is present and working, but has the following types of defects: dripping faucet; minor leaks; cracked porcelain; slow drain (see discussion under 3.10); absent or broken support rod for shower curtain.

### 3.13 Ventilation

Working vent systems include: ventilation shafts (non-mechanical vents) and electric fans. Electric vent fans must function when switch is turned on. (Make sure that any malfunctions are not due to the fan not being plugged in.) If electric current to the unit has not been turned on (and there is no openable window), check "Inconclusive." Obtain verification from owner or manager that system works. Note: exhaust vents must be vented to the outside, attic, or crawlspace.

### 3. Bathroom

For each numbered item, check one box only.

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date of final approval
		Yes, Pass	No, Fail	Inconclusive		
3.1	<b>Bathroom Present</b> (See description) Is there a bathroom?	<input type="checkbox"/>	<input type="checkbox"/>			
3.2	<b>Electricity</b> Is there at least one permanently installed light fixture?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3.3	<b>Electrical Hazards</b> Is the bathroom free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3.4	<b>Security</b> Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
3.5	<b>Window Condition</b> Are all windows free of signs of deterioration or missing or broken out panes?	<input type="checkbox"/>	<input type="checkbox"/>			
3.6	<b>Ceiling Condition</b> Is the ceiling sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
3.7	<b>Wall Condition</b> Are the walls sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
3.8	<b>Floor Condition</b> Is the floor sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
3.9	<b>Lead Paint</b> Are all painted surfaces exceeding the surface area thresholds free of defective paint or adequately treated?  If there is a child under 6 with an elevated blood lead level, have the intact and nonintact paint on protruding chewable surfaces which are up to 5 feet from the ground and readily accessible to children under 6 been tested and found to be lead-free or adequately treated? Or, instead of testing intact and nonintact painted chewable surfaces, has the HA authorized the owner to treat chewable surfaces and have these surfaces been adequately treated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Not Applicable	
3.10	<b>Flush Toilet in Enclosed Room in Unit</b> Is there a working toilet in the unit for the exclusive private use of the tenant?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3.11	<b>Fixed Wash Basin or Lavatory in Unit</b> Is there a working, permanently installed wash basin with hot and cold running water in the unit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3.12	<b>Tub or Shower</b> Is there a working tub or shower with hot and cold running water in the unit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3.13	<b>Ventilation</b> Are there openable windows or a working vent system?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

**Additional Comments:** (Give Item Number)(Use an additional page if necessary)

## 4. Other Room Used for Living and Halls

Complete an "Other Room" checklist for as many "other rooms used for living" as are present in the unit and not already noted in Parts 1, 2, and 3 of the checklist. See the discussion below for definition of "used for living." Also complete an "Other Room" checklist for all entrance halls, corridors, and staircases that are located within the unit and are part of the area used for living. If a hall, entry and/or stairway are contiguous, rate them as a whole (i.e., as part of one space).

Additional forms for rating "Other Rooms" are provided in the checklist.

Definition of "used for living." Rooms "used for living" are areas of the unit that are walked through or lived in on a regular basis. Do not include rooms or other areas that have been permanently, or near permanently, closed off or areas that are infrequently entered. For example, do not include a utility room, attached shed, attached closed-in porch, basement, or garage if they are closed off from the main living area or are infrequently entered. Do include any of these areas if they are frequently used (e.g., a finished basement/playroom, a closed-in porch that is used as a bedroom during summer months). Occasional use of a washer or dryer in an otherwise unused room does not constitute regular use.

If the unit is vacant and you do not know the eventual use of a particular room, complete an "Other Room" checklist if there is any chance that the room will be used on a regular basis. If there is no chance that the room will be used on a regular basis, do not include it (e.g., an unfinished basement) since it will be checked under Part 5, All Secondary Rooms (Rooms not used for living).

### 4.1 Room Code and Room Location

Enter the appropriate room code given below:

#### Room Codes:

- 1 = Bedroom or any other room used for sleeping (regardless of type of room)
- 2 = Dining Room or Dining Area
- 3 = Second Living Room, Family Room, Den, Playroom, TV Room
- 4 = Entrance Halls, Corridors, Halls, Staircases
- 5 = Additional Bathroom (also check presence of sink trap and clogged toilet)
- 6 = Other

**Room Location:** Write on the line provided the location of the room with respect to the unit's width, length and floor level as if you were standing outside the unit facing the entrance to the unit:

right/left/center: record whether the room is situated to the right, left, or center of the unit.

front/rear/center: record whether the room is situated to the back, front or center of the unit.

floor level: identify the floor level on which the room is located.

If the unit is vacant, you may have some difficulty predicting the eventual use of a room. Before giving any room a code of 1 (bedroom), the room must meet all of the requirements for a "room used for sleeping" (see items 4. 2 and 4.5).

**4.2 - 4.9 Explanations of these items are the same as those provided for "Living Room" with the following modifications:**

### 4.2 Electricity/Illumination

If the room code is not a "1," the room must have a means of natural or artificial illumination such as a permanent light fixture, wall outlet present, or light from a window in the room or near the room. If any required item is missing, check "Fail." If the electricity is turned off, check "Inconclusive."

### 4.5 Window Condition

Any room used for sleeping must have at least one window. If the windows in sleeping rooms are designed to be opened, at least one window must be openable. The minimum standards do not require a window in "other rooms." Therefore, if there is no window in another room not used for sleeping, check "Pass," and note "no window" in the area for comments.

### 4.6 Smoke Detectors

At least one battery-operated or hard-wired smoke detector must be present and working on each level of the unit, including the basement, but not the crawl spaces and unfinished attic.

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards).

If the dwelling unit is occupied by any hearing-impaired person, smoke detectors must have an alarm system designed for hearing-impaired persons as specified in NFPA 74 (or successor standards).

If the unit was under HAP contract prior to April 24, 1993, owners who installed battery-operated or hard-wired smoke detectors in compliance with HUD's smoke detector requirements, including the regulations published on July 30, 1992 (57 FR 33846), will not be required subsequently to comply with any additional requirements mandated by NFPA 74 (i.e. the owner would not be required to install a smoke detector in a basement not used for living purposes, nor would the owner be required to change the location of the smoke detectors that have already been installed on the other floors of the unit). In this case, check "Pass" and note under comments.

### Additional Notes

For staircases, the adequacy of light and condition of the stair rails and railings is covered under Part 8 of the checklist (General Health and Safety)

**4. Other Rooms Used for Living and Halls** For each numbered item, check one box only.

**4.1 Room Location**

**Room Code**

- \_\_\_\_\_ right/left/center: the room is situated to the right, left, or center of the unit.
- \_\_\_\_\_ front/rear/center: the room is situated to the back, front or center of the unit.
- \_\_\_\_\_ floor level: the floor level on which the room is located.

- 1 = Bedroom or Any Other Room Used for Sleeping (regardless of type of room)
- 2 = Dining Room or Dining Area
- 3 = Second Living Room, Family Room, Den, Playroom, TV Room
- 4 = Entrance Halls, Corridors, Halls, Staircases
- 5 = Additional Bathroom (also check presence of sink trap and clogged toilet)
- 6 = Other:

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date of final approval
		Yes, Pass	No, Fail	Inconclusive		
<b>4.2 Electricity/Illumination</b>	If Room Code is a 1, are there at least two working outlets or one working outlet and one working, permanently installed light fixture? If Room Code is not a 1, is there a means of illumination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>4.3 Electrical Hazards</b>	Is the room free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>4.4 Security</b>	Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.5 Window Condition</b>	If Room Code is a 1, is there at least one window? And, regardless of Room Code, are all windows free of signs of severe deterioration or missing or broken-out panes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>4.6 Ceiling Condition</b>	Is the ceiling sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.7 Wall Condition</b>	Are the walls sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.8 Floor Condition</b>	Is the floor sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.9 Lead Paint</b>	Are all painted surfaces exceeding the surface area thresholds free of defective paint or adequately treated? If there is a child under 6 with an elevated blood lead level, have the intact and nonintact paint on protruding chewable surfaces which are up to 5 feet from the ground and readily accessible to children under 6 been tested and found to be lead-free or adequately treated? Or, instead of testing intact and nonintact painted chewable surfaces, has the HA authorized the owner to treat chewable surfaces and have these surfaces been adequately treated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Not Applicable	
<b>4.10 Smoke Detectors</b>	Is there a working smoke detector on each level? Do the smoke detectors meet the requirements of NFPA 74? In units occupied by the hearing impaired, is there an alarm system connected to the smoke detector?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

**Additional Comments:** (Give Item Number)(Use an additional page if necessary)

**4. Supplemental for Other Rooms Used for Living and Halls** For each numbered item, check one box only.

**4.1 Room Location**

**Room Code**

\_\_\_\_\_ right/left/center: the room is situated to the right, left, or center of the unit.  
 \_\_\_\_\_ front/rear/center: the room is situated to the back, front or center of the unit.  
 \_\_\_\_\_ floor level: the floor level on which the room is located.

- 1 = Bedroom or Any Other Room Used for Sleeping (regardless of type of room)
- 2 = Dining Room or Dining Area
- 3 = Second Living Room, Family Room, Den, Playroom, TV Room
- 4 = Entrance Halls, Corridors, Halls, Staircases
- 5 = Additional Bathroom (also check presence of sink trap and clogged toilet)
- 6 = Other:

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date of final approval
		Yes, Pass	No, Fail	Inconclusive		
<b>4.2</b>	<b>Electricity/Illumination</b> If Room Code is a 1, are there at least two working outlets or one working outlet and one working, permanently installed light fixture? If Room Code is not a 1, is there a means of illumination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>4.3</b>	<b>Electrical Hazards</b> Is the room free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>4.4</b>	<b>Security</b> Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.5</b>	<b>Window Condition</b> If Room Code is a 1, is there at least one window? And, regardless of Room Code, are all windows free of signs of severe deterioration or missing or broken-out panes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>4.6</b>	<b>Ceiling Condition</b> Is the ceiling sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.7</b>	<b>Wall Condition</b> Are the walls sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.8</b>	<b>Floor Condition</b> Is the floor sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.9</b>	<b>Lead Paint</b> Are all painted surfaces exceeding the surface area thresholds free of defective paint or adequately treated? If there is a child under 6 with an elevated blood lead level, have the intact and nonintact paint on protruding chewable surfaces which are up to 5 feet from the ground and readily accessible to children under 6 been tested and found to be lead-free or adequately treated? Or, instead of testing intact and nonintact painted chewable surfaces, has the HA authorized the owner to treat chewable surfaces and have these surfaces been adequately treated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Not Applicable	
<b>4.10</b>	<b>Smoke Detectors</b> Is there a working smoke detector on each level? Do the smoke detectors meet the requirements of NFPA 74? In units occupied by the hearing impaired, is there an alarm system connected to the smoke detector?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

**Additional Comments:** (Give Item Number)(Use an additional page if necessary)



**4. Supplemental for Other Rooms Used for Living and Halls** For each numbered item, check one box only.

**4.1 Room Location**

\_\_\_\_\_ right/left/center: the room is situated to the right, left, or center of the unit.  
 \_\_\_\_\_ front/rear/center: the room is situated to the back, front or center of the unit.  
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**Room Code**

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- 6 = Other:

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date of final approval
		Yes, Pass	No, Fail	Inconclusive		
<b>4.2 Electricity/Illumination</b>	If Room Code is a 1, are there at least two working outlets or one working outlet and one working, permanently installed light fixture? If Room Code is not a 1, is there a means of illumination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>4.3 Electrical Hazards</b>	Is the room free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>4.4 Security</b>	Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.5 Window Condition</b>	If Room Code is a 1, is there at least one window? And, regardless of Room Code, are all windows free of signs of severe deterioration or missing or broken-out panes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>4.6 Ceiling Condition</b>	Is the ceiling sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.7 Wall Condition</b>	Are the walls sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.8 Floor Condition</b>	Is the floor sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.9 Lead Paint</b>	Are all painted surfaces exceeding the surface area thresholds free of defective paint or adequately treated? If there is a child under 6 with an elevated blood lead level, have the intact and nonintact paint on protruding chewable surfaces which are up to 5 feet from the ground and readily accessible to children under 6 been tested and found to be lead-free or adequately treated? Or, instead of testing intact and nonintact painted chewable surfaces, has the HA authorized the owner to treat chewable surfaces and have these surfaces been adequately treated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Not Applicable	
<b>4.10 Smoke Detectors</b>	Is there a working smoke detector on each level? Do the smoke detectors meet the requirements of NFPA 74? In units occupied by the hearing impaired, is there an alarm system connected to the smoke detector?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

**Additional Comments:** (Give Item Number)(Use an additional page if necessary)

**4. Supplemental for Other Rooms Used for Living and Halls** For each numbered item, check one box only.

**4.1 Room Location**

\_\_\_\_\_ right/left/center: the room is situated to the right, left, or center of the unit.  
 \_\_\_\_\_ front/rear/center: the room is situated to the back, front or center of the unit.  
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**Room Code**

- 1 = Bedroom or Any Other Room Used for Sleeping (regardless of type of room)
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- 6 = Other:

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date of final approval
		Yes, Pass	No, Fail	Inconclusive		
<b>4.2</b>	<b>Electricity/Illumination</b> If Room Code is a 1, are there at least two working outlets or one working outlet and one working, permanently installed light fixture? If Room Code is not a 1, is there a means of illumination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>4.3</b>	<b>Electrical Hazards</b> Is the room free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>4.4</b>	<b>Security</b> Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.5</b>	<b>Window Condition</b> If Room Code is a 1, is there at least one window? And, regardless of Room Code, are all windows free of signs of severe deterioration or missing or broken-out panes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>4.6</b>	<b>Ceiling Condition</b> Is the ceiling sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.7</b>	<b>Wall Condition</b> Are the walls sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.8</b>	<b>Floor Condition</b> Is the floor sound and free from hazardous defects?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>4.9</b>	<b>Lead Paint</b> Are all painted surfaces exceeding the surface area thresholds free of defective paint or adequately treated? If there is a child under 6 with an elevated blood lead level, have the intact and nonintact paint on protruding chewable surfaces which are up to 5 feet from the ground and readily accessible to children under 6 been tested and found to be lead-free or adequately treated? Or, instead of testing intact and nonintact painted chewable surfaces, has the HA authorized the owner to treat chewable surfaces and have these surfaces been adequately treated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Not Applicable	
<b>4.10</b>	<b>Smoke Detectors</b> Is there a working smoke detector on each level? Do the smoke detectors meet the requirements of NFPA 74? In units occupied by the hearing impaired, is there an alarm system connected to the smoke detector?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

**Additional Comments:** (Give Item Number)(Use an additional page if necessary)

## 5. All Secondary Rooms (Rooms not used for living)

### 5. Secondary Rooms (Rooms not used for living)

If any room in the unit did not meet the requirements for "other room used for living" in Part 4, it is to be considered a "secondary room (not used for living)." Rate all of these rooms together (i.e., a single Part 5 checklist for all secondary rooms in the unit).

Inspection is required of the following two items since hazardous defects under these items could jeopardize the rest of the unit, even if present in rooms not used for living: 5.2 Security, 5.3 Electrical Hazards. Also, be observant of any other potentially hazardous features in these rooms and record under 5.4

#### 5.1 None

If there are no "Secondary Rooms (rooms not used for living)," check "None" and go on to Part 6.

#### 5.2 - 5.4 Explanations of these items is the same as those provided for "Living Room"

#### Additional Note

In recording "other potentially hazardous features," note (in the space provided) the means of access to the room with the hazard and check the box under "Inconclusive." Discuss the hazard with the HA inspection supervisor to determine "Pass" or "Fail." Include defects like: large holes in floor, walls or ceilings; evidence of structural collapse; windows in condition of severe deterioration.

## 6. Building Exterior

### 6.1 Condition of Foundation

"Unsound or hazardous" means foundations with severe structural defects indicating the potential for structural collapse; or foundations that allow significant entry of ground water (for example, evidenced by flooding of basement).

### 6.2 Condition of Stairs, Rails, and Porches

"Unsound or hazardous" means: stairs, porches, balconies, or decks with severe structural defects; broken, rotting, or missing steps; absence of a handrail when there are extended lengths of steps (generally four or more consecutive steps); absence of or insecure railings around a porch or balcony which is approximately 30 inches or more above the ground.

### 6.3 Condition of Roof and Gutters

"Unsound and hazardous" means: The roof has serious defects such as serious buckling or sagging, indicating the potential of structural collapse; large holes or other defects that would result in significant air or water infiltration (in most cases severe exterior defects will be reflected in equally serious surface defects within the unit, e.g., buckling, water damage). The gutters, downspouts and soffits (area under the eaves) show serious decay and have allowed the entry of significant air or water into the interior of the structure. Gutters and downspouts are, however, not required to pass. If the roof is not observable and there is no sign of interior water damage, check "Pass."

### 6.4 Condition of Exterior Surfaces

See definition above for roof, item 6.3.

### 6.5 Condition of Chimney

The chimney should not be seriously leaning or showing evidence of significant disintegration (i.e., many missing bricks).

### 6.6 Lead Paint: Exterior Surfaces

If the unit was built in 1978 or after, has no child under 6, is a 0-BR or elderly unit, or has lead free certification by a qualified inspector, check "NA" and do not inspect painted surfaces.

This requirement does not apply to fences or outbuildings such as garages and sheds. This requirement applies to an exterior wall with more than 10 square feet of defective (cracking, scaling, chipping, peeling, or loose) paint up to 5 feet from the ground or floor and readily accessible to children. This requirement applies to other **large** exterior surfaces such as doors, porch floors, porch ceilings, stairs, and decks with more than 2 square feet of defective paint up to 5 feet from the ground or floor and readily accessible to children. This requirement also applies to defective paint on more than 10% of the total surface area of **small** exterior surfaces such as window sills, stairs and railings that are up to 5 feet from the ground or floor and readily accessible to children. In order to fail, the paint must be noticeably loose and separating from the surface material and the area of defective paint must exceed the above stated surface area thresholds.

If there is a child under 6 with an elevated blood lead level, there is an additional requirement: both **intact** and defective paint on protruding, chewable exterior surfaces such as walls, stairs, decks, porches, railings, windows and doors (but not outbuildings such as garages and sheds) up to 5 feet from the ground or floor that are readily accessible to children under 6 must be tested for lead using an XRF or lab analysis of paint samples. If lead is found, the surfaces must be treated in accordance with the instructions in the Inspection Manual. Instead of testing intact or nonintact paint, the HA may opt to let the owner treat all defective paint on these chewable surfaces.

### 6.7 Manufactured Homes: Tie Downs

Manufactured homes must be placed on a site in a stable manner and be free from hazards such as sliding and wind damage. Manufactured homes must be securely anchored by a tiedown device which distributes and transfers the loads imposed by the unit to appropriate ground anchors so as to resist wind overturning and sliding, unless a variation has been approved by the HUD Field Office.

**5. All Secondary Rooms (Rooms not used for living)** For each numbered item, check one box only.

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date of final approval
		Yes, Pass	No, Fail	Inconclusive		
5.1	None <input type="checkbox"/> Go to Part 6					
5.2	<b>Security</b> Are all windows and doors that are accessible from the outside lockable?	<input type="checkbox"/>	<input type="checkbox"/>			
5.3	<b>Electrical Hazards</b> Are all these rooms free from electrical hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
5.4	<b>Other Potentially Hazardous Features</b> Are all of these rooms free of any other potentially hazardous features? For each room with an "other potentially hazardous feature," explain the hazard and the means of control of interior access to the room.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>6.0 Building Exterior</b>						
6.1	<b>Condition of Foundation</b> Is the foundation sound and free from hazards?	<input type="checkbox"/>	<input type="checkbox"/>			
6.2	<b>Condition of Stairs, Rails, and Porches</b> Are all the exterior stairs, rails, and porches sound and free from hazards?	<input type="checkbox"/>	<input type="checkbox"/>			
6.3	<b>Condition of Roof and Gutters</b> Are the roof, gutters, and downspouts sound and free from hazards?	<input type="checkbox"/>	<input type="checkbox"/>			
6.4	<b>Condition of Exterior Surfaces</b> Are exterior surfaces sound and free from hazards?	<input type="checkbox"/>	<input type="checkbox"/>			
6.5	<b>Condition of Chimney</b> Is the chimney sound and free from hazards?	<input type="checkbox"/>	<input type="checkbox"/>			
6.6	<b>Lead Paint: Exterior Surfaces</b> Are all painted surfaces exceeding the surface area thresholds which are up to 5 feet from the ground or floor and readily accessible to children free of defective paint or adequately treated?  If there is a child under 6 with an elevated blood lead level, have the intact and nonintact paint on protruding chewable surfaces which are up to 5 feet from the ground or floor and readily accessible to children under 6 been tested and found to be lead-free or adequately treated? Or, instead of testing intact and nonintact painted surfaces, has the HA authorized the owner to treat chewable surfaces and have these surfaces been adequately treated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Not Applicable	
6.7	<b>Manufactured Homes: Tie Downs</b> If the unit is a manufactured home, is it properly placed and tied down? If not a manufactured home, check "Not Applicable."	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Not Applicable	
<b>Additional Comments:</b> (Give Item Number)(Use an additional page if necessary)						

## 7. Heating and Plumbing

### 7.1 Adequacy of Heating Equipment

"Adequate heat" means that the heating system is capable of delivering enough heat to assure a healthy environment in the unit (appropriate to the climate). The HA is responsible for defining what constitutes a healthy living environment in the area of the country in which it operates. Local codes (city or state codes) should be instructive in arriving at a reasonable local definition. For example, for heat adequacy, local codes often require that the unit's heating facility be capable of maintaining a given temperature level during a designated time period. Portable electric room heaters or kitchen stoves or ranges with a built-in heat unit are not acceptable as a primary source of heat for units located in areas where climate conditions require regular heating.

"Directly or indirectly to all rooms used for living" means:

"directly" means that each room used for living has a heat source (e.g., working radiator; working hot air register; baseboard heat)

"indirectly" means that, if there is no heat source present in the room, heat can enter the room easily from a heated adjacent room (e.g. a dining room may not have a radiator, but would receive heat from the heated living room through a large open archway).

If the heating system in the unit works, but there is some question whether a room without a heat source would receive adequate indirect heat, check "Inconclusive" and verify adequacy from tenant or owner (e.g., unheated bedroom at the end of a long hallway).

How to determine the capability of the heating system: If the unit is occupied, usually the quickest way to determine the capability of the heating system over time is to question the tenant. If the unit is not occupied, or the tenant has not lived in the unit during the months when heat would be needed, check "Inclusive." It will be necessary to question the owner on this point after the inspection has been completed and, if possible, to question other tenants (if it is a multi-unit structure) about the adequacy of heat provided. Under some circumstances, the adequacy of heat can be determined by a simple comparison of the size of the heating system to the area to be heated. For example, a small permanently installed space heater in a living room is probably inadequate for heating anything larger than a relatively small apartment.

### 7.2 Safety of Heating Equipment

Examples of "unvented fuel burning space heaters" are: portable kerosene units; unvented open flame portable units.

"Other unsafe conditions" include: breakage or damage to heating system such that there is a potential for fire or other threats to safety; improper connection of flues allowing exhaust gases to enter the living area; improper installation of equipment (e.g., proximity of fuel tank to heat source, absence of safety devices); indications of improper use of equipment (e.g., evidence of heavy build-up of soot, creosote, or other substance in the chimney); disintegrating equipment; combustible materials near heat source or flue. See Inspection Manual for a more detailed discussion of the inspection of safety aspects of the heating systems.

If you are unable to gain access to the primary heating system in the unit check "Inconclusive." Contact the owner or manager for verification of safety of the system. If the system has passed a recent local inspection, check "Pass." This applies especially to units in which heat is provided by a large scale, complex central heating system that serves multiple units (e.g., a boiler in the basement of a large apartment building). In most cases, a large scale heating system for a multi-unit building will be subject to periodic safety inspections by a local public agency. Check with the owner or manager to determine the date and outcome of the last such inspection, or look for an inspection certificate posted on the heating system.

### 7.3 Ventilation and Adequacy of Cooling

If the tenant is present and has occupied the unit during the summer months, inquire about the adequacy of air flow. If the tenant is not present or has not occupied the unit during the summer months, test a sample of windows to see that they open (see Inspection Manual for instruction).

"Working cooling equipment" includes: central (fan) ventilation system; evaporative cooling system; room or central air conditioning.

Check "Inconclusive" if there are no openable windows and it is impossible, or inappropriate, to test whether a cooling system works. Check with other tenants in the building (in a multi-unit structure) and with the owner or manager for verification of the adequacy of ventilation and cooling.

### 7.4 Hot Water Heater

"Location presents hazard" means that the gas or oil water heater is located in living areas or closets where safety hazards may exist (e.g., water heater located in very cluttered closet with cloth and paper items stacked against it). Gas hot water heaters in bedrooms or other living areas must have safety dividers or shields.

Water heaters must have a temperature-pressure relief valve and discharge line (directed toward the floor or outside of the living area) as a safeguard against build up of steam if the heater malfunctions. If not, they are not properly equipped and shall fail.

To pass, gas or oil fired hot water heaters must be vented into a properly installed chimney or flue leading outside. Electric hot water heaters do not require venting.

If it is impossible to view the hot water heater, check "Inconclusive." Obtain verification of safety of system from owner or manager.

Check "Pass" if the heater has passed a local inspection. This applies primarily to hot water that is supplied by a large scale complex water heating system that serves multiple units (e.g., hot water heating system in large apartment building). Check in the same manner described for heating system safety, item 7.2, above.

### 7.5 Water Supply

If the structure is connected to a city or town water system, check "Pass." If the structure has a private water supply (usually in rural areas) inquire into the nature of the supply (probably from the owner) and whether it is approvable by an appropriate public agency.

**General note:** If items 7.5, 7.6, or 7.7 are checked "Inconclusive," check with owner or manager for verification of adequacy.

### 7.6 Plumbing

"Major leaks" means that main water drain and feed pipes (often located in the basement) are seriously leaking. (Leaks present at specific facilities have already been evaluated under the checklist items for "Bathroom" and "Kitchen.")

"Corrosion" (causing serious and persistent levels of rust or contamination in the drinking water) can be determined by observing the color of the drinking water at several taps. Badly corroded pipes will produce noticeably brownish water. If the tenant is currently occupying the unit, he or she should be able to provide information about the persistence of this condition. (Make sure that the "rusty water" is not a temporary condition caused by city or town maintenance of main water lines.) See general note under 7.5.

### 7.7 Sewer Connection

If the structure is connected to the city or town sewer system, check "Pass." If the structure has its own private disposal system (e.g., septic field), inquire into the nature of the system and determine whether this type of system can meet appropriate health and safety regulations.

The following conditions constitute "evidence of sewer back up": strong sewer gas smell in the basement or outside of unit; numerous clogged or very slow drains; marshy areas outside of unit above septic field. See general note under 7.5.

## 7. Heating and Plumbing

For each numbered item, check one box only.

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date of final approval
		Yes, Pass	No, Fail	Inconclusive		
<b>7.1 Adequacy of Heating Equipment</b>	Is the heating equipment capable of providing adequate heat (either directly or indirectly) to all rooms used for living?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>7.2 Safety of Heating Equipment</b>	Is the unit free from unvented fuel burning space heaters or any other types of unsafe heating conditions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>7.3 Ventilation and Adequacy of Cooling</b>	Does the unit have adequate ventilation and cooling by means of openable windows or a working cooling system?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>7.4 Hot Water Heater</b>	Is the hot water heater located, equipped, and installed in a safe manner?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>7.5 Water Supply</b>	Is the unit served by an approvable public or private sanitary water supply?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>7.6 Plumbing</b>	Is plumbing free from major leaks or corrosion that causes serious and persistent levels of rust or contamination of the drinking water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>7.7 Sewer Connection</b>	Is plumbing connected to an approvable public or private disposal system, and is it free from sewer back-up?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

**Additional Comments:** (Give Item Number)

## 8. General Health and Safety

### 8.1 Access to Unit

"Through another unit" means that access to the unit is only possible by means of passage through another dwelling unit.

### 8.2 Exits

"Acceptable fire exit" means that the building must have an alternative means of exit that meets local or State regulations in case of fire; this could include:

An openable window if the unit is on the first floor or second floor or easily accessible to the ground.

A back door opening on to a porch with a stairway leading to the ground.

Fire escape, fire ladder, or fire stairs.

"Blocked" means that the exit is not useable due to conditions such as debris, storage, door or window nailed shut, broken lock.

Important note: The HA has the final responsibility for deciding whether the type of emergency exit is acceptable, although the tenant should assist in making the decision.

### 8.3 Evidence of Infestation

"Presence of rats, or severe infestation by mice or vermin" (such as roaches) is evidenced by: rat holes; droppings; rat runs; numerous settings of rat poison. If the unit is occupied, ask the tenant,

### 8.4 Garbage and Debris

"Heavy accumulation" means large piles of trash and garbage, discarded furniture, and other debris (not temporarily stored awaiting removal) that might harbor rodents. This may occur inside the unit, in common areas, or outside. It usually means a level of accumulation beyond the capacity of an individual to pick up within an hour or two.

### 8.5 Refuse Disposal

"Adequate covered facilities" includes: trash cans with covers, garbage chutes, "dumpsters" (i.e., large scale refuse boxes with lids); trash bags (if approvable by local public agency). "Approvable by local public agency" means that the local Health and Sanitation Department (city, town or county) approves the type of facility in use. Note: During the period when the HA is setting up its inspection program, it will check with the local health and sanitation department to determine which types of facilities are acceptable and include this in the inspection requirements.

If the unit is vacant and there are no adequate covered facilities present, check "Inconclusive." Contact the owner or manager for verification of facilities provided when the unit is occupied.

### 8.6 Interior Stairs and Common Halls

"Loose, broken, or missing steps" should fail if they present a serious risk of tripping or falling.

A handrail is required on extended sections of stairs (generally four or more consecutive steps). A railing is required on unprotected heights such as around stairwells.

"Other hazards" would be conditions such as bare electrical wires and tripping hazards.

The lead paint requirements apply to painted surfaces on the entrance and within the hallway providing access to a unit in a multi-unit building. See discussion of Lead Paint for Living Room (item 1.9).

### 8.7 Other Interior Hazards

Examples of other hazards might be: a broken bathroom fixture with a sharp edge in a location where it represents a hazard; a protruding nail in a doorway.

### 8.8 Elevators

Note: At the time the HA is setting up its inspection program, it will determine local licensing practices for elevators. Inspectors should then be aware of these practices in evaluating this item (e.g., check inspection date). If no elevator check "Not Applicable."

### 8.9 Interior Air Quality

If the inspector has any questions about whether an existing poor air quality condition should be considered dangerous, he or she should check with the local Health and Safety Department (city, town or county).

### 8.10 Site and Neighborhood Conditions

Examples of conditions that would "seriously and continuously endanger the health or safety of the residents" are:

other buildings on, or near the property, that pose serious hazards (e.g., dilapidated shed or garage with potential for structural collapse),

evidence of flooding or major drainage problems,

evidence of mud slides or large land settlement or collapse,

proximity to open sewage,

unprotected heights (cliffs, quarries, mines, sandpits),

fire hazards,

abnormal air pollution or smoke which continues throughout the year and is determined to seriously endanger health, and

continuous or excessive vibration of vehicular traffic (if the unit is occupied, ask the tenant).

### 8.11 Lead Paint: Owner Certification

If the owner is required to treat any interior or exterior surfaces, the HA must obtain certification that the work has been done in accordance with such requirements prior to the execution or renewal of any HAP contract. No reinspection is necessary if certificate is obtained.

Suggested wording of this certificate is as follows:

The undersigned hereby certifies that the property located at

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

has had applicable surfaces treated as required.

(Owner's Signature) \_\_\_\_\_

(Type or Print Name) \_\_\_\_\_

(Date) \_\_\_\_\_



## 8. General Health and Safety

For each numbered item, check one box only.

Item No.	Description	Decision			If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date of final approval
		Yes, Pass	No, Fail	Inconclusive		
<b>8.1 Access to Unit</b>	Can the unit be entered without having to go through another unit?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>8.2 Exits</b>	Is there an acceptable fire exit from this building that is not blocked?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>8.3 Evidence of Infestation</b>	Is the unit free from rats or severe infestation by mice or vermin?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>8.4 Garbage and Debris</b>	Is the unit free from heavy accumulation of garbage or debris inside and outside?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>8.5 Refuse Disposal</b>	Are there adequate covered facilities for temporary storage and disposal of food wastes, and are they approvable by a local agency?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>8.6 Interior Stairs and Common Halls</b>	Are interior stairs and common halls free from hazards to the occupant because of loose, broken, or missing steps on stairways; absent or insecure railings; inadequate lighting; or other hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>8.7 Other Interior Hazards</b>	Is the interior of the unit free from any other hazard not specifically identified previously?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>8.8 Elevators</b>	Where local practice requires, do all elevators have a current inspection certificate? If local practice does not require this, are they working and safe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Not Applicable	
<b>8.9 Interior Air Quality</b>	Is the unit free from abnormally high levels of air pollution from vehicular exhaust, sewer gas, fuel gas, dust, or other pollutants?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>8.10 Site and Neighborhood Conditions</b>	Are the site and immediate neighborhood free from conditions which would seriously and continuously endanger the health or safety of the residents?	<input type="checkbox"/>	<input type="checkbox"/>			
<b>8.11 Lead Paint: Owner Certification</b>	If the owner of the unit is required to treat any interior or exterior surfaces, has the certification of compliance been obtained? If the owner was not required to treat surfaces, check "Not Applicable."	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Not Applicable	

**Additional Comments:** (Give Item Number)

**Special Amenities (Optional)**

This Section is for optional use of the HA. It is designed to collect additional information about other positive features of the unit that may be present. Although the features listed below are not included in the Housing Quality Standards, the tenant and HA may wish to take them into consideration in decisions about renting the unit and the reasonableness of the rent. Check/list any positive features found in relation to the unit.

**1. Living Room**

- High quality floors or wall coverings
- Working fireplace or stove
- Balcony, patio, deck, porch
- Special windows or doors
- Exceptional size relative to needs of family
- Other: (Specify)

**2. Kitchen**

- Dishwasher
- Separate freezer
- Garbage disposal
- Eating counter/breakfast nook
- Pantry or abundant shelving or cabinets
- Double oven/self cleaning oven, microwave
- Double sink
- High quality cabinets
- Abundant counter-top space
- Modern appliance(s)
- Exceptional size relative to needs of family
- Other: (Specify)

**3. Other Rooms Used for Living**

- High quality floors or wall coverings
- Working fireplace or stove
- Balcony, patio, deck, porch
- Special windows or doors
- Exceptional size relative to needs of family
- Other: (Specify)

**4. Bath**

- Special feature shower head
- Built-in heat lamp
- Large mirrors
- Glass door on shower/tub
- Separate dressing room
- Double sink or special lavatory
- Exceptional size relative to needs of family
- Other: (Specify)

**5. Overall Characteristics**

- Storm windows and doors
- Other forms of weatherization (e.g., insulation, weather stripping)
- Screen doors or windows
- Good upkeep of grounds (i.e., site cleanliness, landscaping, condition of lawn)
- Garage or parking facilities
- Driveway
- Large yard
- Good maintenance of building exterior
- Other: (Specify)

**6. Disabled Accessibility**

Unit is accessible to a particular disability.  Yes  No  
Disability \_\_\_\_\_

**D. Questions to ask the Tenant (Optional)**

1. Does the owner make repairs when asked?  Yes  No
2. How many people live there? \_\_\_\_\_
3. How much money do you pay to the owner/agent for rent? \$ \_\_\_\_\_
4. Do you pay for anything else? (specify) \_\_\_\_\_
5. Who owns the range and refrigerator?(insert O = Owner or T = Tenant) Range \_\_\_\_\_ Refrigerator \_\_\_\_\_ Microwave \_\_\_\_\_
6. Is there anything else you want to tell us? (specify) \_\_\_\_\_

**Inspection Summary** (Optional)

Provide a summary description of each item which resulted in a rating of **Fail** or **Pass with Comments**.

Tenant ID No.	Inspector	Date of Inspection	Address of Inspected Unit
Type of Inspection	<input type="checkbox"/> Initial	<input type="checkbox"/> Special	<input type="checkbox"/> Reinspection

Item Number

Reason for "Fail" or "Pass with Comments" Rating

# ***THE NAHASDA DEVELOPMENT MODEL SERIES***

## ***Owner Occupied Rehabilitation***



### **SPONSORED BY:**

U.S. Department of Housing and Urban Development  
Office of Native American Programs

### **UNDER CONTRACT WITH:**

ICF Consulting

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July 26, 1999



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# Chapter One

## DEVELOPMENT OPTIONS

### INTRODUCTION

NAHASDA offers significant flexibility in designing rehabilitation programs that meet the needs of the tribe and its existing homeowners. Thus, the tribe must decide the type of rehabilitation projects it wants to conduct. An owner occupied rehabilitation program can be created to assist existing homeowners with the repair and rehabilitation of owner occupied units. Upon completion of the renovation, the unit can be brought up to the tribe/TDHE written rehabilitation standards. The tribe/TDHE might design the program themselves, or they may seek assistance from an area nonprofit, or a contractor. This chapter discusses some key considerations in housing rehabilitation program design.

#### *Program Options*

The tribe or TDHE will have to decide on the types of options it will offer homeowners under this program. To establish a program that will meet the needs of the community, program staff may want to conduct a needs assessment. The assessment will provide data that will allow the tribe to target areas that need rehabilitation. There are generally nine key areas of rehabilitation work:

- Foundation/structural integrity
- Outside walls and windows
- Roofs
- Porches and steps
- Electric wiring
- Plumbing systems
- Heating facilities
- Kitchen facilities
- Inside floors, walls, and ceilings

Once the tribe has collected the data it should weigh this data against the amount of funds allocated to the program, along with the housing standards to determine the type of activities it will undertake. The following is a description of typical types of rehabilitation programs.

- Emergency repair* includes those items that jeopardize the family's safety and the integrity of the home (i.e. a leaky roof, broken furnace). Emergency repair programs are often available on a first come, first served basis as families experience problems with their home. Typically, under this type of program, the tribe would set aside a portion of its Indian Housing Block Grant (IHBG) funds and then make these funds available as eligible homeowners apply for assistance. If a tribe wishes to enact an emergency repair program, it should adopt a clear definition of what types of items are considered emergency repairs. It should then screen according to these definitions when applications for assistance are received.
- Conservation* includes items that would make the home more energy efficient (i.e. insulation of pipes and hot water heater). As under the emergency repair program, tribes set aside a portion of their funds and then accept applications pertaining to this specific type of assistance. Many states offer energy conservation programs. Tribes may wish to contact their state for ideas about program design and about effective energy conservation activities for their climate.
- Whole house* would involve the improvement of most major systems and the interior structures of the house (i.e. the upgrade of all floors, interior walls, appliances, windows, etc.). Whole house rehabilitation can be very expensive due to the extensive scope of work. If a tribe wishes to offer such substantial rehabilitation programs, it would be wise to estimate the costs of demolition and



## Owner Occupied Rehabilitation

new construction for the unit. It is sometimes less expensive to build new than to conduct very substantive levels of rehabilitation. Substantive rehabilitation is frequently used for units where an interior fire has occurred or where its major systems are out of date and likely to fail.

- Selected* allows the tribe to target a few features of each home (i.e. exterior doors, hot water heaters, etc.). Under this type of rehabilitation program—sometimes known as a moderate rehabilitation program—the tribe works with the homeowner to target those specific areas of the home needing repair. Those types of rehabilitation activities may formerly have been completed under the Comprehensive Grant Program or Comprehensive Improvement Assistance Program (CIAP). It is important that tribes determine which types of rehabilitation will be eligible under their program. How about adding on a room? Kitchen and bath upgrades? Major systems only? Landscaping or exterior upgrades?

### Methods of Doing Rehab

NAHASDA offers significant flexibility in designing rehabilitation programs that meet the needs of the tribe and its existing homeowners.

### Construction Management Methods

There are three types of construction management methods that tribes may implement to aid in the effectiveness and efficiency of rehabilitation programs. These are:

#### ***Force Account (tribe/TDHE contracted)***

The term force account means that a tribe/THDE functions as its own contractor. In order to undertake this function, the tribe/TDHE must have the construction management skills to undertake and oversee a project. Tribes should either have successful previous experience or demonstrate they can hire expert supervision and have all necessary planning and management systems in place. Managing a Force Account construction/modernization project is just like running a construction company.

The following are the major specific actions required for successful Force Account construction/modernization:

- Hire the best construction supervisor available.
- Prepare a detailed construction/modernization budget and construction schedule.
- Assign administrative management responsibilities.
- Establish a system to control materials and equipment inventory.
- Review project insurance requirements and coverage.
- Establish and adopt construction policies.
- Require regular on-site construction meetings and written progress reports.

Use of the force account construction method has its advantages and disadvantages. The advantages include but are not limited to:

- No profit in costs,
- No bonding cost,
- More flexibility,
- More control by grantee,
- Local financial benefits, and
- Development of local labor force.

Disadvantages to Force Account include:

- Grantee responsibility and liability for entire project,
- Additional administrative burden on grantee,
- Potential conflict of interest,
- No bonding,
- Limited resources,
- Operation within government regulations, and
- Procurement and audit requirements.





## **Owner Occupied Rehabilitation**

Successful Force Account construction project teams include but are not limited to:

- A qualified construction manager who has the power to hire and fire staff and make decisions relating to the project without delay. This construction manager must have the skills needed to plan and manage both the work and the workers.
- A procurement officer and contracting officer who prepares the scope of work of each contract, prepares RFP's and IFB's awards each contract approves contractor payments.
- Individual will be needed to keep track of work and quality controls including construction progress reports, scheduling of the sequence of activities and estimated budget and financial controls broken out by labor and materials, security for materials and tools.

The Force Account method of construction requires the implementation of many construction and financial management systems that must be maintained on a daily and weekly basis. In fact, it is often the case that the Force Account method of construction places a greater administrative burden on the tribe/TDHE than contracting. For example, accounting functions will be greatly increased with the additional needs for accounts payable and materials.

For more information on Force Account construction, refer to the Construction Issues model in the NAHASDA model series.

### **Owner Selected Contractor**

The tribe may decide to give the homeowner the responsibility of selecting a contractor. The level of guidance the tribe provides to the homeowner will depend on the owner's level of experience and staff resources. Allowing the homeowner to select the contractor has several advantages:

- It requires less staff time and lower expenditures of program funds, including costly advertisements inviting contractor bids.
- It usually expands the number and range of contractors participating in local programs since the selection and review process is very similar to purely private transactions.
- Most importantly, it encourages the owner to get involved in the process and take responsibility for the choice of the contractor. Homeowners who participate in the selection process tend to support the process they are a part of and gain ability to "fend for themselves" during the rehabilitation process. This is further explained in the Construction Issues model.

### **Sweat Equity**

In a sweat equity program, the homebuyers do construction work themselves. Few programs will rely on sweat equity alone – this would only be feasible if houses require only a minimal amount of rehabilitation work or the homeowners are sufficiently skilled to perform the work necessary. Sweat equity has the following advantages:

- Sweat equity reduces costs, because the family provides its labor in exchange for the home improvements rather than for wages.
- Homeowners gain a sense of personal pride in their work and their homes.
- Homeowners gain valuable work experience and job skills.

Nonetheless, if sweat equity is not managed carefully, it can result in poor quality work, delays in completion, and inappropriate work methods. Sweat equity requires adequate supervision and technical assistance; these costs must be balanced against the potential benefits.



## Chapter Two

# REGULATORY AND ADMINISTRATIVE ISSUES

### INTRODUCTION

The flexibility of the NAHASDA program can be deemed the best feature of the new regulations. However, without proper planning, it could also be viewed as the most confusing feature. Tribes must determine the policies and procedures for each of the tribe's housing programs based on NAHASDA requirements. Tribes must decide on:

- Housing quality standards;
- Homeowner income guidelines as defined by HUD grantees may establish other income limits but they may not exceed those in the regulations at 1000.110; and
- Eligible renovation costs within the guidelines of NAHASDA and OMB Circular A-87.

This chapter will provide some of the benefits and guidelines for implementing program regulations.

### Housing Quality Standards

The tribe/TDHE may elect to use HUD's Housing Quality Standards (HQS) as the standard for decent, safe, and sanitary conditions for its rehab program. The tribe can also choose to write its own rehabilitation standards. These standards should be used if they are more stringent than HQS. For example, rehabilitation standards can be established to: (1) require all non conforming items to be corrected on each property to be rehabilitated; (2) create a priority repair system under which the most serious problems must be corrected before less severe conditions are repaired; or (3) modify and strengthen existing local codes.

Many available resources can provide technical assistance in preparing rehabilitation standards. One is a series of booklets published by HUD entitled "Rehabilitation Guidelines." These booklets can be ordered by calling (800) 245-2691 or by writing to:

HUD User  
P.O. Box 6091  
Rockville, MD 20849

Other valuable resources may be available at your local HUD field office, other tribes or nearby local governments that have established local rehabilitation standards.

Rehabilitation standards will influence the level of IHBG assistance. In general, the higher the standard, the more funds will be needed to rehabilitate the property to meet the standards. For example, a rehabilitation standard that requires all existing windows to be replaced with more energy efficient windows will require significantly greater expenditures than a standard that requires all windows to be free of cracks, properly glazed, and operational. It is important to compare the condition of the housing stock with the standard that is adopted to estimate the average rehabilitation cost in relationship to the amount allocated to the program and the owner's ability to pay.

### Unit Inspections

Preconstruction unit inspections are not a requirement of NAHASDA, but are probably the best way to assess the housing needs of the homeowner. In the inspection, the rehabilitation specialist visits the property and identifies deficiencies to be corrected to bring the property into compliance with the tribe's housing standards. The rehabilitation specialist should review the inspection findings with the homeowner and estimate whether the deficiencies and any general property improvements requested by the homeowner can be corrected within the budget limits established in the program design.

### Homeowner Income Guidelines

Native American homeowners requesting assistance from the tribe/TDHE must meet the requirements of §1000.104 of NAHASDA. For example, one of the



## Owner Occupied Rehabilitation

requirements of NAHASDA is that the applicant should be considered low income at the time the request for assistance is submitted.

The program administrator should verify that the prospective homeowner family's income falls within the given thresholds. The three most common methods for doing so are:

- Third party verification – the program administrator contacts the homeowner's employer and other source(s) of income (such as a Social Security office) directly to verify income. It also contacts financial institutions to verify assets, and other offices as necessary to verify each component of the homeowner's income.
- Review of documents – the program administrator requires the homeowner to submit bank statements, pay stubs, receipts, and other necessary documents to verify income eligibility. The program administrator then reviews each document against the application.
- Homeowner certification – the homeowner certifies, under penalty of federal criminal action, that he or she is eligible for assistance.

Of these three, third party verification is the most effective. Homeowner certification is the least desirable of the three, because the program administrator must rely on the homeowner's ability to accurately tabulate the family's income.

To ensure that families are eligible at the time they receive assistance, the program administrator should perform the verification relatively close to the time that work would begin on the home. Verifications are generally good for six months from the date of the verification, so the tribe should provide assistance to the family within this time period. However, the family's income may rise or fall once the rehabilitation work has been performed. Based on NAHASDA requirements, a change in income after the family receives rehabilitation assistance does not require repayment of the assistance.

### Eligible Costs and Activities

Once a family is selected to receive assistance, the environmental review and flood insurance requirements at 1000.18 (when applicable) must be

met. In addition, as applicable the tribe must address:

- Relocation:* (1000.14) If a family must vacate due to the rehabilitation, the family must be reimbursed for expenses incurred in connection with the temporary relocation.
- Labor Standards:* (1000.16) Minimum wage rates must be paid to workman.
- Insurance:* (1000.136) Requires insurance on assisted units, including privately owned housing, to protect the recipient from loss or if the assistance exceed \$5,000.
- Useful Life:* (1000.142) Each assisted housing unit must remain affordable according the determination of useful life as described in the IHP and approved by the Secretary.

The tribe can use IHBG funds to pay for materials, labor costs, and other federal requirements to achieve the following improvements:

- Restore the unit to the tribe's housing standards including the removal of any lead based paint hazards;
- Increase energy efficiency;
- Replace heating/ventilation, septic or plumbing systems;
- Allow utility connections;
- Make the unit disability accessible;
- Make general property improvements;
- Relocation assistance to families temporarily displaced due to the renovation;
- Labor and wage standards;
- Property insurance;
- Useful life homeowner occupancy timeframes; or
- Maximum homebuyer payments.

In addition to property construction costs, the tribe may choose to use the funds for the payment of services provided by third parties, such as lenders, architects or engineers, that are involved in the



## ***Owner Occupied Rehabilitation***

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rehabilitation program. The fees for these services are often called "soft costs." Soft costs include fees for:

- Marketing;
- Architectural, engineering, inspection services or related professional services associated with preparing work specifications; and
- Processing and financing fees, such as costs for building permits, private credit reports and loan origination fees, and fees for attorneys, appraisers, etc.

Ineligible costs must be determined by each tribe and should be consistent with the housing standards and regulations established by the tribe.

Upon completion of the housing unit, it must remain affordable according to the determination of useful life as described in the IHP and approved by the Secretary.

Finally, the amount of construction funds that can be spent per unit is limited by HUD determined "Dwelling Construction and Equipment Costs" (DC&E). DC&E covers all construction costs of an individual dwelling within five feet of the foundation. This limit does not affect other associated costs with developing the unit, such as planning, site acquisition, water and sewer (or other utilities), demolition, and financing. The DC&E amounts are regularly published and updated by HUD.

### **Mutual Help Units**

The tribe/TDHE may elect to assist homeowners of mutual help units. These units were developed under the 1937 Act. Units that are still a part of the tribe's stock can receive assistance if the tribe wants to provide assistance to these homeowners.



# Chapter Three

## IMPLEMENTATION AND FEASIBILITY ISSUES

### INTRODUCTION

Once program designers have resolved the key issues of housing rehabilitation program design, they must create a process for implementing the steps to operate a program. These steps include but are not limited to:

- Establishing a written owner occupied rehabilitation program which describes who will be served, the assistance to be provided and the requirements to receive the assistance.
- Marketing the program and accepting applications.
- Processing applications and selecting participants.
- Performing environmental reviews.
- Establishing binding commitments to ensure assisted housing remain affordable according to the established useful life.
- Developing a scope of work.
- Obtaining wage rates.
- Establishing a project plan including detailed budgets, schedule and production method.
- Competitively procuring a contractor or, if using force account, competitively procuring materials, tools and equipment and hire workers.
- Obtaining necessary insurance.
- Implementing work in accordance with plans and specifications.
- Regularly inspecting work to ensure quality.

### Targeting and Selection Criteria

Targeting and selecting eligible participants for the homeowner rehabilitation program can be very

challenging. Tribes are often faced with a great demand for housing repair over a large geographic area. A tribe can avoid promising more than it can deliver by determining how many households it can serve in the most effective way. For some tribes, this may mean targeting assistance to one geographic area. For others, it may mean serving a percentage of the population with special needs. Each tribe should take stock of its own housing conditions, by surveying families and performing visual inspections of homes to assess the need for rehabilitation services.

When deciding who it can serve, tribes must adopt and utilize tenant selection policies and criteria set forth under NAHASDA. These policies should be consistent with the purpose of providing housing for low income families, relate to program eligibility, and, provide for the selection of tenants based on the policies and goals set forth in their IHP.

What is more important about the selection guidelines is *impartiality*. The success of the program depends on its insulation from tribal politics or personal gain. The program must remain open and accessible to all families equally. Examples of commonly used targeting and selection criteria are provided in the following chart.

Criteria	Sample Criteria
Family income	80% of median income
Special needs population	Elderly or disabled
Residency status	Owner occupied
Minimum rehabilitation cost	\$1,000 - \$5,000
Maximum rehabilitation cost	\$20,000 - \$25,000
Property condition	Existing noncompliance with Section 8 HQS
Priority system	"First come, first served"

### Assistance Limits

Additionally, tribes should consider establishing per unit assistance limits. Although NAHASDA does not require the tribes to set a maximum limit on



assistance, the tribe might wish to set a more stringent cap on the amount of assistance any one family can receive. (Remember that there is a cap on per unit construction costs—refer back to “DC&E”). The consequence of this assistance cap is that some families might not receive all the assistance they would like; however, the cap would ensure that more families could be helped. Ideally, the cap would have to be established so that a home can be brought up to HQS with the available funds. Tribes might also set a minimum cap, to target resources toward more needy families.

### Financial Assistance Methods

Each tribe/TDHE will have to weigh the needs of the program against the need for financial assistance on the part of the program. For example, if the program has a limited amount of IHBG funds available, how much assistance will be made available to each individual homeowner needing rehabilitation on their homes? Program administrators must determine the type of financial assistance it will provide based on the factors mentioned above. It will take some careful planning to combine the right mix of financial assistance for the tribe and the individual homeowner.

### Underwriting

While the rehabilitation specialist inspects the property and develops the work specifications, the program's loan processing staff should review the homeowner's application to determine how much financial assistance is appropriate.

To determine the appropriate form of financial assistance, the program staff must have underwriting criteria. Underwriting consists of an objective analysis of the risks associated with a loan. Good underwriting requires common sense, an inquisitive or questioning mind, knowledge of credit analysis, and attention to detail. There are three key variables to consider when underwriting a loan:

- Homeowner's ability to pay (i.e., affordability);
- Credit history and financial interest in the property; and
- Scope of the proposed rehabilitation work.

### Homeowner's Ability to Pay

Standard lending practices generally establish underwriting ratios (qualifying ratios) that are used to measure whether a homeowner can afford additional monthly debt. These ratios compare a homeowner's gross monthly income (family's wages and salaries, tribal land payment, welfare, unemployment/disability, dividends, and interest) with monthly housing expenses and/or total monthly debt. Historically, the private sector lending standard has been 28 percent of gross monthly income to housing expenses and 36 percent of gross monthly income to monthly long term debt, including housing expenses. These ratios may be too restrictive for low income homeowners and not necessarily a true measure of debt capacity. When examining income, program staff should ask:

- How much income does the family receive monthly?
- What is the source of income? Does the income arrive regularly?
- What are the family's reasonable expenses?
- How many people does the income support? and
- How much income is left to repay the loan?

### Applying the Ratios

If the program offers a direct loan to the family, the program staff will use the analysis of income to estimate the family's **housing payment ratio**, i.e. the ratio of monthly housing payments (principal, interest, and taxes and insurance if any) to the monthly income. As one underwriting standard, the program staff should ensure that loan payments are low enough so that the housing payment ratio does not exceed (for example) 30-33 percent; a higher ratio would suggest that the housing payments are too high a percentage of the family's income, and it might not be able to keep up with the payments. For families whose housing payment ratio is excessive, the program might offer them a combination of grants and loans to bring the ratio to a more manageable level.

The program staff also should look at the applicant's other debts to assess the applicant's ability to repay the loan. A family might have a monthly income of





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\$700. With monthly housing payments of \$200, their housing payment ratio would be 28 percent. However, if the family also has car payments costing \$150 per month, its **total installment debt ratio** – another potential underwriting standard – would be  $(\$200 + \$150) \div \$700$ , or 50 percent. The family might not be able to support the debt from a rehabilitation loan. Typical total installment debt ratios are close to 40 percent.

Finally, the program might accept the house itself as security on the loan. In this case, the program staff would look at the **loan to value** ratio (LTV), another underwriting standard. LTV measures the value of the loan against the value of the house, so that, if the borrower stops making payments on a direct loan, the lender can sell the home to get its loan back. Typically, private lenders will allow no more than a 90 percent LTV (e.g., if the house is worth \$50,000, the loan will be for no more than \$45,000). However, in government sponsored programs, the LTV may exceed 100 percent.

By using the house as collateral, the homeowner in effect allows the lender to take possession of the house, sell it, and retain an amount of up to the value of the loan if the borrower does not repay. Thus, if the homeowner in the above example defaults on the loan, the program administrator will sell the house for \$50,000.

### Credit History

A credit history is a record of the applicant's past debt and payment history. Credit bureaus and agencies nationwide have records on any person who has taken a bank loan, or has a credit card account or other revolving debt. These records show whether the borrower paid the loans back on time, whether payments were slow, and whether a loan was defaulted altogether. Because certain rules apply to obtaining and using the credit reports, the tribe should become familiar with the requirements of the Equal Credit Opportunity Act.

There are three key factors to consider in reviewing a credit history:

- ❑ Overall payment patterns, such as recurring slow payments, failure to pay debts incurred, or multiple debts submitted to collection agencies and courts;

- ❑ Delinquencies, bankruptcies, or defaults on the first mortgage or other loans; and
- ❑ The borrower's ability to manage financial affairs and budget for debt necessities.

The homeowner's demonstrated ability to reestablish a good credit standing (e.g., for at least 2 years), and to maintain a good repayment pattern on housing related debts are all factors to be considered. After program staff review these factors, it should compare the family's financial status with the cost estimate for the rehabilitation job and decide whether a grant or some kind of loan is most appropriate for the family. A grant or deferred payment loan will be appropriate when the family has no means to repay a loan, and a direct loan will be appropriate when the family does have sufficient extra income to make monthly or quarterly repayments and when the program staff has the ability to monitor those repayments.

### Leveraging Additional Funds

Tribes should consider ways in which they can leverage additional funds for their program. Leverage refers to non IHBG funds that the tribe can use to augment their NAHASDA activities. The advantage of leveraging, of course, is that the tribe has more funding to use in its program. For example, assume that a housing rehabilitation program has a budget of \$250,000 in IHBG funds. Also assume that each applicant's home needs \$25,000 for repairs. If the tribe does not leverage additional funds, it can assist only 10 homes with its allocation. However, if the tribe approaches (for example) a State or private charitable housing trust fund, and obtains an agreement that the fund will contribute one dollar for every dollar provided in IHBG funds – i.e., each IHBG dollar leverages an additional dollar in non IHBG funds – then the tribe can assist 20 homeowners for the same amount of its own money!

What are the sources for leveraged funds? As the above example suggests, some tribes may seek public or private grants to support their housing rehabilitation activities, or may approach private lending institutions (banks, credit unions, etc.). In fact, the Community Reinvestment Act of 1987 (CRA) requires all federally insured and most state insured lending institutions to assist their local communities, and some tribes have obtained housing program financing through bank participation in CRA activities.





## Owner Occupied Rehabilitation

In addition, tribes may contribute their own funds, or leverage IHBG dollars with other federal grants. For example, a project might be proposed that uses IHBG funds to rehabilitate a home, but uses Indian Health Service funds, instead of the IHBG monies, for the water and sewer work, thus leaving more IHBG funds to pay for other projects.

While the concept of leveraging is easy, in practice it is difficult to do. Leveraging requires a great deal of skill and imagination for success.

### Scope of the Proposed Work

Although not required, the tribe may wish to require that the proposed work should bring the property up to at least Section 8 Housing Quality Standards and/or that it be adequate to extend the useful life of the property for at least the term of the loan, preferably longer, to protect the security of the rehabilitation loan. The only types of programs that do not impose this type of requirement are energy conservation upgrades or emergency repairs. Poor workmanship, contractor problems, and an insufficient level of rehabilitation often lead to repayment problems, threatening the homeowner's willingness to repay the loan. The loan underwriter must determine that the proposed rehabilitation is sufficient, and that the proposed contractor is able to complete the job on a timely basis.

### Developing Work Write Ups and Estimating Construction Costs

The inspector develops the work write up based on information obtained during the property inspection and the type of repair program offered by the tribe. Write ups serve as instructions to potential contractors about work to be done and should be very specific, clear and complete. Vague or poorly written write ups can cause a great deal of confusion and misunderstandings between the homeowner and the contractor. In preparing the work write up, the inspector should compare the condition of the house to applicable local property standards and Section 8 HQS rehabilitation standards. A work write up should answer the following questions:

- What work will be done?

- How will it be constructed?
- Where will the work be installed?
- What materials will be installed?
- How much material will be installed?
- What standards of workmanship will be used?
- Who will do the work?

To make the write up as clear as possible and to provide good instructions to contractors, the tribe may wish to reference specific local performance standards that apply to items in the work. More information is provided in the Construction Issues model.

Once the scope of work is developed, costs can be estimated. In a rehabilitation program, costs and construction needs must be carefully estimated; the program must obtain accurate cost estimates before commencing work or contracting. These estimates will help both in planning construction needs and finalizing the size of each household's needs. A cost estimate is a summary of the expected cost of providing the materials, labor, and equipment to complete the project. A successful rehabilitation project depends on complete, accurate, and consistent cost estimates. The TDHE must have the following information to accurately estimate costs:

- Cost data base** — Over time costs and prices change. The rehabilitation specialist who prepares construction cost estimates must use an up to date cost database in preparing accurate and reliable cost estimates.
- Detail of the estimate** — Every estimate may not call for detailed line items, but every estimator must know how to prepare detailed estimates. A detailed estimate contains a list of every work item with prices for all labor, material and equipment necessary to complete the proposed work.
- Skills and knowledge of the estimator** — Construction cost estimators must have a good knowledge of construction systems in order to develop accurate reliable cost estimates.



## Selecting Contractors

A general contractor is a professional builder who contracts to do a particular project (or projects) for a set price. The general contractor in turn often hires subcontractors, such as plumbers and electricians, to do specialized work. If the program staff elect to use a general contractor, they must competitively bid the work and follow the Indian preference requirements outlined under NAHASDA.

The use of private contractors has many advantages, especially for tribes who lack experience in force account construction work. These advantages include:

- The responsibility for cost control, quality control, and meeting time schedules rests with the contractor; the tribe is protected from cost overruns by its contract.
- Tribes can select contractors with specific skills in response to particular needs.
- Contractors will provide records that help the tribe to monitor and allocate costs.
- The tribe does not have to purchase equipment or maintain a warehouse and materials inventory.

However, tribes must ensure that the contractors do not overcharge for their services or perform shoddy work. An experienced professional (**not** affiliated with the contractor) should conduct regular inspections before the tribe makes payment. The tribe's detailed work specifications ("work write ups") will be provided to the contractor and will guide all work to be performed, so that there is no question about the methods or materials to be used. The tribe should hold some percentage of the payments (called a **retainage** or **hold back**) until a specified time after the entire job is completed, to discourage contractors from abandoning jobs in progress or performing low quality work. The retainage usually equals 10 percent of the contract amount and usually is paid upon project completion, although in some cases the retainage is held for an additional 30 days to insure against defects that appear after completion.

Additionally, the tribe must ensure that all subcontractors and materials suppliers have been paid by the contractor prior to making final payment.

If this has not been done, these unpaid parties could have a lien placed on the property. Tribes should ask that lien waivers from the subs and materialmen be provided to them by the contractor prior to making final payment. If the contract is over \$100,000, the contractor must provide a 100 percent payment and performance bond. Even if the contract is for a lesser amount, the tribe could still require 100 percent bonding.

## Qualifications

NAHASDA imposes certain guidelines on construction contracts. First, tribes must give a preference to Indian contractors, subcontractors and workers per Section 7(b) of the Indian Self Determination and Education Assistance Act. They must give Indian owned firms the greatest opportunity to bid on projects, and must select those firms, whenever it is reasonable and cost effective to do so. (Note that the preference covers all Indians and may not be limited to or withheld from Indians of any one tribe.)

Beyond these Program requirements, general contractors should have experience in the type of housing development and rehabilitation that the program will sponsor. Particularly for larger jobs, they should be licensed by the state in which they operate, and they should carry sufficient amounts of comprehensive liability and worker's compensation insurance for all employees (the appropriate amount varies by state and by the size of the job.) The program staff should request references from the general contractor that show the contractor is competent and reliable. The tribe also should contact the state licensing office for guidelines on appropriate contractor qualifications and insurance levels.

The use of contractors probably makes the most sense when a tribe lacks experience in construction, when there are capable contractors available, and/or when the small size of the program does not indicate a need for the tribe to develop in house construction capacity. The tribe generally will contract with one or more general contractors to work on all the houses in the program, unless there are a sufficient number of interested contractors to be hired on a home by home basis, in which case the homeowners can select the contractors themselves (with or without the program staff's assistance).



## **Outreach**

Ultimately, the program's own reputation will be its most successful outreach tool; as results of the program become obvious in the community, news will spread by word of mouth and more households will express interest. Until then, the outreach plan can include:

- Making presentations at community gatherings, churches, and meetings of other neighborhood based organization;
- Placing advertisements in community newspapers; and
- Posting handbills and posters in targeted neighborhoods and in public buildings.

# ***THE NAHASDA DEVELOPMENT MODEL SERIES***

## ***Tenant Based Rental Assistance***



**SPONSORED BY:**

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## INTRODUCTION

Providing rental assistance through a tenant based rental assistance (TBRA) program is one option for tribes or tribally designated housing entities (TDHE) under the Native American Housing Assistance and Self Determination Act (NAHASDA). Can it address important housing needs for your community?

TBRA programs are cost effective and popular with low income households. The Section 8 rental assistance programs have demonstrated the value of this flexible form of assistance for more than 20 years. TBRA can enable tribes/TDHEs to expand the supply of affordable housing and, at the same time, provide considerable choice and mobility for tenants.

The program is not without challenges. TBRA works best where there is a sufficient supply of decent, safe and sanitary housing – where affordability, not availability, of housing is the problem. For many tribes/TDHEs, it may also represent a significant administrative challenge.

How does a TBRA program work? Does it make sense for you? This model helps answer these questions. If your answer is "YES" – it provides detailed guidance for getting a successful program underway.

Note: Currently, the Section 8 rental assistance program is undergoing revisions. Any changes made will be reflected in future documents.



# Chapter One

## ADMINISTRATIVE AND REGULATORY ISSUES

### WHAT IS TENANT BASED RENTAL ASSISTANCE?

A tenant based rental assistance (TBRA) program is a tool that can be used to assist low income renters. Unlike project based subsidy programs in which tenants receive assistance only if they live in certain developments, TBRA enables eligible tenants to receive assistance in rental units of their own choosing, provided the units meet basic program requirements. If TBRA was a component of a tribe's/TDHE's Indian Housing Plan (IHP), then eligible tribal members could receive assistance in rental units of their own choosing, even outside of the reservation or in housing owned and operated by the tribe.

Generally, in traditional TBRA programs, interested tenants apply to a tribe/TDHE for assistance. The application would enable the tribe/TDHE to determine first, whether the applicant is eligible to participate in the program, and then, how much assistance the household needs. When Indian Housing Block Grant (IHBG) funds were available, the tribe/TDHE would issue each eligible household a TBRA "certificate/voucher." The Section 8 rental certificates/vouchers are issued by the federal government to assist very low income families, elderly, and the disabled to rent decent, safe and sanitary housing in the private market. Since the rental assistance is provided on behalf of the family or individual, participants are able to find and lease privately owned housing, including single family homes. The participant is free to choose any housing that meets the requirements of the Section 8 program and is not limited to units located in subsidized housing projects.

With a IHBG funded certificate/voucher in hand, a family could begin looking for a new rental unit or

could request approval to receive assistance in its current unit, as long as it is not a unit which is already subsidized under NAHASDA or Section 8. When the household found a unit, the owner and the household would request that the tribe/TDHE inspect the unit and approve its rent. If the tribe/TDHE approved the unit, a "tenant share" and "tribal share" of the rent would be calculated. The tenant and the owner would sign a lease, and the tribe/TDHE would sign an agreement with either the owner or the tenant. Each month, the tribe/TDHE would use IHBG funds to pay its share of the rent to either the owner or the tenant, depending upon the tribe's program design.

NAHASDA rules permit the tribe/TDHE to make many key decisions about how the program is designed. If the tribe/TDHE decides to include a TBRA program in its IHP, the tribe/TDHE can decide *who* will receive the subsidy, *how much* subsidy a tenant can receive, *where* TBRA may be used, and *to whom* (the tenant or the owner) the payment will be made. How a tribe/TDHE should structure its program will vary, depending upon the goals the tribe/TDHE hopes to achieve and the administrative capacity. See Exhibit 1.1.

This model is designed to give tribes/TDHEs the information they need to:

- Decide if TBRA is a good use of IHBG funds in their communities;
- Design a TBRA program that meets community needs; and
- Successfully implement a TBRA program.

This chapter presents an overview of a traditional TBRA program. Subsequent chapters provide detailed guidance on the design and implementation of the program.





**Exhibit 1.1 TBRA Program Design Checklist**

A. Program Goals:

- Community wide TBRA
- Anti displacement only
- Special purpose (Specify)

B. Local Preferences: Specify any preferences and, if more than one is established, how the preferences will be ranked.

C. Forms of Assistance

- Rental Assistance
- Security Deposit Assistance:
- Utility Deposit Assistance:
- Paid to landlord
- All participants
- All participants
- Paid to tenant
- Need based
- Need based

D. Deposits will be refunded to:  Tenant  Tribe/TDHE

E. Length of Subsidy Contract: \_\_\_\_\_ (not to exceed 24 months)

F. Occupancy Standards: (List guidelines, such as a 2 person per bedroom standard).

G. Portability:

- Use only within tribal jurisdiction
- Limited portability. Describe eligible area: \_\_\_\_\_ (e.g., SMSA)
- Unlimited portability
- Other, specify: \_\_\_\_\_

H. Waiting List:  Section 8  Separate tribal/TDHE waiting list

If the Section 8 waiting list is used, describe how the receipt of NAHASDA TBRA will affect the applicant's eligibility for Section 8 assistance.



## TRIBAL/TDHE PROGRAM

To establish a TBRA program, a tribe/TDHE must include a description of the program in its IHP, and assure that market conditions in localities where tribal members live make TBRA a viable option. If the TBRA program is not presently an activity identified in the tribe's/TDHE's IHP, the IHP can be amended to include it at a later date. In order to determine if TBRA is appropriate, the tribe/TDHE should undertake an assessment of market factors. If there is a sufficient supply of housing, a TBRA program may be an effective way to expand affordable housing opportunities in these locations.

## ELIGIBLE PARTICIPANTS

A household qualifies as low income if its *annual gross income* does not exceed 80 percent of the area median income or national median income, whichever is greater. In most TBRA programs, incomes of participating tenants must be verified before assistance is provided and re examined annually thereafter. Income limits are established by household size and revised annually by HUD. Current income limits are available from any HUD office.

A family should not receive TBRA if they are receiving rental assistance under another federal program, or a state or local rental assistance program, if this subsidy would result in duplicative subsidies. However, some state and local government rental assistance programs do not provide assistance in amounts sufficient to lower a tenant's rental payment to 30 percent of income. In such cases, a tribe/TDHE could provide TBRA as supplemental assistance to further reduce the tenant's rent payment to 30 percent of income.

## INCOME TARGETING

Any program under NAHASDA must be targeted to low income Indian households. Households must be low income when they initially qualify for the program, although they are not required to remain at the income level in order to continue inhabiting their unit or receive assistance. However, tribes/TDHEs may want to consider using TBRA to serve families at or

below a smaller percentage of the area median income, such as 50 percent, so that the assistance is allocated to households with the greatest need.

## TENANT SELECTION

Tribes/TDHEs can use TBRA to support a variety of local goals and initiatives. A tribe/TDHE wide TBRA program can address the general need for affordable housing by giving low income households more "buying power." Through the use of local preferences, tribes/TDHEs can target funds to meet specific needs or serve specific purposes.

### Written Tenant Selection Policy

The tribe/TDHE should have a written tenant selection policy that clearly specifies how families to be assisted will be selected. Appendix 1 provides an outline of a sample tenant selection plan. Although the tenant selection plan need not be submitted to HUD for approval, it should be on file in the tribe's office and available to HUD and the public upon request.

### Anti Displacement and Relocation

TBRA can be an important tool to assist income eligible tenants who live in units that will be acquired, demolished, or rehabilitated with IHBG funds. Displaced families may be offered TBRA as an alternative to relocation assistance required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, and implementing regulations at 49 CFR Part 24. However, under these regulations, the tenant chooses whether to accept TBRA or the relocation payment. HUD Handbook 1378, *Tenant Assistance, Relocation and Real Property Acquisition* provides detailed guidance on relocation requirements.

### Self Sufficiency Programs

Tribes/TDHEs may require TBRA recipients to participate in self sufficiency programs as a condition of assistance. Self sufficiency programs are designed to help residents get jobs and become self sufficient as part of an overall strategy of empowering residents and increasing community development. For example, the HUD Family Self Sufficiency program



allows tenants to establish escrow accounts for savings from employment so they can build assets as they move toward economic independence. Other self sufficiency programs may include counseling, education or job training components.

### Homebuyer Programs

TBRA may be used to assist potential low income homebuyers who enter into lease purchase agreements. While the TBRA payment cannot be used to create equity, all or a portion of the homebuyer's monthly contribution toward housing expenses may be set aside for this purpose. If a tribe/TDHE determines that a tenant has met the lease purchase criteria and is ready to assume ownership, it may provide families with funds for down payment assistance.

### Local Preference for Persons with Disabilities

Tribes/TDHEs must use IHBG funds for low-income Indian families, according to 24 CFR 1000.10. In some cases, a non-Indian family may receive housing assistance if the non-Indian family's housing needs cannot be reasonably met without such assistance and it is determined that the presence of the family is essential to the well-being of Indian families in the area.

Within the required preference for low-income Indian families, tribes/TDHEs may establish a preference for individuals with disabilities or for a specific category of individuals with disabilities (e.g., persons with chronic mental illness or AIDS). Typically, a tribe/TDHE implementing this preference would do so in conjunction with other activities that provide appropriate non mandatory supportive services to persons with disabilities.

Generally, if such a preference is given, TBRA assistance and related services should be made available to all persons with disabilities that can benefit from such services.

A tribe/TDHE may use tribal preference in selecting families for housing assistance if the preference is adopted in its admissions policy. A person given a preference for the TBRA program may not be

prohibited from applying for or participating in other available programs or forms of assistance for which he or she might qualify.

### Student Rental Voucher Programs

Tribes/TDHEs may establish a preference for students in search of housing. Typically, tribes/TDHEs would allocate a certain amount of available funding to student applicants who are income eligible under NAHASDA. By doing so, tribes/TDHEs provide opportunities for individuals to attend school where it may not be otherwise financially feasible. The program also allows students to live off campus.

### Other Special Needs

Tribes/TDHEs may establish other preferences that are not discriminatory in intent or effect. For example, preferences may be established for families whose children may be placed in foster care because of inadequate housing, families with children in foster care who can return to the household only when adequate housing is available, battered spouses, or senior citizens.

## ELIGIBLE USES OF ASSISTANCE

TBRA funds may be used to provide rental assistance to help pay the cost of monthly rent and utility costs, and/or to pay security and/or utility deposits. Tribes/TDHEs may provide security deposit assistance to tenants regardless of whether the tribe/TDHE is providing ongoing tenant based rental assistance. Utility deposit assistance should be provided in conjunction with either rental assistance or a security deposit program.

In determining which forms of assistance to offer, the tribe/TDHE might want to consider both the needs of target households and the amount of funding that is available. Providing continuous rental assistance can reduce the household's rent burden and make higher quality units affordable. Security deposit only (or utility and security deposit only) programs may be attractive for many households who can afford monthly housing costs but not the "up front" costs of moving to quality housing.



Although providing deposit assistance only enables the tribe/TDHE to serve more households, this approach may not enable the tribe/TDHE to serve those most in need. To adequately serve some very low income households, tribes/TDHEs may need to provide maximum rental and deposit assistance.

## INELIGIBLE USES OF TBRA FUNDS

In most TBRA programs, TBRA funds cannot be used to make commitments to specific owners for specific projects. Tenants should be free to use the assistance in any eligible unit.

## LIMITATIONS ON THE AMOUNT OF SUBSIDY PROVIDED

Most TBRA program regulations specify the maximum rental subsidy that may be paid and requires the tribe/TDHE to establish a minimum tenant contribution. This is not a requirement under NAHASDA, although tribes/TDHEs may wish to consider imposing minimum tenant contributions so that its resources may be used to assist the maximum number of households possible. The tribe/TDHE can establish guidelines such as those listed below:

- The tribe/TDHE may establish a rent ceiling for dwellings of various sizes so that the subsidy amount does not exceed the difference between this rent ceiling and 30 percent of the household's monthly adjusted income.
- Tribes/TDHEs may establish the minimum tenant contribution expressed as a percentage of either gross or adjusted income.
- Security and utility deposits could be charged so that the landlord would be partially reimbursed if a tenant does not pay rent or damages the unit beyond normal wear and tear. Security deposits should be "reasonable" (e.g., not more than two months rent) and consistent with local market practices. If the tenant does not have the money to make the deposit upfront, he/she could pay in installments (within a few months).

The tribe/TDHE may limit subsidy contracts to a finite period of time, such as two years. Assistance on

behalf of an individual household could be extended under subsequent contracts if the tribe/TDHE continues to administer a TBRA program and has funds available.

Sample subsidy calculations are provided in Chapter Two.

## ELIGIBLE UNITS

TBRA Certificate/Voucher holders may select units that are publicly or privately owned, but the tribe/TDHE may opt to withhold TBRA from families who propose to rent a unit that receives project based rental assistance through federal, state, or local programs, if the tribe's assistance would provide a duplicative subsidy. However, if the household lives in an assisted unit, but the amount of the assistance is not sufficient to bring the household's payment portion down to 30 percent of its monthly adjusted income, the tribe/TDHE may want to use TBRA to close the gap.

Units should rent for a reasonable amount, similar to rents charged for comparable, unassisted units, otherwise the tribe's TBRA portion could be unnecessarily high. Tribes/TDHEs should document the basis of the reasonableness of their rent determinations.

Tribes/TDHEs may require that eligible TBRA participants use their TBRA certificate/vouchers within a particular jurisdiction or permit their use in a larger area. For most tribes/TDHEs, limiting TBRA to units within a particular area is administratively simpler. However, in certain areas in which the housing market crosses arbitrary political subdivisions, some degree of portability will offer families more unit and neighborhood options, may help to further fair housing opportunities, and may better assist hard to house families.

If an eligible participant used the TBRA outside a particular jurisdiction, the tribe/TDHE would retain its basic responsibilities such as housing quality inspections and tenant income re examinations. If portability is limited to contiguous jurisdictions, the tribal staff is likely to be able to conduct these activities. However, if portability is permitted on a



larger scale, perhaps even nationwide, the tribe/TDHE may need to enter into cooperative agreements with other tribes/TDHEs to provide some of the needed services.

## HOUSING STANDARDS

### Housing Quality Standards

If a tribe/TDHE establishes a TBRA program, it should establish minimum standards for housing that will be occupied by assisted households. It may require, for instance, that tenants use TBRA assistance in units that meet Section 8 Housing Quality Standards (HQS). In order for these standards to be upheld, inspections should be made at initial occupancy and then annually during the length of the TBRA assistance. HUD has developed a variety of training materials on Housing Quality Standards including an HQS Inspection Manual, Inspection Forms (HUD 52580 and 52580A), and a video presentation. These materials are available from any HUD office.

### Occupancy Standards

Tribes/TDHEs should develop occupancy standards that specify unit sizes for households of various sizes. Section 8 Housing Quality Standards (HQS) include a basic occupancy standard of two persons per living/sleeping area. The basic standard can be modified to take into consideration specific household composition and circumstances, for example, by:

- Permitting/requiring/prohibiting young children of the opposite sex to share a bedroom;
- Not requiring different generations of the same sex to share a bedroom;
- Providing for less than two persons per living/sleeping area in the case of medical necessity.

Occupancy standards are used to provide consistent criteria for determining the unit size for which the household is eligible and thus, the amount of assistance to be provided. Federal fair housing rules permit a household to select a smaller unit that does not create seriously overcrowded conditions. Participants may also select larger units, but the tribe/TDHE is not required to increase the subsidy to cover the increased costs of a larger unit.

In conjunction with the periodic income reexamination, the tribe/TDHE should re examine the TBRA household's size and composition to determine whether its circumstances have changed. Depending upon the occupancy requirements established by the tribe, a household whose size or composition has changed may be required to find a unit that is more suitable to its current circumstances.

## PROTECTION FOR TENANTS

Each tribe/TDHE should develop standards outlining when participating owners may terminate tenancy or refuse to renew a lease. These standards must be established in writing and be included in the lease agreement and, if applicable, the agreement between the tribe/TDHE and the owner.

Tribes/TDHEs should, at a minimum, require that owners comply with local landlord tenant ordinances, if applicable, and may impose additional requirements. Other requirements should be imposed only when the tribe/TDHE has a specific reason for intervening in the landlord tenant relationship. For example, tribes/TDHEs using TBRA assistance in conjunction with a self sufficiency program in which the tribe/TDHE is providing additional counseling or support, may want to consider requiring the owner to notify the tribe/TDHE before taking any termination action. The tribe/TDHE should also have a written policy about how any termination of tenancy will affect the tenant's TBRA assistance.



## FAIR HOUSING COMPLIANCE

Although not all federal fair housing rules apply to tribes/TDHEs, tribes/TDHEs should consider both the intent and the effect of their tenant selection policies and procedures when determining their fair housing policies.

Before a local preference is implemented, tribes/TDHEs should analyze the pool of applicants that is likely to receive assistance using the preference to confirm that the preference will not result in discrimination based on age, religion, sex, handicap, or familial status. For example, if a tribe/TDHE gives preference to applicants who participate in a training program, the tribe/TDHE must confirm that the selection process for the training program is not discriminatory.

For most tribes/TDHEs, the application of a local preference is unlikely to have a discriminatory effect because the population within the jurisdiction is diverse and includes families of varying sizes and individuals with disabilities.

## IS TBRA AN EFFECTIVE USE OF YOUR NAHASDA FUNDS?

For some tribes/TDHEs, administering a TBRA program can be a cost effective and highly successful use of NAHASDA funds. Implementing a TBRA program makes sense if low income households have significant needs for rental assistance that are not being met by other sources, and housing in which eligible families can use the assistance is available. To decide whether NAHASDA/TBRA is appropriate, the tribe/TDHE should consider:

- ❑ **How great is the need for rental assistance?**  
The tribe's IHP should provide valuable information about the number and incomes of renters in the community. If a significant number of households pay in excess of 30 percent of their monthly incomes for housing, serious consideration should be given to administering a TBRA program. Similarly, if other planned IHP activities will generate the need for relocation assistance, using TBRA as a relocation resource can be very cost effective.

- ❑ **Are resources other than TBRA available to meet the needs of tribes/TDHEs?** TBRA should be used only if it addresses an unmet need. Tribes/TDHEs should consider how much demand exists for rental assistance and which segments of its low income members currently may not be served or may be underserved by assisted housing developments such as public housing or privately owned assisted housing.
- ❑ **Is a TBRA program feasible in the housing market?** Are units available that (1) would meet the tribe's minimum property standards, and (2) rent within program cost constraints? The tribe's IHP can provide valuable information about the condition and cost of the housing stock. Are there vacant units in standard condition that could be made affordable with rental assistance? Could a TBRA program stimulate owners of housing with minor deficiencies to make repairs? Could a TBRA program offer assistance to persons who need off site housing to access an employment or school center outside of the Indian area?

If a supply of standard housing does not exist, or if the TBRA program does not provide sufficient incentives for owners of substandard housing to improve housing quality, the tribe/TDHE might better use NAHASDA funds to help develop or rehabilitate affordable rental housing.

- ❑ **Is a TBRA program administratively feasible?**  
For most tribes/TDHEs, administering a TBRA program will require the development of new skills and administrative processes. Although some activities such as housing inspections and income determinations are also recommended or required for other NAHASDA activities, many tribes/TDHEs have not had previous experience in the leasing process and the process of making monthly rental payments.

Tribes may develop their own capabilities or designate a TDHE to administer the program. Because implementation of a TBRA program requires the development of significant administrative capability, it will be most cost





effective if the tribe/TDHE intends to administer the program on a continuing basis.

## TBRA ADMINISTRATION

### Administrative Costs

IHBG may be used to pay for reasonable planning and administrative expenses associated with operating a TBRA program. Such expenses are subject to the overall 20 percent limitation on administrative costs for all of the tribe's programs funded by IHBG. TBRA administrative costs are considered general management, oversight and coordination under the NAHASDA regulation.

### Using a Waiting List

To ensure that families are selected for assistance in a fair and equitable manner, most tribes/TDHEs will need to create or adopt a waiting list. The waiting list serves the purpose of identifying all interested applicants and documents the process by which their eligibility is confirmed and the order in which they receive assistance. Tribes/TDHEs may, depending upon the program goals they have established, create their own waiting list or, if applicable, use a variation of the IHA's waiting list.

Key considerations:

- If the tribe's/TDHE's goal is to administer a general rental assistance program (without preference for a specific part of its membership), using a variation of the IHA's existing waiting list may be appropriate and administratively simpler.
- If the tribe's/TDHE's preference system is significantly different than the preferences generally applied by the IHA's waiting list, a completely different list may be more appropriate.
- Whether a tribe/TDHE uses a variation of the IHA's waiting list or develops its own list, the tribe/TDHE may want to coordinate with area housing agencies to determine how receipt of TBRA will affect the status of families on the TBRA waiting list.

When tribal members are apt to sign up on waiting lists, the tribe/TDHE should provide applicants with enough information to enable them to make informed decisions about accepting or rejecting tribal TBRA assistance.





# Chapter Two

## SUBSIDY CALCULATIONS

Tribes/TDHEs have considerable discretion about the amount of subsidy they provide on behalf of each tenant. The regulations do not specify the amount of subsidy a tribe/TDHE may provide or whether the tribe/TDHE must establish a minimum tenant contribution.

Tribes/TDHEs can use the Section 8 programs as models for subsidy calculations, or can establish their own methodologies for calculating the subsidy. The following discussion offers two alternatives for calculating the subsidy based upon the methods used for Section 8 programs. The sample forms included in this model can easily be adapted to accommodate either model, or a tribe's/TDHE's own subsidy design.

### PAYMENT STANDARDS

The tribe/TDHE may set a payment standard for each available bedroom size. Similar to the Section 8 Fair Market Rents (FMRs), a NAHASDA payment standard might represent the cost (rent and utilities) in the tribe's jurisdiction of moderately priced units that meet certain unit quality standards.

The payment standard determination is an important one. If the payment standard is set too low in comparison to the actual cost of modest, standard housing in the community, certificate/voucher holders may be unable to find housing. If the payment

standard is set too high, the tribe/TDHE may provide more subsidy than is needed and, therefore, not make the best use of its limited IHBG funds.

There are different ways of setting a payment standard. The following are two examples of methods the tribe/TDHE might use:

1. The tribe/TDHE may rely upon HUD's market analysis by adopting a payment standard based upon the Section 8 Existing Housing Fair Market Rents (FMRs). Using this method, the payment standard for each unit size would be no less than 80 percent of the published FMR, and no more than the published FMR or HUD approved community wide exception rent in effect when the tribe/TDHE adopts its payment standard. This method is attractive because it requires little market analysis on the part of the tribe/TDHE.

If there are Public Housing Authorities (PHAs) in the area, they can provide valuable information about the relationship between actual market rents and the published FMRs, based upon their experience with the Section 8 program. With this information and its own knowledge of market conditions, the tribe/TDHE can set the payment standard anywhere within this allowable range. Exhibit 2.1 illustrates this option.

**Exhibit 2.1 – Illustration of Tribe/TDHE Payment Standard Options Based Upon Section 8 FMR**

	1 BR	2 BR	3 BR	4 BR
Published FMR	\$350	\$390	\$450	\$510
HUD Approved Area Wide Exception Rent	N/A	N/A	\$480	\$550
Maximum Allowable Tribe/TDHE Payment Standard	\$350	\$390	\$480	\$550
Minimum Allowable tribe/TDHE Payment Standard (80% of FMR or HUD Approved Exception Rent)	\$280	\$312	\$384	\$440



When this method of establishing the payment standard is used, the tribe/TDHE might want to use, on a unit by unit exception basis, a payment standard that exceeds the applicable FMR in a small percentage of cases.

2. Because HUD's FMR market areas are quite large, the published FMR may be dramatically high or low for a specific jurisdiction within the FMR area. For this reason, this guide provides another example of how to establish the payment standard. The tribe/TDHE may establish the payment standard at any level (higher or lower than the FMR), based upon its own market analysis.

## SUBSIDY METHODS

### Key Terms and Concepts

The two options described in this section represent different philosophies for providing assistance. Option 1 offers a predictable tenant contribution and specifically limits the rent the tribe/TDHE may charge. Option 2 leaves more to the discretion of both the tenant and the tribe/TDHE, but also involves more risk for tenants. In order to understand the differences between the two subsidy models, it is important to understand the common terms described below.

- ❑ **Contract Rent** is the rent charged by the tribe/TDHE.
- ❑ **Utility Allowance** is the estimated average monthly cost of utilities to be paid by the tenant, separately from rent to the tribe/TDHE. A tribe/TDHE may use the utility allowance for the Section 8 program, or establish its own schedule of allowances.

- ❑ **Gross Rent** is the Contract Rent plus the applicable utility allowance.
- ❑ **Reasonable Rent** is the rent charged for comparable, unassisted units in the same market area. The tribe/TDHE makes a determination of the reasonable rent by documenting the rents for comparable units.
- ❑ **Annual (Gross) Income** is the amount of income anticipated to be received by a household during the coming year, which meets one of three definitions under 24 CFR 1000.10, as determined by the tribe/TDHE. Annual income may be calculated using the Section 8 definition of annual income found at 24 CFR Part 5, Subpart F, the Census long form definition, or the IRS Form 1040 series definition.
- ❑ **Adjusted Income** is a household's annual income less specified deductions based upon family circumstances. Tribes/TDHEs may use the Section 8 adjustments to income found at 24 CFR Part 813, or other types of adjustments, as long as they are applied consistently.

### Option 1: A Predictable Tenant Share and Limit on Contract Rent (Certificate Model)

The first option, which is modeled after the Section 8 Certificate Program, assumes (1) a fixed tenant payment, and (2) a tribally established maximum rent that the tribe/TDHE can charge. In this model, the tenant's share of housing costs (called Total Tenant Payment or TTP) is calculated by a formula. The tenant pays the greater of 30 percent of the monthly adjusted income or 10 percent of the monthly gross income. The tribe/TDHE pays the difference between the TTP and the approved gross rent for the unit. Exhibit 2.2 demonstrates this method.



**Exhibit 2.2 – Calculating Tenant and Tribe/TDHE Payments Using Subsidy Method Option 1**

The Smiths have been issued a two bedroom NAHASDA/TBRA Certificate/Voucher. Their Annual and Adjusted Incomes are \$22,500 and \$18,300 respectively. They find an apartment that rents for \$725 (including all utilities).

The Smith's must pay the greater of:

- \$458** (30% of adjusted monthly income)  
(\$18,300 ÷12 x 0.30)
- OR
- \$188** (10% of gross monthly income)  
(\$22,500 ÷12 x 0.10)

The tribe/TDHE must pay the difference between the tenant's share and the approved rent.

Approved Rent	\$725
<u>Less Total Tenant Payment</u>	<u>\$458</u>
Tribe/TDHE Share of the Rent	<b>\$267</b>

Under this option, the tribe/TDHE limits the rent that may be charged in two ways. First, the tribe/TDHE should determine that the rent is reasonable in comparison to the rent charged for comparable, unassisted units. Second, the gross rent should not exceed the tribe's payment standard for the appropriate unit size. The tribe/TDHE may establish an exception rent policy that would enable the tribe/TDHE to approve higher gross rents. Exception rents should only be approved in a limited number of cases, otherwise the payment standard will be ineffective. The exception rent policy should clearly state under what circumstances the tribe/TDHE would approve the exception rent.

This option offers tenants predictability. It is based on NAHASDA regulations at 24 CFR 1000.124 that an appropriate contribution toward housing costs cannot exceed 30 percent of monthly adjusted income for all households (the tribe/TDHE may find that a lower percentage would be appropriate). The tenant's share of the rent will never exceed the amount required by the formula. For example, if the tribe/TDHE raises the rent in the second year of the TBRA contract and the household's income has remained the same, the entire increase would be paid by the tribe/TDHE.

On the other hand, this option can have the effect of limiting the tenant's choice of housing. For example, if the tenant finds a unit that rents for more than the payment standard, the unit must be rejected unless an exception is approved. Under this option, tenants do not have the choice of paying an amount higher

than is required by the formula in order to rent a more expensive unit.

**Option 2: Fixed Tribal Share and a Flexible Tenant Share and Contract Rent (Voucher Model)**

A second option, which is modeled after the Section 8 Voucher Program, assumes a fixed tribal payment. The maximum subsidy is calculated by subtracting 30 percent of the participant's monthly adjusted income from the tribe's payment standard. The tenant pays the difference between the maximum subsidy and the gross rent for the unit, but no more than 30 percent of the monthly adjusted income. A minimum tenant payment of 10 percent of the monthly gross income could be required.

Using this model, the rent charged by the tribe/TDHE should be reasonable, but is not limited by the payment standard. This model offers the tenant some flexibility in the percentage of income it contributes to housing costs, and in the cost of the unit selected.

- If the tenant selects a unit with a gross rent that is less than the payment standard, the household will pay less than 30 percent of its adjusted income.
- If the tenant selects a unit with a gross rent that matches the payment standard, the household will pay 30 percent of its adjusted income.

While the added flexibility of this model is attractive to many tenants, NAHASDA regulations at 24 CFR 1000.124 limit rent payments to 30 percent of the



adjusted family income. When tribes/TDHEs choose the fixed tribal payment option, household options

may be limited to apartments renting at or below the tribe's/TDHE's rent standard.

### Exhibit 2.3 — Calculating Tenant and Tribe's Payments Using Subsidy Method Option 2

The Smiths have been issued a two bedroom NAHASDA TBRA Certificate/Voucher. Their Annual and Adjusted Incomes are \$22,500 and \$18,300 respectively. As shown in Exhibit 2.2, their monthly gross and adjusted income amounts are \$458 and \$188 respectively. They find an apartment that rents for \$775 (including utilities), which is the tribe's/TDHE's Rent Standard.

**The maximum tribe/TDHE subsidy is:**

\$775	Rent Standard
\$458	<u>(less) 30% of Adjusted Monthly Income</u>
\$317	Maximum Tribal Subsidy

**The Smith's share of the rent:**

\$775	Approved Rent
\$317	<u>(less) Maximum Tribal Subsidy</u>
\$458	Smiths' Payment

In this example, the Smiths will pay 30% of their adjusted income for housing because they selected a unit that rents for the payment standard.

Had the Smiths found a very inexpensive unit, the requirement that the family must pay at least 10% of their monthly gross income might apply.

\$500	Approved Rent
\$317	<u>(less) Maximum Tribe/TDHE Subsidy</u>
\$183	Calculated Tenant Share

The calculated tenant share is \$183. However, the Smith's must pay at least 10% of their gross monthly income

(\$22,500 ÷ 12 months x 0.10 = \$188). In this case, the Smiths would pay \$188, and the tribe's contribution would be reduced by \$5.

### Other Tribal Options

As noted above, adopting either Option 1 or Option 2 is the simplest way for the tribe/TDHE to calculate tenant rent payments and subsidy amounts. However, tribes/TDHEs interested in accomplishing specific outcomes can adopt other methods of computing the amount of subsidy. For example, the tribe/TDHE could establish:

- An expected tenant share that meets or is lower than 30 percent; or
- A higher or lower minimum tenant contribution than the 10 percent of gross monthly income specified for the Section 8 program.

Generally, the minimum tenant contribution should be expressed in percentage terms. Establishing a flat dollar amount for the minimum payment is not recommended because this policy has the effect of imposing a hardship on families with the lowest incomes.

### Impact of Unit Size on the Subsidy

The tribe/TDHE should establish a policy with respect to how the subsidy will be calculated if the household leases a unit with more or fewer bedrooms than authorized by the tribe. As a comparison, under the Section 8 Voucher Program, PHAs calculate the subsidy based upon the unit size authorized, regardless of the size selected by the household. This means that a household that selects a smaller unit (that still meets applicable quality standards) may reap significant savings. However, because rental payments in units assisted with IHBG funds cannot exceed 30 percent of adjusted income, a household that wants to select a larger unit than necessary generally will not be eligible.

Alternatively, under the Section 8 Certificate Program, PHAs use the Fair Market Rent for the size authorized if the Certificate/Voucher holder selects a larger unit. The FMR for the size the household selects is used if the household selects a smaller unit.



Tribes/TDHEs can elect to follow either rule, or adjust the payment standard to the unit size the household has selected in all cases. In any case, tribes/TDHEs

must ensure that rents do not exceed 30 percent of adjusted income. Exhibit 2.4 illustrates the impact of this policy.

**Exhibit 2.4 — Impact of Unit Size Selected on the Payment Standard**

	Tenant Selects Larger Unit	Tenant Selects Smaller Unit
Section 8 Certificate Model	Use Payment Standard for unit size authorized	Use Payment Standard for selected unit
Section 8 Voucher Model	Use Payment Standard for authorized unit	Use Payment Standard for authorized unit

***When a Larger Unit Is Selected***

The Smith family has been authorized a two bedroom NAHASDA Rental Assistance Certificate/Voucher (Payment Standard \$350); 30% of the household's adjusted monthly income is \$150. The family selects a three bedroom unit that rents for \$375.

- Using the Certificate model, the family would be unable to select this unit unless the tribe/TDHE approved an exception rent. If the tribe/TDHE did so, the family would pay \$150 and the tribe/TDHE would pay \$225. (The cost of the rent above the Payment Standard is borne by the tribe.)
- Using the Voucher model, the family also would be unable to select this unit unless the tribe approved an exception rent, since rental payments under NAHASDA cannot exceed 30 percent of the adjusted income. Without the exception, the tribe would pay \$200 (Payment Standard minus monthly adjusted income) and the family would pay \$175, which exceeds \$150 or 30 percent of the adjusted family income. If the tribe approved an exception, the tribe would pay \$225 and the family would pay \$150 (The cost of the rent above Payment Standard is again born by the tribe, not the family).

***When a Smaller Unit Is Selected***

The Jones family has been authorized a two bedroom NAHASDA Rental Assistance Certificate/Voucher (Payment Standard \$350); 30% of the household's adjusted monthly income is \$150. The family selects a one bedroom unit that rents for \$275 (Payment Standard \$300).

- Using the Certificate model, the family would pay \$150 and the tribe/TDHE would pay \$125. (Thus the tribe/TDHE benefits from the savings for the smaller unit, not the family.)
- Using the Voucher model, the tribe/TDHE would pay \$200 (Payment Standard minus 30 percent of adjusted income); the family would pay \$75. (The family benefits by selecting the smaller unit, not the tribe.)

**Adjusting for Tenant Paid Utilities**

Regardless of the method used to determine the household's contribution, the tribe/TDHE should consider how utilities would be paid. The tenant's

contribution should cover both rent and utilities. If all utilities are included in the rent, the household's entire contribution goes to the tribe/TDHE. However, this is rarely the case. Most tenants pay separately for at least some utilities. In such cases, the tribe/TDHE



should determine how much of the tenant's contribution should go to pay utilities and how much to the tribe/TDHE.

Tribes/TDHEs should establish a utility allowance schedule that estimates the average cost of utilities for typical types of housing (single family, row house, etc.) and for various utilities (natural gas, propane,

electricity, etc.). Utilities included in the schedule generally are those required for water/sewer, cooking, heating, lighting, and trash collection. Traditionally, telephone and cable TV are not considered utilities for this purpose. Tribes/TDHEs may use the utility allowance schedule that PHAs use for the Section 8 Program or establish a separate schedule. Exhibit 2.5 illustrates how the utility allowance is used.

**Exhibit 2.5 — Using Utility Allowances**

The Brown family's Annual Adjusted Income is \$12,000; their monthly required contribution is \$300 (12,000 ÷ 12 months x .30). The family selects a unit that rents for \$575; the tribe/TDHE determines the rent for the unit is reasonable. Gas and electricity must be paid separately.

(1) The tribe's/TDHE's utility allowance schedule shows the average cost of electricity and gas for the unit size and housing type selected as \$75.

(2) The family makes its tenant contribution as follows:

\$ 75	For gas and electricity
<u>\$225</u>	<u>Rent to owner</u>
\$300	Total Tenant Contribution

(3) The tribe/TDHE pays the difference between the rent the owner is charging and the amount paid by the tenant:

\$575	Rent to owner
<u>\$225</u>	<u>Paid by tenant</u>
\$350	Tribe/TDHE subsidy

**DETERMINING THE AMOUNT OF DEPOSIT ASSISTANCE**

Deposits may be provided as a loan or grant. Tribes/TDHEs can decide to provide security and utility deposit assistance to all eligible applicants or require a separate determination of need. Security deposit payments can be made to the tenant or the tribe/TDHE; likewise, utility deposits must be made to the tenant or the appropriate utility company. If the tribe/TDHE offers a security or utility payment to the tenant as a loan, the tribe/TDHE should execute a

repayment agreement with the tenant to ensure that it is repaid at the end of program participation. Returned funds may be treated as program income, and may be reinvested in other NAHASDA eligible activities. State or local laws governing deposits (e.g., with respect to paying or accruing interest) apply.

A tribe/TDHE may make a *utility reimbursement* to the household, as well as a payment to the landlord. This would occur whenever the household's share of housing costs is insufficient to cover expected utility costs. Exhibit 2.6 illustrates this scenario.





**Exhibit 2.6 — Utility Reimbursements**

Sally Green's Annual Adjusted Income is \$2,000; the monthly required contribution is \$50 (2,000 ÷ 12 months x .30). She selects a unit that rents for \$575; the tribe/TDHE determines the rent for the unit is reasonable. Gas and electricity must be paid separately.

- (1) The tribal utility allowance schedule shows the average cost of electricity and gas for the unit size and housing type selected as \$75.
- (2) The full tenant contribution is used to pay gas and electricity. The tenant makes no contribution to contract rent.
- (3) The tribe/TDHE pays:

\$575	Rent to owner
<u>\$ 25</u>	<u>Utility reimbursement to tenant (\$75 - \$50)</u>
\$600	Tribe/TDHE subsidy

**Security Deposits**

The amount of security deposit paid should be based upon local market practice. However, the tribe/TDHE may wish to impose maximum amount TBRA funds to be provided for a security deposit (such as the equivalent of two months' rent for the unit).

In lieu of security deposits, the tribe/TDHE may, at its discretion, assume liability for damages and other allowable costs in an arrangement with the property owner. The tribe/TDHE should carefully consider whether it wishes to assume potential liability for damages and other allowable costs. Payment of the security deposit limits tribal liability and decreases potential administrative follow up action associated with owner claims. PHAs can provide valuable information about the advantages and disadvantages of being involved in unpaid rent and damage claims.

**Utility Deposits**

Utility deposits may be paid for any of the tenant paid utility services included on the utility allowance schedule. This includes fuel for cooking, heating and lighting (electric, gas, propane, etc.), and water/sewer

and trash collection, if not provided as a city service, but does not include telephone or cable deposits.

Assistance with utility deposits is often a critical need for low income households. However, administering a utility deposit component is more complicated than providing security deposits. Some utilities require a deposit only the first time utilities are provided, and the household's "account" is transferred from unit to unit with the household. For other utilities, the household must pay a deposit each time service is connected in a new location. For all these reasons, tribes/TDHEs should determine if this assistance is really needed before including it in the TBRA program. It may be most productive to provide utility deposit assistance based upon need, rather than providing it to all participating households.

This chapter provided guidance for designing the subsidy component of a TBRA program. Exhibit 2.7 provides a checklist that summarizes these key program design decisions. Chapter Three presents a step by step implementation process, beginning with the development of a budget and ending with the first rental assistance payment.





**Exhibit 2.7 – Subsidy Design Checklist**

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A. Subsidy Model

- Option 1 Model
- Option 2 Model
- Model designed by tribe. Describe:

B. Maximum Rents\*

- Rents limited by reasonableness test only
- Rents limited by Fair Market Rent
- Rents limited by payment standard established by tribe. Describe:

\*Cannot exceed 30 percent of adjusted family income.

C. Exception Rent Policy?  No  Yes  Criteria:

D. Minimum Tenant Contribution. Describe:

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# Chapter Three

## PROGRAM IMPLEMENTATION AND FLEXIBILITY

This chapter provides guidance on the implementation of a TBRA program from initiation through the first TBRA payment.

program can determine *how much* total funding will be required.

### DEVELOPING THE TBRA BUDGET

### The Simplest Model

Program implementation begins with a budget. Tribes/TDHEs that know how much of the NAHASDA allocation will be used for TBRA can determine *how many* TBRA certificate/vouchers that amount will support. Conversely, tribes/TDHEs that know how many families they want to assist with the TBRA

In either event, the process begins with two key pieces of information: (1) the estimated cost for rent and utilities for the housing that is likely to be used by Certificate/Voucher holders; and (2) the estimated average income of households which are expected to participate. With this information, the tribe/TDHE can estimate its average per household subsidy. The simple model (Exhibit 3.1) illustrates this concept.

#### Exhibit 3.1 — Conceptual Budget Model – An Example

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Given: \$500 Fair Market Rent (a proxy for market housing costs)

\$13,000 Average Annual Gross Income  
\$12,000 Average Annual Adjusted Income

Per Household Cost:

\$500	Fair Market Rent
<u>300</u>	<u>12,000 (adjusted income) ÷ 12 months x .30</u>
\$200	tribe/TDHE monthly per household cost

\$200/month x 24 months = \$4,800 per household cost

\$4,800 x 50 families = \$240,000 estimated total costs.

or, conversely if the tribe/TDHE has budget only \$200,000:

\$200,000 ÷ 4,800/household = 41 households can be assisted

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## Adding Refinements and Complexity

Although the conceptual model shown above provides a rough estimate of the costs for a TBRA program, a more refined estimate requires each tribe/TDHE to consider the following factors:

- ❑ **Actual housing costs:** Exhibit 3.1 uses the FMR as the estimate of the average rent (including utilities) for units that will be selected for TBRA. Tribes/TDHEs should also use the FMR as an indicator of housing costs.

The simple example also does not make any assumptions about rent increases (and resulting increased subsidy payments) in the second year of the contract. Remember, under the Option 1 subsidy model, the tribe/TDHE absorbs any increase in rent if the household's income remains the same. Under Option 2, both the household and the tribe/TDHE may be responsible for a portion of any rent increases.

- ❑ **Variations in housing cost and household income by bedroom size:** The example provided above did not make any assumptions about the bedroom size requirements of the households to be assisted, nor did it refine

household income data by household size. Developing budget estimates by bedroom size helps achieve better accuracy.

- ❑ **Length of subsidy contract:** Exhibit 3.1 assumes that each subsidy contract will be 24 months. Tribes/TDHEs may specify a longer or shorter period than 24 months.
- ❑ **Impact of Security/Utility Deposits:** If the tribe/TDHE will provide security and/or utility deposit assistance, the budget should reflect these expenditures. The tribe/TDHE may elect to provide deposit assistance for all recipients or only some based upon need.
- ❑ **Need for a contingency allowance:** Even with these refinements, the tribe/TDHE should set aside some additional cushion to cover errors in the estimating process. However, it is also important to note there may be some "built in" contingency because some families may not complete the subsidy period due to personal circumstances such as moving out of the jurisdiction.

Exhibit 3.2 provides a more detailed approach to estimating the budget for a TBRA program.



**Exhibit 3.2 – Sample TBRA Budget Worksheet**

	Number of Bedrooms				
	0-1	2	3	4	5+
(1) Estimated Housing Cost <sup>1</sup>					
(2) Monthly Adjusted Income x 0.30 <sup>2</sup>					
(3) Est. Monthly Subsidy Cost to the tribe/TDHE [(1) minus (2)]					
(4) Enter number of months (Length of subsidy contract)					
(5) Total Per Household Cost [(3) x (4)]					
(6) Enter number of families to be assisted					
(7) Basic Cost by BR Size [(5) x (6)]					
(8) Enter inflation/contingency amount [Use 1.xx format] <sup>3</sup>					
(9) Adjusted Costs by BR size [(7) x (8)]					
(10) Per Household Deposit Cost <sup>4</sup>					
(11) Total Deposit Costs [(10) x (6)] <sup>5</sup>					
(12) Total Cost by BR Size [(11) + (9)]					
(13) Total Estimated Cost (Add all costs in Row (12))					

**NOTES:**

- <sup>1</sup> Use the FMR payment standard adopted by tribe, or another estimate based upon experience.
- <sup>2</sup> Use data by household size if available. Absent specific data, \$1,000/household in adjustments is not a bad "rule of thumb."
- <sup>3</sup> Enter the appropriate contingency figure expressed as 1.xx. For example, if a 3 percent contingency is needed, enter 1.03.
- <sup>4</sup> Use only if the tribe/TDHE will use subsidy funds for deposits. Use local real estate practice as a guide.
- <sup>5</sup> If not all households will receive deposit assistance, multiply Item 10 by the estimated number of families to be assisted. If there is no deposit assistance, this number will be 0. However, if Item 10 is 0, use 1 as the multiplier.

**KEY PROCESSING STEPS AND PROGRAM DOCUMENTS**

Exhibit 3.3 lists the basic documents that are recommended for use in administering a TBRA program. The use of each is explained in the implementation steps that follow. Exhibit 3.4 summarizes key processing steps.

A sample format for each of these documents is provided in the Appendices. These forms have been

developed using Section 8 program forms as a model. They can easily be adapted for either subsidy model or the tribe's/TDHE's own program design. The formats also assume that the tribe's/TDHE's subsidy payment will be made to the owner. These formats should be reviewed by each tribe's counsel to assure that they are not in conflict with state or local laws, and that they adequately reflect the tribe's/TDHE's program design.



**Exhibit 3.3 – Key TBRA Forms**

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Application Form  
Rental Assistance Certificate/Voucher  
Rental Assistance Contract  
Request for Unit Approval  
Rental Assistance Lease Addendum  
Inspection Form  
Rent Reasonableness Checklist/Certification

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**Exhibit 3.4 – Key Processing Steps**

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**1. MARKETING AND OUTREACH**

Publicly announce availability of TBRA  
Outreach to prospective applicants  
Outreach to prospective owners

**2. APPLICATION**

Accept applications  
Initial screening  
Place apparently eligible applicants on waiting list  
Notify ineligible applicants

**3. ELIGIBILITY DETERMINATION**

Select households based upon preference  
Verify household preferences, composition, income  
Notify ineligible applicants

**4. CERTIFICATE/VOUCHER ISSUANCE**

Conduct briefing for Certificate/Voucher holders  
Issue Certificate/Voucher  
Provide assistance to Certificate/Voucher holder during search

**5. REQUEST FOR UNIT APPROVAL**

Applicant/owner submit request  
Tribe/TDHE conducts unit quality inspection  
Tribe/TDHE determines rent reasonableness  
Tribe/TDHE reviews owner lease

**6. EXECUTION OF DOCUMENTS**

Tribe's/TDHE's Rental Assistance Contract Lease Addendum

**7. PAYMENTS BEGIN**

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## KEY PROCESSING STEPS

### Step 1: Marketing and Outreach Activities

The nature of tribal marketing and outreach depends upon whether a separate waiting list is established for the NAHASDA TBRA program or a variation of the Section 8 waiting list is used.

#### *Outreach to Eligible Households*

The tribe's/TDHE's marketing approach should address: (1) *how* the program will be announced (e.g., which media and other sources); (2) *where* applications will be taken (e.g., at one site or more); (3) *when* applications will be accepted (e.g., daily, during normal working hours or extended hours for a specified period); and (4) the method for taking applications (e.g., in person, by mail).

Generally, the demand for rental assistance is far greater than available resources. As a result, a public announcement of the availability of TBRA in newspapers and other media of general circulation usually elicits an ample supply of applicants. However, the tribe/TDHE should ensure that information about the program reaches the broadest possible range of potentially qualified applicants.

To further fair housing objectives, the tribe/TDHE should identify those households that have been identified to be "least likely to apply," and determine what special outreach activities will ensure that this population is fully informed about the program.

#### *Outreach to Prospective Owners*

The willingness of owners to participate in the NAHASDA TBRA program significantly affects the options and opportunities available to Certificate/Voucher holders. Tribes/TDHEs should conduct outreach to owners of rental property to stimulate their interest in the program. Mailing program notices to owners using tax or IHA records as sources, and participating in meetings of owner and realtor associations are often effective outreach methods.

Many owners will use the Section 8 program as their frame of reference. Tribal staff should be prepared to describe how their TBRA program is similar to and different from Section 8. Key areas of potential differences that are likely to be of concern to owners are summarized in Exhibit 3.5.



### Exhibit 3.5 – Summary of Key Owner Concerns

Many owners will use the Section 8 program as the frame of reference. Tribal staff should be prepared to describe how the TBRA program is similar to and different from Section 8. Key issues that are likely to be of interest to owners include:

- Rent limitations.** (The Section 8 and HOME programs require the rent to be "reasonable" in comparison to comparable, unassisted units. Fair Market Rent limitations apply to Certificates but not Vouchers.) Tribes/TDHEs should explain whether the Fair Market Rent limitations or the tribe's payment standards also would limit rents for TBRA units.
- Who receives the payment?** (Section 8 payments go to the landlord.)
- How prompt will the payment be?** (Providing checks regularly and on time is essential.)
- Who makes the payment?** (An owner with no previous exposure to the tribe/TDHE will wonder about responsiveness.)
- Length of the contract.** (Section 8 contracts are opened ended, rather than limited to a particular period of time. Owners may see this different policy as either positive or negative. Owners seeking longer term commitments may prefer the Section 8 rule. However, many owners prefer a defined period.)
- Lease provisions.** (The tribe's lease provisions may not be the same as in the Section 8 program.)
- Annual Income and Rent Determinations.** Like the Section 8 program, the tribe's TBRA program may or may not require annual re examination of tenant income and permits owners to request rent increases on an annual basis.
- Interim Income Re examinations.** The Section 8 program provides for interim redeterminations of income if the household's circumstances change between annual re examinations. Tribes/TDHEs may develop their own policies. (Owners may be concerned if the tribe/TDHE does not provide for interim adjustments when household income goes down.)
- Evictions and Tenant Disputes.** (Like Section 8, the TBRA program assumes a private relationship between owner and tenant. Evictions are determined by the courts, not the tribe.)

*Note: The Section 8 program is currently undergoing changes. This list will need to be updated periodically. Check with a PHA for updated information*

### Step 2: Accept Applications

All applications should be in written form. (See Appendix 2 for a sample format.) If long waiting lists are anticipated, tribes/TDHEs may elect to use a short form of the application to accept a preliminary application. Using this method, potentially eligible applicants are placed on the waiting list based upon the preliminary application. Nearer the time that an applicant would be selected from the list, a more detailed application is taken, and more current information is used to verify eligibility.

Applications should contain, at a minimum, information that enables the tribe/TDHE to determine household income and eligibility. A tenant file should be created for each application. This file ultimately should contain the application, documentation of the household's eligibility, copies of program forms, and correspondence.

Each application received should be reviewed for completeness and to determine if the applicant is obviously ineligible. Tribes/TDHEs may elect to fully determine eligibility at the time the household submits





application. However, it is rare that households provide sufficient documentation at the time of application to confirm eligibility. Generally speaking, tribes/TDHEs will place all applicants who are apparently eligible on the waiting list, pending verification of detailed information.

### Step 3: Determine Eligibility

Applicants are selected from the waiting list in the order established by the tribe's preference policy. To determine a household's eligibility, the tribe/TDHE can verify:

- The household's *eligibility for its preference* status. Generally preferences are not verified at the time of application, but must be verified before the household receives assistance. (If an applicant does not qualify for the preference claimed, the application is returned to the waiting list.)
- The household's *size and composition*. This enables the tribe/TDHE to determine the unit size for which the household qualifies.
- Household *income and adjustments* to income. This enables the tribe/TDHE to determine if the household is income eligible, and to calculate the subsidy amount for which the household qualifies.

Verification of the information provided by the household can be accomplished through a variety of sources and documents. For example, a birth certificate or custody agreement verifies that a minor child is part of the household; employers should be asked to provide verification of income; and bank statements can provide documentation of some assets. Appendix 3 contains a sample format for calculating tenant annual and adjusted income and for calculating the tenant and tribal share of the rent for both Options 1 and 2. Guidance on income verification and calculation processes is provided in *HUD 1780 CPD, Technical Guide for Determining Income and Allowances for the HOME Program* (Second Edition).

Applicants who are determined ineligible should be notified in writing of this decision, and should be given an opportunity to appeal the decision. Applicants who are determined eligible will be issued Certificate/Vouchers subject to fund availability.

### Step 4: Issue Certificate/Voucher

The issuance of a Rental Assistance Certificate/Voucher (see Appendix 4) authorizes the household to begin the search for housing. The Certificate/Voucher should be issued in person, during a counseling session with the household, often called the "TBRA Briefing." Appendix 5 provides a sample handout for new Certificate/Voucher recipients.

#### *The Briefing*

The purpose of the briefing is to ensure that the household (1) understands its responsibilities, as well as those of the tribe/TDHE and the owner, and (2) has sufficient guidance to make an informed choice of housing. The briefing should cover:

- Roles and responsibilities*** of the tenant, owner, and tribe.
- Limitations on the rent*** the owner may charge, including how utility allowances are used in this determination.
- Subsidy calculations***, including how the tribe/TDHE and tenant shares will be calculated.
- Security deposit policy***, including how much may be charged, who pays, and who receives any refund.
- Certificate/Voucher expiration and extension policies***. (The tribe/TDHE may decide the initial period during which the Certificate/Voucher is valid and extension approval criteria.)
- Guidance on selecting a unit***, including unit quality requirements and procedures for submitting a Request for Unit Approval. Families should be counseled against signing any lease until the tribe/TDHE has approved the unit.



- Lead based paint** information.
- Fair housing information**, including any search assistance that may be available, and the process for filing a complaint in the case of discrimination.

The tribe/TDHE should consider maintaining a list of available properties to assist households in their search. However, if such a list is provided, the tribe/TDHE must make it clear that the Certificate/Voucher holder is free to choose units other than those on the list.

### Step 5: Unit/Lease Approval

Once the household has located a unit and the owner has agreed to participate, the household and the owner jointly submit the Request for Unit Approval.

The Request for Unit Approval (a sample is provided in Appendix 6) should provide essential information about the property (bedroom size, utility combination, proposed rent, and ownership information). The submission of this document triggers the tribe's inspection, rent negotiations, and review of the owner's lease.

### Housing Quality Inspection

Each unit should be inspected to confirm that it meets the tribe's unit quality standards. If the unit initially fails the inspection, the owner may be given a reasonable amount of time to correct deficiencies, or the Certificate/Voucher holder may elect to look for another unit. Generally speaking, an agreement with the owner should not be executed until the owner has made all repairs. (An exception may be made for corrections to defective exterior paint during the winter in climates where the weather makes this impossible.) The results of each inspection should be recorded on an inspection form and retained in the tenant's file. Appendix 7 provides a sample inspection form based on Section 8 Housing Quality Standards (HQS).

### Rent Determination

The rent for each unit should be determined to be reasonable when compared to comparable, unassisted units. The chart below highlights key components of the comparability analysis. Appendix 8 provides a sample format for determining comparability and certifying to the reasonableness of the rent.

Depending upon the tribe's/TDHE's TBRA design, the owner's rent plus an allowance for tenant paid utilities may have to remain below the Fair Market Rent limitation. (See Chapter Two for additional information on rent limitations.)

### Lease Review

The tribe/TDHE should review the owner's lease to assure that it is appropriate. The simplest way to accomplish this is to use a Lease Addendum (Appendix 9) that nullifies any such provisions that exist in the owner's lease. This eliminates the need for an indepth legal review of the owner's lease. In addition, the Lease Addendum should cover key tribal program requirements that, of course, are not routinely included in private sector leases.

The term of the lease between the tenant and the owner should not be for less than one year, unless the tenant and the owner mutually agree upon another term.

### Final Subsidy Calculation

Once the unit has been approved, a final subsidy calculation is required to determine the tribe's/TDHE's and the tenant's share of the rent.

### Step 6: Contract/Lease Execution

All three parties (the owner, the tenant, and a tribe/TDHE representative) sign both the Lease Addendum and the tribe's/TDHE's Rental Assistance Contract (Appendix 10). Each Rental Assistance Contract should begin on the first day of the lease and on the first of the month whenever possible.



**Step 7: Initiation of Payments**

The tribe/TDHE will have to set up a cash management procedure for processing payment to either the tenant or the landlord on a monthly basis.

Tribes/TDHEs should maintain their financial records in such a manner that is easily possible to summarize subsidy amounts provided by household and by owner. Tribes/TDHEs must report to the Internal Revenue Service annually the amount of rental income paid to owners.

The tribe/TDHE would want to have an automated system which provides information on the tenant, landlord, the location and size of the unit, the amount of the tenant's payment, and the amount of the TBRA subsidy portion.



## Chapter Four

# ONGOING PROGRAM ADMINISTRATION

Execution of key program documents and the start of subsidy payments is the end of one important phase of TBRA, but only the beginning of another. For the full term of the TBRA contract, the tribe/TDHE has important operational responsibilities.

### ANNUAL UNIT INSPECTIONS

Tribes/TDHEs may require that all units inhabited by tenants receiving TBRA comply with minimum quality standards, such as Section 8 HQS. If this is the case, each unit under contract must be inspected, at least annually, to assure that this requirement is met. Units may also be inspected as a result of housing quality complaints initiated by the owner or the tenant.

If a unit fails to pass an inspection, the owner may be given a reasonable period of time (e.g., 24 hours for emergency conditions or 30 days for less serious conditions) to correct the deficiencies. If the owner fails to make the needed corrections, the tribe/TDHE has several options. The tribe/TDHE may, with adequate notice to the owner and household, terminate the Rental Assistance Contract and require the household to move to another location in order to continue to receive assistance. The tribe/TDHE may also temporarily suspend its payments until the owner remedies the unit deficiencies. (Note: If this second approach is taken, the tenant should be encouraged to continue to pay its share of the rent in order to prevent eviction.)

### PERIODIC ELIGIBILITY DETERMINATIONS

Each household's eligibility to participate in the program and its share of the rent should be confirmed periodically. If a participating household's income exceeds 80 percent of the national median income, the tribe/TDHE may wish to end the household's assistance. In order to assure that the re examination is completed on time and that adequate notice is

given to both the owner and tenant of changes in the household's eligibility or share of the rent, the re examination process should begin 60 to 90 days in advance of the household's one year anniversary date.

Using the same basic procedures described in Chapter Two to determine the household's initial eligibility and share of the rent, the tribe/TDHE may re verify household size, composition, and income.

The Section 8 program provides for interim redeterminations of income if the household's circumstances change between re examinations. Tribes/TDHEs may develop their own policies.

### PROCESSING REQUESTS FOR RENT INCREASES

Typically, owners offer leases that specify the rent for one year. This means that, unless the tribe/TDHE has negotiated a two year rent, most owners will request a rent increase at the end of the first year of the contract. The tribe/TDHE should again determine that the proposed rent is reasonable in comparison to rents charged for comparable, unassisted units, and also that it is within any other limitations established in the tribe's program.

For the Section 8 program, HUD publishes annually an Annual Adjustment Factor that is used to adjust contract rents. Tribes/TDHEs may use this Annual Adjustment Factor to determine the maximum allowable contract rent increase or develop its own standard for rent increases based upon a market analysis.

### MOVES AND TERMINATION OF TENANCY

Tenants may elect to move to another unit, as permitted by the lease. The Rental Assistance



Contract should contain provisions that terminate the tribe's agreement with the owner when the household moves out. To assure that subsidy is not paid on units no longer occupied by an eligible tenant, the tribe/TDHE should require tenants to give advance notice of their plans to move out, and owners to inform the tribe/TDHE when tenants move out.

A tenant who wishes to move may be issued another Certificate/Voucher following the same procedures used to issue the original Certificate/Voucher. However, the tribe/TDHE should make it clear to the tenant and the new owner whether the tenant is entitled to receive assistance only for the balance of months remaining in its original contract, or for another initial assistance period.

Each tribe/TDHE should develop standards outlining when owners participating in the TBRA program may terminate tenancy or refuse to renew a lease. If a Certificate/Voucher holder is evicted for cause, the tribe/TDHE must determine whether assistance also will be terminated or whether the tenant may receive assistance in another unit.

## **UPDATING POLICIES AND PROCEDURES**

At least annually the tribe/TDHE should review key program operating procedures to determine if revisions are required. At a minimum, the tribe/TDHE should assess the appropriateness of its payment standards and utility allowance schedule. Changes to either should be implemented in an equitable fashion. This may be done by making the changes effective for all participating households immediately, or at each household's next annual re examination.

## **MONITORING PERFORMANCE**

As with any activity, program administrators should monitor progress on an ongoing basis to assure that the tribe's requirements are met, and to assess program outcomes. Key performance indicators that should be considered are discussed in this section.

## **Budget Versus Actual Spending**

Since the initial estimate of funding required might be based upon theoretical program participants, close monitoring of actual expenditures is essential. If participating households have incomes that are lower than expected, the tribe/TDHE may need to allocate more funds, or reduce the number of families to be assisted.

## **On Time Payments**

One of the tribe's/TDHE's most important administrative jobs is making sure that rent checks are distributed on schedule because late checks can reduce the credibility of the program with owners, and decrease the number of owners willing to rent to those receiving TBRA.

## **Outreach and Success Rates**

The tribe/TDHE should analyze the program's success rates, and make use of the results to determine if aspects of program design could be changed to improve the success rate. For example, if most of those who fail to make use of the Certificate/Voucher are households requiring large units, it may be that the tribe's/TDHE's payment standard for such units is too low. Similarly, if families disproportionately require time extensions in order to find acceptable units, the tribe/TDHE may need to increase marketing to potential owners and review the briefing process to ensure that all applicants are receiving high quality information and know how to file fair housing complaints.

## **Administrative Efficiency**

Tribes/TDHEs should review the length of time that various aspects of the TBRA program take, including the time between initial application and Certificate/Voucher issuance, and between Certificate/Voucher issuance and lease up.

While many factors can affect these time frames, this information can give clues about ways to improve the



administrative efficiency of the program. For example, if the time between Certificate/Voucher issuance and lease up is lengthy, it could be attributable to slow unit quality monitoring procedures, poor communication with property owners, or slow paperwork processing, all of which are within the tribe's/TDHE's control.

Similarly, if applicants are on the waiting list for significant periods before assistance is available, the tribe/TDHE may need to expand the program in the future, or tailor its eligibility requirements more narrowly.

### **Turnover**

Turnover rates alone will reveal little. High turnover could indicate at one extreme that owners are quitting the program out of frustration, requiring their tenants to leave the program. At the other extreme, it may be that families are becoming self sufficient.

The tribe/TDHE should examine the reasons for turnover in the program to determine whether involuntary terminations are being administered fairly, and to assess whether the program could be improved. For example, numerous owners may refuse to renew TBRA leases, resulting in tenants who leave the program rather than move again. For this reason, high turnover might prompt the tribe/TDHE to investigate the reason for high owner terminations.



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**NOTE:** Tribes/TDHEs should modify documents, as appropriate, to ensure compliance with local policies.





# APPENDIX 1

## SAMPLE OUTLINE FOR TENANT SELECTION PLAN AND OUTREACH STRATEGY

**NOTE:** Tribes/TDHEs should modify documents, as appropriate, to ensure compliance with local policies.



## SAMPLE OUTLINE FOR TENANT SELECTION PLAN AND OUTREACH STRATEGY

Note: Tribal program administrators should have a written description of how tenants will be selected for the TBRA program. Program administrators should also develop a marketing and outreach strategy that specifies how the program will be marketed, paying particular attention to fair housing issues and requirements. This outline assumes a single document that is used for both of these purposes.

### I. KEY TBRA POLICIES AFFECTING MARKETING AND TENANT SELECTION

- A. **Preferences.** Describe any established local preferences and how they will be used.
- B. **Application Procedures.** Describe the waiting list that will be used and, if a separate TBRA waiting list is established, describe:
  - how the program will be announced. (Opening and closing of waiting lists must be publicly announced.)
  - where applications will be taken (e.g., in one central location, accommodations for elderly/handicapped, etc).
  - when applications will be accepted (e.g., on a continuing basis, for a limited time, only during certain hours, etc.).
  - the method of application (e.g., in person, by mail, using interviews, etc.).
- C. **Occupancy Standards** (sample only).

Certificate/Voucher Size	Persons in Household	
	Minimum	Maximum
0BR	1	1
1BR	1	2
2BR	2	4
3BR	4	6
4BR	6	8
5BR	8	10

Unit Assignment Policies (sample only). Unit assignments will be made on the following basis:

- Persons of the opposite sex, other than spouses, will not be required to share the same bedroom.
- Children of the opposite sex above the age of six will not be required to share the same bedroom.
- Children will not be required to share a bedroom with a parent.
- An unborn child may be considered for the purpose of assigning the bedroom size.



- Larger size units than indicated by these policies may be assigned if the applicant provide documentation that a larger unit is needed for health/medical reasons.

**D. Certificate/Voucher Expirations and Extensions**

The program administrator should establish a deadline for use of the Certificate/Voucher, and describe the circumstances under which extensions will be granted. (Include any other established policies that affect how program participants will be selected.)

**E. Termination of Tenancy and Tenant Moves**

State the tribe's/TDHE's policy with respect to owner termination of tenancy.

State the tribe's/TDHE's policy with respect to tenant evictions. Will the family be permitted to receive assistance in another dwelling, or will a tenant caused eviction also terminate the household's eligibility for assistance?

State the tribe's/TDHE's policy with respect to tenant moves. What kind of notice must the family give? Under what circumstances will the household be eligible for continued assistance?

**II. OUTREACH TO POTENTIAL APPLICANTS**

**A. Demographic Description of Eligible Households**

Provide a brief description of the demographic characteristics of the potentially eligible population.

**B. Least Likely to Apply Households**

Identify which households by reason of age, gender, handicap, familial status, or income source are least likely to apply for assistance.

**C. Outreach Activities**

Describe the outreach steps that will be taken to reach potential applicants, especially those identified as least likely to apply. For example:

- media (newspaper, television, radio, etc.) advertisement, news releases, and public service announcements. (Be sure to include both media serving the population in general, and media sources that support a particular group.)
- public meetings and/or contacts with appropriate community organizations and institutions (e.g., social service providers, churches, community/resident groups, etc.).

**III. OUTREACH TO OWNERS**

**A. Identify Barriers to Landlord Participation**



**B. Outreach Activities**

Describe the outreach steps that will be taken to reach owners of rental property throughout the community. For example:

- media (newspaper, television, radio, etc.) advertisement, news releases and public service announcements. (Be sure to include both media serving the population in general and media sources that support a particular group.)
- public meetings and/or contacts with appropriate community organizations and institutions (e.g., apartment managers associations, chamber of commerce, etc.).
- identify any special outreach planned for owners of units outside of areas with low income concentration.

**IV. COMPLIANCE WITH SECTION 504 ACCESSIBILITY REQUIREMENTS**

Describe how the program administrator will comply with Section 504 requirements including:

- providing information materials in alternative formats (large print, on tape, etc.);
- communicating with hearing impaired applicants; and
- making reasonable accommodations to applicants with handicaps.



## APPENDIX 2

# SAMPLE RENTAL ASSISTANCE APPLICATIONS

[This appendix includes a short form of a sample application that may be used to make a preliminary determination of eligibility to place an applicant on the waiting list. It also includes a sample of a more extensive application to capture current income, asset, and expense information at the time the household's eligibility is formally determined.]

**NOTE:** Tribes/TDHEs should modify documents, as appropriate, to ensure compliance with local policies.



**SAMPLE TBRA APPLICATIONS**

**APPLICATION FOR RENTAL ASSISTANCE  
(Pre Application Version)**

APPLICANT NAME: \_\_\_\_\_  
 Current Address: \_\_\_\_\_  
 City, State, Zip Code: \_\_\_\_\_  
 Home Phone No.: \_\_\_\_\_ Alternate Phone No.: \_\_\_\_\_

**HOUSEHOLD COMPOSITION**

(List the Head of Household and all other members who will be living in the unit. Give the relationship of each family member to the head.)

Member's Full Name	Relationship	Birthdate	Age	Sex	Social Security No.

**Preference Information.**<sup>1</sup> You may qualify for a preference for housing assistance if any of the following circumstances can be verified for your family. Please check any that apply to you.

- Are you currently homeless or living in substandard housing?  
 If yes, please explain: \_\_\_\_\_  
 \_\_\_\_\_
- Have you been (or are you about to be) displaced from your housing? If yes, please explain:  
 \_\_\_\_\_  
 \_\_\_\_\_

What is the total annual income of all household members? (Include wages, salaries and tips; other income such as alimony, child support; and Social Security, AFDC or other benefits) \$\_\_\_\_\_

**APPLICATION CERTIFICATION:** I/we understand that the above information is being collected to determine if I/we are eligible to receive rental assistance. I/we authorize the (Program Administrator) to verify all information provided on this application.

Head of Household Signature _____	Date _____	Spouse Signature _____	Date _____
-----------------------------------	------------	------------------------	------------

\_\_\_\_\_

<sup>1</sup> Note: These are examples only. Insert the appropriate local preferences.



**SAMPLE TBRA APPLICATIONS**  
**APPLICATION FOR RENTAL ASSISTANCE**  
**(Full Application Version)**

APPLICANT NAME: \_\_\_\_\_  
 Current Address: \_\_\_\_\_  
 City, State, Zip Code: \_\_\_\_\_  
 Home Phone No.: \_\_\_\_\_ Alternate Phone No.: \_\_\_\_\_

**HOUSEHOLD COMPOSITION**

(List the Head of Household and all other members who will be living in the unit. Give the relationship of each family member to the head.)

Member's Full Name	Relationship	Birthdate	Age	Sex	Social Security No.

**Preference Information.**<sup>2</sup> You may qualify for a preference for housing assistance if any of the following circumstances can be verified for your family. Please check any that apply to you.

- Are you currently homeless or living in substandard housing?  
 If yes, please explain: \_\_\_\_\_  
 \_\_\_\_\_
- Have you been (or are you about to be) displaced from your housing? If yes, please explain:  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_

<sup>2</sup> Note: These are examples only. Insert the appropriate local preferences.





**Application for Rental Assistance (Page Two)**

**INCOME INFORMATION**

What is the total annual income of all household members? (Include wages, salaries and tips; other income such as alimony, child support; and Social Security, AFDC or other benefits) \$ \_\_\_\_\_

Member's Full Name	Source of Income	Annual Amount	Payment Basis (weekly, monthly, etc.)

**ASSET INFORMATION**

List the type and source of any family assets. Provide both the current cash value and the estimated annual income from the asset.

Member's Full Name	Type and Source of Asset (e.g.bank accounts, investments)	Cash Value of Asset	Annual Income from Asset

**EXPENSE INFORMATION**

- Yes     No    Does your household have unreimbursed medical expenses in excess of 3 percent of annual income?
- Yes     No    Does your household pay child care expenses for children under the age of 13 that enable a family member to work or go to school?
- Yes     No    Does your household pay care expenses for the care of a family member with disabilities that enable a family member to work?

**APPLICATION CERTIFICATION:** I/we understand that the above information is being collected to determine if I/we are eligible to receive rental assistance. I/we authorize the [Program Administrator] to verify all information provided on this application.

Head of Household Signature	Date	Spouse Signature	Date
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## APPENDIX 3

# SAMPLE FORMAT FOR CALCULATING ANNUAL AND ADJUSTED INCOME AND TENANT PAYMENT

**NOTE:** Tribes/TDHEs should modify documents, as appropriate, to ensure compliance with local policies.



**SAMPLE FORMAT FOR CALCULATING ANNUAL AND ADJUSTED INCOME  
AND TENANT PAYMENT USING SECTION 8 DEFINITIONS**

**PART I. SUMMARY OF FAMILY INCOME DATA**

1. Name		2. Identification			
<b>ASSETS</b>					
Family Member	Asset Description		Current Cash Value		Income from Assets
3. Total Net Family Assets			3.		
4. Total Actual Asset Income.....					4.
5. If line 3 is greater than \$5,000, multiply line by ____ (Passbook Rate) and enter result here; otherwise, leave blank.					5.
<b>ANTICIPATED ANNUAL INCOME</b>					
Family Member	a. Wages/ Salaries	b. Benefits/ Pensions	c. Public Assistance	d. Other Income	e. Asset Income
					Enter the greater of lines 4 or 5 from above in e.
6. Totals	a.	b.	c.	d.	e.
7. Enter total of items from 6a. through 6e. This is <i>Annual Income</i> .					7.



**PART II. CALCULATING ADJUSTED INCOME**

8. Annual Income (from line 7).	8.	
9. Number of family members (except head or spouse) under 18, disabled, handicapped, or full time students.	9.	
10. Multiply line 9 by 480.		10.
11. Child care deduction (reasonable expenses for children age 12 and under). [If family has Handicap Assistance Expenses or qualified as an elderly family, proceed to line 12; otherwise, skip to line 20.]		11.
12. Enter Handicap Assistance Expense.	12.	
13. Multiply line 8 by 0.03.	13.	
14. Subtract line 13 from line 12, if negative, enter 0.	14.	
15. Enter amount earned by family member enabled to work as a result of Handicap Assistance Expenses.	15.	
16. Enter the lesser of lines 14 or 15. This is the Handicap Assistance Allowance.		16.
***FILL IN LINES 17 THROUGH 19 FOR ELDERLY FAMILIES ONLY.***		
17. Enter total medical expenses.	17.	
18. Allowable medical expenses:		18.
<input type="checkbox"/> If the household reported no expenses in line 12, enter line 17 minus line 13.		19.
<input type="checkbox"/> If the household reported expenses in line 12, but line 14 is zero, enter line 17 minus (line 13 minus 12).		20.
<input type="checkbox"/> If the household reported expenses in line 12 and line 14 is greater than zero, enter line 17.		21.
19. Enter \$400		
20. Add lines 10, 11, 16, 18, and 19.		
21. Subtract line 20 from line 8. This is Adjusted Income.		



**PART III. TTP CALCULATION AND TRIBAL SUBSIDY  
RENTAL VOUCHER MODEL**

22. Rent Standard	22.	
23. 30% of Monthly Adjusted Income (line 21 • 12) x 0.30.	23.	
24. Maximum Subsidy (line 22 minus line 23).		24.
25. Rent Charged by Owner.*	25.	
26. Utility Allowance if any.	26.	
27. Gross Rent for the Unit (line 25 plus line 26).		27.
28. Gross Rent minus Maximum Subsidy (line 27 minus line 24).		28.
29. 10% of Monthly Gross Income (line 8 • 12) x 0.10.	29.	
30. Total Family Contribution (higher of line 28 or line 29).		30.
31. Gross Rent minus Family Contribution (line 27 minus line 30).	31.	
32. Total Voucher Subsidy (lower of line 24 or line 31).		32.
33. Tribe/TDHE Payment to Owner (lower of line 25 minus line 32).		33.
34. Family Rent to Owner (line 25 minus line 33).		34.
35. Utility Reimbursement if any (line 32 minus line 33).		35.

\* If this is a HUD Section 236 or FmHA Section 515 project, enter the lower of the project's Market Rent or line 22, but never less than the project's Basic Rent.



**PART III. TTP CALCULATION AND TRIBAL SUBSIDY  
RENTAL CERTIFICATE MODEL\***

22. 30% of Monthly Adjusted Income (line 21 • 12) x 0.30).	22.	
23. 10% of Gross Monthly Income (line 8 • 12) x 0.30).	23.	
24. Welfare Rent if applicable.	24.	
25. TOTAL TENANT PAYMENT (greater of lines 22, 23, or 24).		25.
26. Contract Rent to Owner.	26.	
27. Utility Allowance.	27.	
28. Gross Rent (line 26 plus line 27).		28.
29. Tenant Rent (line 25 minus line 27) If line 27 is greater than line 25, enter zero, and enter the <i>difference</i> in line 30.		29.
30. Utility Reimbursement to Tenant (line 27 minus line 25 only if line 27 is greater than line 25).		30.
31. Tribe/TDHE Payment to Owner (line 26 minus line 29).		31.

\* Must be used for calculation of TTP when required for antidisplacement activities.



## APPENDIX 4

# SAMPLE RENTAL ASSISTANCE COUPON

**NOTE:** Tribes/TDHEs should modify documents, as appropriate, to ensure compliance with local policies.





**SAMPLE RENTAL ASSISTANCE COUPON**

<b>TENANT NAME</b>	<b>Unit Size:*</b>	<b>Certificate/Voucher No:</b>
Number of Household Members:		Issued On: Expires On:
* This is the number of bedrooms for which the tenant family qualifies.		

**1. Rental Assistance Program**

This Certificate/Voucher has been issued by [program administrator] to the Tenant identified above who is eligible to participate in the Rental Assistance Program. Under this program, the program administrator makes monthly payments to a Landlord on behalf of an eligible Tenant. The tenant selects a decent, safe and sanitary dwelling unit and the [program administrator] makes payments to the Landlord to help the Tenant to afford the rent.<sup>3</sup>

When the [program administrator] issues this Certificate/Voucher, it fully expects to have money available to provide assistance. However, the [program administrator] is under no obligation to the Tenant or the Landlord or any other party until the [program administrator] has approved the unit and entered into an Agreement with the Landlord and the Tenant.

**2. Key Steps in Using this Certificate/Voucher**

A. The Tenant must select a rental unit within the City/County/other limits of \_\_\_\_\_<sup>4</sup> that meets the program's housing quality standards and has a reasonable rent. When the Tenant finds a suitable unit, the Tenant must give the (program administrator) a "Request for Unit Approval" form, signed by the Landlord and also provide a copy of the Landlord's lease.

(Note: The Tenant has \_\_\_<sup>5</sup> days to use the Certificate/Voucher. If a Request for Unit Approval has not been submitted by the expiration date shown above, the Certificate/Voucher will expire unless the [program administrator] approves an extension.)

B. After the (program administrator) receives the Request for Unit Approval, the [program administrator] will inspect the unit and review the Landlord's lease. If the unit meets the program's standards and the rent for the unit is reasonable, the (program administrator) will notify the Landlord and the Tenant that the unit has been approved.

[Note: If the unit or lease cannot be approved, the (program administrator) will give the Landlord an opportunity to correct the problem, or the Tenant can begin to look for another unit.]

<sup>3</sup> Note: This document assumes payments will go to the landlord.

<sup>4</sup> Note: This paragraph may need to be adjusted depending upon the extent of portability permitted by the tribe.

<sup>5</sup> Note: Enter the number of days permitted before the coupon expires.



### HOME Rental Assistance Certificate/Voucher (Page Two)

- C. The (program administrator) will then work with the Landlord and the Tenant to execute all of the necessary documents as follows:
- The Landlord and the Tenant must sign a (program administrator) approved lease.
  - The Landlord and the (program administrator) must sign a Certificate/Voucher Contract.
  - Once all necessary documents have been signed and the Tenant moves into the unit, payments to the Landlord will begin.

### 3. Security Deposit<sup>6</sup>

The (program administrator) will pay a security deposit to the Landlord consistent with local market practices. When the Tenant moves out, any reimbursement of the deposit that are due from the Landlord under state and local laws will be paid to [the Tenant/the (program administrator)].

### 4. Tenant and (program administrator) Share of the Rent

- A. The portion of the rent payable by the Tenant to the Landlord ("tenant's share") is calculated based upon the Tenant's ability to pay. The Tenant must provide the (program administrator) with information about income, assets and other family circumstances that affect the amount the Tenant will pay. The Tenant's Share may change as a result of changes in income or other family circumstances. The Tenant is also responsible for payment of all utilities not included in the rent.
- B. Each month the program administrator will make a rental payment to the Landlord on behalf of the Tenant. The monthly payment will be equal to the difference between the approved rent the Landlord is charging and the Tenant's share of the rent.

### 5. Requirements for Participating Tenants

The Family must:

- supply information about the family's income, assets, and other family circumstances that affect eligibility and the amount of the Tenant's share, and cooperate fully with annual and interim re examinations;
- allow the (program administrator) to inspect the unit at reasonable times and after giving reasonable notice;
- notify the (program administrator) when any person moves in or out of the unit and before vacating the dwelling unit; and
- use the dwelling unit as the family's principal place of residence and solely as a residence for the family.

The Tenant must not sub lease or assign the lease.

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<sup>6</sup> Note: Amend this paragraph to conform to the tribe's/TDHE's policy.



**HOME Rental Assistance Certificate/Voucher (Page Three)**

**6. Length of Certificate/Voucher Assistance**

Assistance under the Rental Assistance Program is not guaranteed. Assistance may be terminated if:

- at any re examination the Tenant's income is greater than the published income limit for the program;
- the Tenant is evicted from the assisted unit;
- the Tenant provides false information or commits any fraud in connection with the program, or fails to be cooperative with required re examinations; or
- funding for the [program administrator's] Rental Assistance Program is terminated.

The [program administrator] will give the Tenant at least 30 days' notice of termination of assistance.

**7. Equal Housing Opportunity**

If a Tenant has reason to believe that he/she has been discriminated against on the basis of age, race, color, creed, religion, sex, handicap, national origin, or familial status, the Tenant may file a complaint with HUD. HUD has set up a "hot line" to answer questions and take complaints about Fair Housing and Equal Opportunity. The toll free number is (800) 424 8590.

ISSUED BY: [grantee]	
Name:	Signature:
Date:	Telephone:

ACCEPTED BY CERTIFICATE/VOUCHER HOLDER	
Name:	Signature:
Date:	Telephone:



## APPENDIX 5

# SAMPLE FORMAT FOR INFORMATION HANDOUT TO PROGRAM PARTICIPANTS

[This appendix includes two versions of a Sample Information Brochure for TBRA participants. The first summarizes program rules for subsidy option 1 (certificate method); the second summarizes program rules for subsidy option 2 (voucher method). Tribes/TDHEs should adjust the information provided to match their program designs.]

**NOTE:** Tribes/TDHEs should modify documents, as appropriate, to ensure compliance with local policies.



**SAMPLE FORMAT FOR INFORMATION  
HANDOUT TO PROGRAM PARTICIPANTS**

(Subsidy Method Option 1)

Congratulations! You have been selected to participate in the (tribe's) Rental Assistance Program. The following information is provided to help you understand how the program works.

**FINDING A PLACE TO LIVE**

The Rental Assistance Certificate/Voucher that you have received means that you are eligible to receive rental assistance. In order to receive that assistance, you must find a unit that (1) is the right size for your family; (2) is in good condition; and (3) rents for a reasonable amount. The landlord must be willing to sign a Rental Assistance Contract. If the landlord agrees, both you and [program administrator] will pay a portion of the rent and utility costs.

If the unit you are now living in meets these requirements, you may receive rental assistance without moving. If your current unit does not meet these requirements or if you want to move, you can now begin to look for another place to live. Please remember that you must meet your lease obligations to your current owner.

You have been approved for a \_\_\_ bedroom unit. It may be possible for us to approve a smaller unit if this does not result in serious overcrowding of your family, or a larger unit if the rent is not excessive.

**HOW MUCH CAN THE RENT BE FOR THE UNIT I SELECT?**

First, the amount that the owner may charge must be reasonable, based upon its quality, size, condition, and location. An inspector will determine whether the rent is reasonable.

Second, the payment standard for the size unit you have been assigned is: \_\_\_\_\_. The amount the owner charges for rent plus the amount you will have to pay separately for utilities cannot exceed this payment standard. Attached is a utility allowance schedule that will help you figure out how much the utilities may be for the unit you select.

**HOW MUCH WILL I HAVE TO PAY?**

Based upon the information you provided to us, your payment for rent and utilities will be \_\_\_\_\_.

You may also be responsible for security deposits and deposits required to connect utilities. *[Indicate whether or not the tribe/TDHE will provide assistance with these deposits.]*

After the first year of assistance, you will be asked to provide new information about your household's income, and your rent may be adjusted based upon the new information.

**HOW MUCH TIME DO I HAVE TO FIND A UNIT?**

You have up to \_\_\_\_\_ days to find a unit. Please don't wait until the last minute because if the unit you select doesn't pass inspection, you may not have enough time to find another unit. If you are having problems finding a unit, please contact \_\_\_\_\_, and we will try to assist you.



**WHAT SHOULD I DO WHEN I FIND THE UNIT I WANT?**

- (1) Ask the owner to fill out and sign the Request for Unit Approval form that is included in this package. By signing this form, the owner shows he/she is willing to rent the unit to you and to receive rental assistance.
- (2) Return the Request for Unit Approval to:

Our inspectors will schedule an inspection of the unit as soon as possible. If the unit passes the inspection and the rent the owner is charging is found to be reasonable, we will notify both you and the owner. **DO NOT SIGN A LEASE WITH THE LANDLORD BEFORE RECEIVING OUR APPROVAL UNLESS YOU ARE PREPARED TO RENT THE UNIT WITH OR WITHOUT ASSISTANCE.**

If the unit does not pass our inspection, we will give the owner a chance to make repairs or adjust the rent before rejecting the unit.

If you or the owner of a unit you want to rent has questions, please contact:

- Name:
- Address:
- Telephone No.:
- Contact Person:

**FAIR HOUSING**

It is against the law to discriminate in the selection of tenants for rental housing. Owners are permitted to screen applicants to determine if they will be good tenants by checking on such things as how well you have maintained your housing in the past, and whether you pay your rent on time. However, landlords are not permitted to reject applicants on the basis of race, ethnicity, religion, national origin, sex, handicap, or familial status. If you believe that you have been discriminated against, you may file a complaint by contacting \_\_\_\_\_ or \_\_\_\_\_.



## Subsidy Method Option 2

Congratulations! You have been selected to participate in the (tribe's) Rental Assistance Program. The following information is provided to help you understand how the program works.

### FINDING A PLACE TO LIVE

The Rental Assistance Certificate/Voucher that you have received means that you are eligible to receive rental assistance. In order to receive that assistance you must find a unit that (1) is the right size for your family; (2) is in good condition; and (3) rents for a reasonable amount. The owner must be willing to sign a rental assistance contract. If the owner agrees, both you and [program administrator] will pay a portion of the rent and utility costs.

If the unit you are now living in meets these requirements you may receive rental assistance without moving. If your current unit does not meet these requirements or if you want to move, you can now begin to look for another place to live. Please remember that you must meet your lease obligations to your current owner.

You have been approved for a \_\_\_ bedroom unit. You may select a larger unit but, in this case, you will have to pay a larger share of the rent. It may be possible for us to approve a smaller unit if this does not result in serious overcrowding of your family.

### HOW MUCH CAN THE RENT BE FOR THE UNIT I SELECT?

The amount that the owner may charge must be reasonable based upon its quality, size, condition, and location. An Inspector will determine whether the rent is reasonable.

### HOW MUCH WILL I HAVE TO PAY?

The exact amount you must pay will depend upon the cost of the housing you select. These three numbers and the discussion which follows will help you understand how much rent you are likely to pay.

\$\_\_\_\_\_ This is the Payment Standard for the unit size for which you are eligible.

\$\_\_\_\_\_ This is 30 percent of your monthly adjusted income, based upon the income and other household information that you provided.

\$\_\_\_\_\_ The maximum amount the tribe/TDHE can pay.

If the rent and utilities for the unit you select equal the payment standard, you will have to pay 30 percent of your adjusted income. If the rent and utilities for the unit you select are less than the payment standard, you will pay less than 30 percent of your adjusted income. However, your share of the rent can never be less than \$\_\_\_\_\_.

You may also be responsible for security deposits and deposits required to connect utilities. *[Indicate whether or not the agency will provide assistance with these deposits.]*

After the first year of assistance, you will be asked to provide new information about your household's income, and your rent may be adjusted based upon the new information.

### HOW MUCH TIME DO I HAVE TO FIND A UNIT?

You have up to \_\_\_ days to find a unit. Please don't wait until the last minute because if the unit you select doesn't pass inspection, you may not have enough time to find another unit. If you are having problems finding a unit, please contact \_\_\_\_\_, and we will try to assist you.



**WHAT SHOULD I DO WHEN I FIND THE UNIT I WANT?**

- (1) Ask the owner to fill out and sign the Request for Unit Approval form that is included in this package. By signing this form, the owner shows he/she is willing to rent the unit to you and to receive rental assistance.
- (2) Return the Request for Unit Approval to:

Our inspectors will schedule an inspection of the unit as soon as possible. If the unit passes the inspection and the rent the owner is charging is found to be reasonable, we will notify both you and the owner. **DO NOT SIGN A LEASE WITH THE LANDLORD BEFORE RECEIVING OUR APPROVAL UNLESS YOU ARE PREPARED TO RENT THE UNIT WITH OR WITHOUT ASSISTANCE.**

If the unit does not pass our inspection, we will give the owner a chance to make repairs or adjust the rent before rejecting the unit.

If you or the owner of a unit you want to rent has questions, please contact:

- Name:
- Address:
- Telephone No.:
- Contact Person:

**FAIR HOUSING**

It is against the law to discriminate in the selection of tenants for rental housing. Owners are permitted to screen applicants to determine if they will be good tenants by checking on such things as how well you have maintained your housing in the past, and whether you pay your rent on time. However, landlords are not permitted to reject applicants on the basis of race, ethnicity, religion, national origin, sex, handicap, or familial status. If you believe that you have been discriminated against, you may file a complaint by contacting \_\_\_\_\_ or \_\_\_\_\_.





## APPENDIX 6

### SAMPLE REQUEST FOR UNIT APPROVAL

**NOTE:** Tribes/TDHEs should modify documents, as appropriate, to ensure compliance with local policies.



**RENTAL ASSISTANCE PROGRAM**  
**SAMPLE REQUEST FOR UNIT APPROVAL**

TENANT NAME & APPLICATION NO.	LANDLORD NAME	NO. OF BEDROOMS
UNIT NO. & ADDRESS	LANDLORD'S ADDRESS Telephone No. _____	

**INSTRUCTIONS:**

This form should be completed by the Tenant and the Landlord to request the (program administrator's) approval of the unit for which the Tenant has elected to receive rental assistance.

**Landlord:** Please read the sample Lease Addendum and information about minimum housing standards provided in the Tenant's Rental Packet. After the Tenant submits this request to the (program administrator), a staff member will contact you to arrange for an inspection. The (program administrator) is not responsible for any part of the rent prior to unit approval and execution of the Certificate/Voucher Contract. Please attach a copy of your proposed lease to this form.

**Tenant:** With the Landlord, fill out this form completely and return it to: \_\_\_\_\_.

Do not sign a lease until the (program administrator) has inspected and approved the unit.

- (1) Type of Unit:     Single Family     Semi detached/Row House     Garden/Walk up  
                           Elevator/High Rise     Mobile Home    Date Constructed: \_\_\_\_\_

- (2) Most recent rent charged: \_\_\_\_\_  
 Were the same utilities/appliances included in the rent:     Yes     No

(3) Utility and Appliances	Provided by Owner	Provided by Tenant
Heating (fuel type: _____)	<input type="checkbox"/>	<input type="checkbox"/>
Cooking (fuel type: _____)	<input type="checkbox"/>	<input type="checkbox"/>
Electric	<input type="checkbox"/>	<input type="checkbox"/>
Hot Water (fuel type: _____)	<input type="checkbox"/>	<input type="checkbox"/>
Water	<input type="checkbox"/>	<input type="checkbox"/>
Refrigerator	<input type="checkbox"/>	<input type="checkbox"/>
Range	<input type="checkbox"/>	<input type="checkbox"/>
Trash Collection	<input type="checkbox"/>	<input type="checkbox"/>



OWNER CERTIFICATION: By executing this request, the owner agrees that the required Lease Addendum is acceptable and certifies that: (1) the information provided on the form is accurate and true; (2) the proposed unit is not assisted or covered by any other federally funded rental subsidy contract; (3) the unit currently meets minimum quality standards (or will be brought to these standards before the Rental Assistance Contract is executed; and (4) this unit is made available, managed, and operated regardless of race, color, creed, religion, sex, national origin, handicap, or familial status.

Tenant Name (Type or Print):	Landlord Name (Type of Print):
(Signature/Date)	(Signature/Date)



# APPENDIX 7

## SAMPLE HOUSING QUALITY STANDARD (HQS) INSPECTION FORM

**NOTE:** Tribes/TDHEs should modify documents, as appropriate, to ensure compliance with local policies.



**HOUSING QUALITY STANDARD (HQS) INSPECTION FORM**

**A. GENERAL INFORMATION**

Date of Inspection: \_\_\_\_\_  
 Address of Inspected Unit: Street: \_\_\_\_\_  
 City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Name of Family: \_\_\_\_\_  
 Current Address of Family: Street: \_\_\_\_\_  
 City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Current Telephone of Family: \_\_\_\_\_

**B. HOW TO FILL OUT THIS CHECKLIST**

Proceed through the inspection as follows:

Area	Checklist Category
<input type="checkbox"/> Room by room	(1) Living Room, (2) Kitchen, (3) Bathroom, (4) All Other Rooms Used for Living, (5) All Secondary Rooms Not Used for Living
<input type="checkbox"/> Basement or utility room	6. Heating and Plumbing
<input type="checkbox"/> Outside	7. Building Exterior
<input type="checkbox"/> Overall	8. General Health and Safety

- Each part of the checklist will be accompanied by an explanation of the item to be inspected.
- Important: For each item numbered on the checklist, check one box only (e.g., check one box only for item 1.4 "Security," in the Living Room).
- In the space to the right of the description of the item, if the decision on the item is "Fail" write what repairs are necessary.
- Also, if "Pass" but there are additional code items or items not consistent with rehab standards or area codes, write these in the space to the right.



**1. LIVING ROOM**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
1.1	<b>LIVING ROOM PRESENT</b> Is there a living room?			
1.2	<b>ELECTRICITY</b> Are there at least two working outlets or one working outlet and one working light fixture?			
1.3	<b>ELECTRICAL HAZARDS</b> Is the room free from electrical hazards?			
1.4	<b>SECURITY</b> Are all windows and doors that are accessible from the outside lockable?			
1.5	<b>WINDOW CONDITION</b> Is there at least one window, and are all windows free of signs of severe deterioration or missing or broken out panes?			
1.6	<b>CEILING CONDITION</b> Is the ceiling sound and free from hazardous defects?			
1.7	<b>WALL CONDITION</b> Are the walls sound and free from hazardous defects?			
1.8	<b>FLOOR CONDITION</b> Is the floor sound and free from hazardous defects?			
1.9	<b>LEAD PAINT</b> Are all interior surfaces either <i>free</i> of cracking, scaling, peeling, chipping, and loose paint or <i>adequately treated and covered</i> to prevent exposure of the occupants to lead based paint hazards?			
1.10	<b>WEATHER STRIPPING</b> Is weather stripping present and in good condition on all windows and exterior doors?			
1.11	<b>OTHER</b>			
1.12	<b>OTHER</b>			

Notes: (Give Item #)



**2. KITCHEN**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
2.1	<b>KITCHEN AREA PRESENT</b> Is there a kitchen?			
2.2	<b>ELECTRICITY</b> Is there at least <i>one</i> working electric outlet and <i>one</i> working, permanently installed light fixture?			
2.3	<b>ELECTRICAL HAZARDS</b> Is the kitchen free from electrical hazards?			
2.4	<b>SECURITY</b> Are <i>all</i> windows and doors that are accessible from the outside lockable?			
2.5	<b>WINDOW CONDITION</b> Are all windows free of signs of deterioration or missing or broken out panes?			
2.6	<b>CEILING CONDITION</b> Is the ceiling sound and free from hazardous defects?			
2.7	<b>WALL CONDITION</b> Are the walls sound and free from hazardous defects?			
2.8	<b>FLOOR CONDITION</b> Is the floor sound and free from hazardous defects?			
2.9	<b>LEAD PAINT</b> Are all interior surfaces either <i>free</i> of cracking, scaling, peeling, chipping, and loose paint or <i>adequately treated and covered</i> to prevent exposure of the occupants to lead based paint hazards?			
2.10	<b>STOVE OR RANGE WITH OVEN</b> Is there a working oven and a stove (or range) with top burners that work?			
2.11	<b>REFRIGERATOR</b> Is there a refrigerator that works and maintains a temperature low enough so that food does not spoil over a reasonable period of time?			
2.12	<b>SINK</b> Is there a kitchen sink that works with hot and cold running water?			



**2. KITCHEN**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
2.13	<b>SPACE FOR STORAGE AND PREPARATION OF FOOD</b> Is there space to store and prepare food?			
2.14	<b>WEATHER STRIPPING</b> Is weather stripping present and in good condition on all windows and exterior doors?			
2.15	<b>OTHER</b>			
2.16	<b>OTHER</b>			

Notes: (Give Item #)





**3. BATHROOM**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
3.1	<b>BATHROOM PRESENT</b> Is there a bathroom that includes a working toilet, sink and tub or shower?			
3.2	<b>ELECTRICITY</b> Is there at least <i>one</i> permanently installed light fixture?			
3.3	<b>ELECTRICAL HAZARDS</b> Is the bathroom free from electrical hazards?			
3.4	<b>SECURITY</b> Are <i>all</i> windows and doors that are accessible from the outside lockable?			
3.5	<b>WINDOW CONDITION</b> Are all windows free of signs of deterioration or missing or broken out panes?			
3.6	<b>CEILING CONDITION</b> Is the ceiling sound and free from hazardous defects?			
3.7	<b>WALL CONDITION</b> Are the walls sound and free from hazardous defects?			
3.8	<b>FLOOR CONDITION</b> Is the floor sound and free from hazardous defects?			
3.9	<b>LEAD PAINT</b> Are all interior surfaces either <i>free</i> of cracking, scaling, peeling, chipping, and loose paint, or <i>adequately treated and covered</i> to prevent exposure of the occupants to lead based paint hazards?			
3.10	<b>FLUSH TOILET IN ENCLOSED ROOM IN UNIT</b> Is there a working toilet in the unit for exclusive private use of the tenant?			
3.11	<b>FIXED WASH BASIN OR LAVATORY IN UNIT</b> Is there a working, permanently installed wash basin with hot and cold running water in the unit?			



**3. BATHROOM**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
3.12	<b>TUB OR SHOWER IN UNIT</b> Is there a working tub or shower with hot and cold running water in the unit?			
3.13	<b>VENTILATION</b> Are there operable windows or a working vent system?			
3.14	<b>WEATHER STRIPPING</b> Is weather stripping present and in good condition on all windows and exterior doors?			
3.15	<b>OTHER</b>			
3.16	<b>OTHER</b>			

Notes: (Give Item #)



**4. OTHER ROOMS USED FOR LIVING AND HALLS**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
4.1	<b>ROOM CODE and ROOM LOCATION:</b> right/left _____ front/rear _____ floor level _____	• ROOM CODES 1 = Bedroom or any other room used for sleeping (regardless of type of room) 2 = Dining Room, or Dining Area 3 = Second Living Room, Family Room, Den, Playroom, TV Room 4 = Entrance Halls, Corridors, Halls, Staircases 5 = Additional Bathroom 6 = Other		
Item #	Description	Yes, PASS	No, FAIL	Repairs Required
4.2	<b>ELECTRICITY</b> If Room Code = 1, are there at least two working outlets or one working outlet and one working, permanently installed light fixture? If Room Code does not = 1, is there a means of illumination?			
4.3	<b>ELECTRICAL HAZARDS</b> Is the room free from electrical hazards?			
4.4	<b>SECURITY</b> Are <i>all</i> windows and doors that are accessible from the outside lockable?			
4.5	<b>WINDOW CONDITION</b> If Room Code = 1, is there at least one window? And, regardless of Room Code, are all windows free of signs of severe deterioration or missing or broken out panes?			
4.6	<b>CEILING CONDITION</b> Is the ceiling sound and free from hazardous defects?			
4.7	<b>WALL CONDITION</b> Are the walls sound and free from hazardous defects?			
4.8	<b>FLOOR CONDITION</b> Is the floor sound and free from hazardous defects?			



**4. OTHER ROOMS USED FOR LIVING AND HALLS**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
4.9	<b>LEAD PAINT</b> Are all interior surfaces either <i>free</i> of cracking, scaling, peeling, chipping, and loose paint, or <i>adequately treated and covered</i> to prevent exposure of the occupants to lead based paint hazards?			
4.10	<b>WEATHERSTRIPPING</b> Is weather stripping present and in good condition on all windows and exterior doors?			
4.11	<b>OTHER</b>			
4.12	<b>OTHER</b>			

Notes: (Give Item #)



5. ALL SECONDARY ROOMS (Rooms not used for living)

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
5.1	<b>NONE • GO TO PART 6</b>			
5.2	<b>SECURITY</b> Are all windows and doors that are accessible from the outside lockable in each room?			
5.3	<b>ELECTRICAL HAZARDS</b> Are all these rooms free from electrical hazards?			
5.4	<b>OTHER POTENTIALLY HAZARDOUS FEATURES IN ANY OF THESE ROOMS</b> Are all of these rooms free of any other potentially hazardous features? For each room with an "other potentially hazardous feature" explain hazard and means of control of interior access to room.			
5.5	<b>OTHER</b>			
5.6	<b>OTHER</b>			

Notes: (Give Item #)



**6. BUILDING EXTERIOR**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
6.1	<b>CONDITION OF FOUNDATION</b> Is the foundation sound and free from hazards?			
6.2	<b>CONDITION OF STAIRS, RAILS, AND PORCHES</b> Are all the exterior stairs, rails and porches sound and free from hazards?			
6.3	<b>CONDITION OF ROOF AND GUTTERS</b> Are the roof, gutters and downspouts sound and free from hazards?			
6.4	<b>CONDITION OF EXTERIOR SURFACES</b> Are exterior surfaces sound and free from hazards?			
6.5	<b>CONDITION OF CHIMNEY</b> Is the chimney sound and free from hazards?			
6.6	<b>LEAD PAINT: EXTERIOR SURFACES</b> Are all exterior surfaces which are accessible to children under seven years of age <i>free</i> of cracking, scaling, peeling, chipping, and loose paint, or <i>adequately treated or covered</i> to prevent exposure of such children to lead based paint hazards?			
6.7	<b>MOBILE HOMES: TIE DOWNS</b> If the unit is a mobile home, it is properly placed and tied down? If not a mobile home, check "Not Applicable."			
6.8	<b>MOBILE HOMES: SMOKE DETECTORS</b> If unit is a mobile home, does it have at least one smoke detector in working condition? If not a mobile home, check "Not Applicable."			
6.9	<b>CAULKING</b> Are all fixed joints including frames around doors and windows, areas around all holes for pipes, ducts, water faucets or electric conduits, and other areas, which may allow unwanted air flow appropriately caulked.			
6.10	<b>OTHER</b>			
6.11	<b>OTHER</b>			

Notes: (Give Item #)





**7. HEATING, PLUMBING AND INSULATION**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
7.1	<b>ADEQUACY OF HEATING EQUIPMENT</b> a. Is the heating equipment capable of providing adequate heat (either directly or indirectly) to all rooms used for living? b. Is the heating equipment oversized by more than 15%? c. Are pipes and ducts located in unconditioned space insulated?			
7.2	<b>SAFETY OF HEATING EQUIPMENT</b> Is the unit free from unvented fuel burning space heaters, or any other types of unsafe heating conditions?			
7.3	<b>VENTILATION AND ADEQUACY OF COOLING</b> Does this unit have adequate ventilation and cooling by means of operable windows or a working cooling system?			
7.4	<b>HOT WATER HEATER</b> Is hot water heater located, equipped, and installed in a safe manner?			
7.5	<b>WATER SUPPLY</b> Is the unit served by an approvable public or private sanitary water supply?			
7.6	<b>PLUMBING</b> Is plumbing free from major leaks or corrosion that causes serious and persistent levels of rust or contamination of the drinking water?			
7.7	<b>SEWER CONNECTION</b> Is plumbing connected to an approvable public or private disposal system, and is it free from sewer back up?			
7.8	<b>INSULATION</b> Are the attic and walls appropriately insulated for regional conditions?			
7.9	<b>OTHER</b>			
7.10	<b>OTHER</b>			

Notes: (Give Item #)



**8. GENERAL HEALTH AND SAFETY**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
8.1	<b>ACCESS TO UNIT</b> Can the unit be entered without having to go through another unit?			
8.2	<b>EXITS</b> Is there an acceptable fire exit from this building that is not blocked?			
8.3	<b>EVIDENCE OF INFESTATION</b> Is the unit free from rats or severe infestation by mice or vermin?			
8.4	<b>GARBAGE AND DEBRIS</b> Is the unit free from heavy accumulation of garbage or debris inside and outside?			
8.5	<b>REFUSE DISPOSAL</b> Are there adequate covered facilities for temporary storage and disposal of food wastes, and are they approved by a local agency?			
8.6	<b>INTERIOR STAIRS AND COMMON HALLS</b> Are interior stairs and common halls free from hazards to the occupant because of loose, broken or missing steps on stairways, absent or insecure railings; inadequate lighting, or other hazards?			
8.7	<b>OTHER INTERIOR HAZARDS</b> Is the interior of the unit free from any other hazards not specifically identified previously?			
8.8	<b>ELEVATORS</b> Where local practice requires, do all elevators have a current inspection certificate? If local practice does not require this, are they working and safe?			
8.9	<b>INTERIOR AIR QUALITY</b> Is the unit free from abnormally high levels of air pollution from vehicular exhaust, sewer gas, fuel gas, dust, or other pollutants?			





**8. GENERAL HEALTH AND SAFETY**

For each item numbered, check one box only.

Item #	Description	DECISION		Repairs Required
		Yes, PASS	No, FAIL	
8.10	<b>SITE AND NEIGHBORHOOD CONDITIONS</b> Are the site and immediate neighborhood free from conditions, which would seriously and continuously endanger the health or safety of the residents?			
8.11	<b>LEAD PAINT: OWNER CERTIFICATION</b> If the owner of the unit is required to treat or cover any interior or exterior surfaces, has the certification of compliance been obtained? If the owner was not required to treat surfaces, check "Not Applicable."			
8.12	<b>OTHER</b>			
8.13	<b>OTHER</b>			

Notes: (Give Item #)



# APPENDIX 8

## SAMPLE

### RENT REASONABLENESS CHECKLIST/CERTIFICATION

**NOTE:** Tribes/TDHEs should modify documents, as appropriate, to ensure compliance with local policies.



RENT REASONABLENESS CHECKLIST AND CERTIFICATION

	Proposed Unit	Unit #1	Unit #2	Unit #3
Address				
Number of Bedrooms				
Square Feet				
Type of Unit/Construction				
Housing Condition				
Location/Accessibility				
Amenities Unit: Site: Neighborhood:				
Age in Years				
Utilities (type)				
Unit Rent Utility Allowance Gross Rent				
Handicap Accessible?				

CERTIFICATION:

A. Compliance with Payment Standard

$$\text{Proposed Contract Rent} + \text{Utility Allowance} = \text{Proposed Gross Rent}$$

Approved rent does not exceed applicable Payment Standard of \$\_\_\_\_\_.

B. Rent Reasonableness

Based upon a comparison with rents for comparable units, I have determined that the proposed rent for the unit [ ] is [ ] is not reasonable.

Name:	Signature:	Date:
-------	------------	-------



## APPENDIX 9

# SAMPLE RENTAL ASSISTANCE LEASE ADDENDUM

**NOTE:** Tribes/TDHEs should modify documents, as appropriate, to ensure compliance with local policies.



### NOTES ON SAMPLE LEASE ADDENDUM

This Sample Lease Addendum should be reviewed carefully for consistency with the (tribe's/TDHE's) design and also reviewed by legal counsel for consistency with state and local laws.

- This Lease assumes that the tribe/TDHE will make the rental payment directly to the Landlord. (See alternate sample language below for a lease when the (tribe/TDHE) will make payments to the Tenant.)
- Paragraph E must be edited based upon three (tribe/TDHE) policy decisions:
  1. Does the (tribe) intend to pay for security deposits from NAHASDA funds? If not, paragraph E can be eliminated. The Landlord and Tenant can negotiate security deposit amounts and reimbursements based upon state/local laws and market practices.
  2. If the (tribe/TDHE) makes security deposit payments will the payment be directly to the Landlord or to the Tenant? Paragraph E currently shows this as a choice: [Tenant/(tribe/TDHE)].
  3. If a security deposit refund is due, will the (tribe/TDHE) permit the Tenant to keep the refund, or must the owner repay any balance of the deposit to the (tribe/TDHE)? Paragraph E also shows this as a choice.
- Paragraph J must be edited based upon the tribe's/TDHE's policy regarding termination of tenancy.

#### Alternate Language When Payment Goes Directly to Tenant

**A. Purpose of the Addendum.** The lease for the above referenced unit is being amended to include the provisions of this addendum because the Tenant has been approved to receive rental assistance under the (tribe's/TDHE's) Rental Assistance Program. Under the Rental Assistance Program, the (tribe/TDHE) will make monthly payments to the Tenant to enable the Tenant to afford the Rent.

The Lease has been signed by the parties on the condition that the (tribe/TDHE) will send written confirmation to the Landlord of the Tenant's eligibility to receive rental assistance in the above referenced unit. This Lease shall not become effective unless the Landlord and Tenant receive an "Authorization to Enter into Lease" from the tribe/TDHE, effective the first day of the term of this Lease.

**B. Rental Assistance Payment.** Each month the (tribe/TDHE) will make a rental assistance payment to the Tenant. The Tenant is responsible for payment in full of the rent to the Landlord. Should the Tenant fail to pay rent as required by this Lease, the Landlord may take appropriate legal action in accordance with state and local laws.



LEASE ADDENDUM

TENANT	LANDLORD	UNIT NO. & ADDRESS
--------	----------	--------------------

This lease addendum adds the following paragraphs to the Lease between the Tenant and Landlord referred to above.

**A. Purpose of the Addendum.** The lease for the above referenced unit is being amended to include the provisions of this addendum because the Tenant has been approved to receive rental assistance under the (program administrator's) Rental Assistance Program. Under the Rental Assistance Program, the (program administrator) will make monthly payments to the Landlord on behalf of the Tenant.

The Lease has been signed by the parties on the condition that the (program administrator) and Landlord will promptly execute a Rental Assistance Contract. This Lease shall not become effective unless the Contract has been executed by both the Landlord and the (program administrator), effective the first day of the term of the Lease.

**B. Conflict with Other Provisions of the Lease.** In case of any conflict between the provisions of this Addendum and other sections of the Lease, the provisions of this Addendum shall prevail.

**C. Terms of the Lease.** The term shall begin on \_\_\_\_\_ and shall continue until: (1) the Lease is terminated by the Landlord in accordance with applicable state and local Tenant/Landlord laws; (2) the Lease is terminated by the Tenant in accordance with the Lease or by mutual agreement during the term of the Lease; or (3) termination of the Rental Assistance Program Contract by the (program administrator).

**D. Rental Assistance Payment.** Each month the (program administrator) will make a rental assistance payment to the Landlord on behalf of the Tenant. This payment shall be credited by the Landlord toward the monthly rent payable by the Tenant. The balance of the monthly rent shall be paid by the Tenant.

**E. Security Deposit**

(1) The [Tenant/(program administrator)] has deposited \$\_\_\_\_\_ with the Landlord as a Security Deposit. The Landlord will hold this security deposit during the period the Tenant occupies the dwelling unit under the Lease. The Landlord shall comply with state and local laws regarding interest payments on security deposits.

(2) After the Tenant has moved from the dwelling unit, the Landlord may, subject to state and local laws, use the security deposit, including any interest on the deposit, as reimbursement for rent or any other amounts payable by the tenant under the Lease. The Landlord will give the Tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used as reimbursement to the Landlord, the Landlord shall promptly refund the full amount of the balance to the [Tenant/(program administrator)].



F. **Utilities and Appliances.** The utilities and appliances listed in Column 1 are provided by the Landlord and included in the rent. The utilities and appliances listed in Column 2 below are not included in the rent and are paid separately by the Tenant.

UTILITY/APPLIANCE	Included in Rent	Tenant Paid
Garbage Collection		
Water/Sewer		
Heating Fuel (specify)		
Lights, electric		
Cooking Fuel (specify)		
Other (specify)		
Refrigerator		
Stove/Range		

G. **Household Members.** Household members authorized to live in this unit are listed below. The Tenant may not permit other persons to join the Household without notifying the (program administrator) and obtaining the Landlord's permission. Household members:

H. **Housing Quality Standards.** The Landlord shall maintain the dwelling unit, common areas, equipment, facilities and appliances in decent, safe, and sanitary condition (as determined by (tribe's/TDHE) minimum unit standards).

I. **Termination of Tenancy.** The Landlord may evict the Tenant following applicable state and local laws. The landlord must provide the Tenant with at least 30 days' written notice of the termination. The Landlord must notify the (program administrator) in writing when eviction proceedings are begun. This may be done by providing the (program administrator) with a copy of the required notice to the Tenant.

J. **Prohibited Lease Provision.** Any provision of the Lease that falls within the classifications below shall not apply and not be enforced by the Landlord.

(1) *Confession of Judgment.* Consent by the Tenant to be sued, to admit guilt, or to a judgment in favor of the landlord in a lawsuit brought in connection with the Lease.

(2) *Treatment of Property.* Agreement by the Tenant that the Landlord may take or hold the Tenant's property, or may sell such property without notice to the Tenant and a court decision on the rights of the parties.



- (3) *Excusing the Landlord from Responsibility.* Agreement by the Tenant not to hold the Landlord or Landlord's agent legally responsible for any action or failure to act, whether intentional or negligent.
- (4) *Waiver of Legal Notice.* Agreement by the Tenant that the Landlord may institute a lawsuit without notice to the Tenant.
- (5) *Waiver of Court Proceedings for Eviction.* Agreement by the Tenant that the Landlord may evict the Tenant Family (i) without instituting civil court proceedings in which the Family has the opportunity to present a defense, or (ii) before a decision by the court on the rights of the parties.
- (6) *Waiver of Jury Trial.* Authorization to the Landlord to waive the Tenant's right to a trial by jury.
- (7) *Waiver of Right to Appeal Court Decision.* Authorization to the Landlord to waive the Tenant's right to appeal a court decision or waive the Tenant's right to sue to prevent a judgment from being put into effect.
- (8) *Tenant Chargeable with Cost of Legal Actions Regardless of Outcome of the Lawsuit.* Agreement by the Tenant to pay lawyer's fees or other legal costs whenever the Landlord decides to sue, whether or not the Tenant wins.

**K. Nondiscrimination.** The Landlord shall not discriminate against the Tenant in the provision of services, or in any other manner, on the grounds of age, race, color, creed, religion, sex, handicap, national origin, or familial status.

TENANT SIGNATURES	LANDLORD SIGNATURES
By: (Type or Print Name of Tenant Representative)	LANDLORD NAME:
(Signature/Date)	By: (Type or Print Name of Landlord Representative)
By: (Type or Print Name of Tenant Representative)	(Signature/Date)
(Signature/Date)	





# APPENDIX 10

## SAMPLE RENTAL ASSISTANCE CONTRACT

**NOTE:** Tribes/TDHEs should modify documents, as appropriate, to ensure compliance with local policies.



**RENTAL ASSISTANCE CONTRACT**

LANDLORD NAME & ADDRESS  Telephone No. _____	UNIT NO. & ADDRESS	TENANT NAME
--	--------------------	-------------

This Rental Assistance Contract ("Contract") is entered into between the "(program administrator)" and the Landlord identified above. This Contract applies only to the Tenant family and the dwelling unit identified above.

**1. TERM OF THE CONTRACT**

The term of this Contract shall begin on \_\_\_\_\_<sup>7</sup> and end no later than \_\_\_\_\_<sup>8</sup>. The Contract automatically terminates on the last day of the term of the Lease.

**2. SECURITY DEPOSIT<sup>9</sup>**

- A. The (program administrator) will pay a security deposit to the Landlord in the amount of \$\_\_\_\_\_. The Landlord will hold this security deposit during the period the Tenant occupies the dwelling unit under the Lease. The Landlord shall comply with state and local laws regarding interest payments on security deposits.
- B. After the Tenant has moved from the dwelling unit, the Landlord may, subject to state and local law, use the security deposit, including any interest on the deposit, as reimbursement for rent or any other amounts payable by the Tenant under the Lease. The Landlord will give the Tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used as reimbursement to the Landlord, the Landlord shall promptly refund the full amount of the balance to the [Tenant/program administrator].
- C. The Landlord shall immediately notify the (program administrator) when the Tenant has moved from the Contract unit.

**3. RENT AND AMOUNTS PAYABLE BY TENANT AND (PROGRAM ADMINISTRATOR)**

- A. *Initial Rent.* The initial total monthly rent payable to the Landlord for the first twelve months of this Contract is \$\_\_\_\_\_.

\_\_\_\_\_

<sup>7</sup> Insert the first day of the term of the Lease.

<sup>8</sup> The maximum allowable length of a Coupon Contract \_\_\_ years.

<sup>9</sup> Modify the paragraph based on tribe/TDHE policy.



**Rental Assistance Contract (Page Two)**

- B. *Rent Adjustments.* With no less than \_\_\_<sup>10</sup> days' notice to the Tenant and the (program administrator), the owner may propose a reasonable adjustment to be effective no earlier than the 13th month of this Contract. The proposed rent may be rejected by either the Tenant or the (program administrator). The Tenant may reject the proposed rent by providing the Landlord with 30 days' written notice of intent to vacate. If the program administrator rejects the proposed rent, the program administrator must give both the Tenant and the Landlord 30 days' notice of intent to terminate the Contract.
- C. *Tenant Share of the Rent.* Initially, and until such time as both the Landlord and the Tenant are notified by the (program administrator), the Tenant's share of the rent shall be \$\_\_\_\_\_.
- D. *Program Administrator Share of the Rent.* Initially, and until such time as both the Landlord and Tenant are notified by the (program administrator), the (program administrator's) share of the rent shall be \$\_\_\_\_\_. Neither the (program administrator) nor HUD assumes any obligation for the Tenant's rent, or for payment of any claim by the Owner against the Tenant. The (program administrator's) obligation is limited to making rental payments on behalf of the Tenant in accordance with this Contract.
- E. *Payment Conditions.* The right of the owner to receive payments under this Contract shall be subject to compliance with all of the provisions of the Contract. The Landlord shall be paid under this Contract on or about the first day of the month for which the payment is due. The Landlord agrees that the endorsement on the check shall be conclusive evidence that the Landlord received the full amount due for the month, and shall be a certification that:
  - 1. the Contract unit is in decent, safe and sanitary condition, and that the Landlord is providing the services, maintenance and utilities agreed to in the Lease.
  - 2. the Contract unit is leased to and occupied by the Tenant named above in this Contract.
  - 3. the Landlord has not received and will not receive any payments as rent for the Contract unit other than those identified in this Contract.
  - 4. to the best of the Landlord's knowledge, the unit is used solely as the Tenant's principal place of residence.
- F. *Overpayments.* If the (program administrator) determines that the Landlord is not entitled to any payments received, in addition to other remedies, the (program administrator) may deduct the amount of the overpayment from any amounts due the Landlord, including the amounts due under any other Rental Assistance Certificate/Voucher Contract.

**4. MINIMUM UNIT QUALITY STANDARDS AND LANDLORD PROVIDED SERVICES**

- A. The Landlord agrees to maintain and operate the Contract unit and related facilities to provide decent, safe and sanitary housing in accordance with (tribe's/TDHE's) written requirements, including all of the services, maintenance and utilities agreed to in the Lease.

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<sup>10</sup> Insert the number of days' notice the owner must provide of a rent increase. At least 60 days is recommended to enable the program administrator 30 days to review the rent and still enable the landlord to give the tenant 30 days notice.



### Rental Assistance Contract (Page Three)

- B. The (program administrator) shall have the right to inspect the Contract unit and related facilities at least annually, and at such other times as may be necessary to assure that the unit is in decent, safe, and sanitary condition, and that required maintenance, services and utilities are provided.
- C. If the (program administrator) determines that the Landlord is not meeting these obligations, the program administrator shall have the right, even if the Tenant continues in occupancy, to terminate payment of the (program administrator's) share of the rent and/or terminate the Contract.

### 5. TERMINATION OF TENANCY

The Landlord may evict the Tenant following applicable state and local laws. The Landlord must give the Tenant at least 30 days' written notice of the termination and notify the (program administrator) in writing when eviction proceedings are begun. This may be done by providing the (program administrator) with a copy of the required notice to the tenant.

### 6. FAIR HOUSING REQUIREMENTS

- A. *Nondiscrimination.* The Landlord shall not, in the provision of services or in any other manner, discriminate against any person on the grounds of age, race, color, creed, religion, sex, handicap, national origin, or familial status. The obligation of the Landlord to comply with Fair Housing Requirements insures to the benefit of the United States of America, the Department of Housing and Urban Development, and the (program administrator), any of which shall be entitled to involve any of the remedies available by law to redress any breach or to compel compliance by the Landlord.
- B. *Cooperation in Quality Opportunity Compliance Reviews.* The Landlord shall comply with the (program administrator) and with HUD in conducting compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders and all related rules and regulations.

### 7. (PROGRAM ADMINISTRATOR) AND HUD ACCESS TO LANDLORD RECORDS

- A. The Landlord shall provide any information pertinent to this Contract which the (program administrator) or HUD may reasonably require.
- B. The Landlord shall permit the (program administrator) of HUD, or any of their authorized representatives, to have access to the premises and, for the purposes of audit and examination, to have access to any books, documents, papers, and records of the Landlord to the extent necessary to determine compliance with this Contract.

### 8. RIGHTS OF (PROGRAM ADMINISTRATOR) IF LANDLORD BREACHES THE CONTRACT

- A. Any of the following shall constitute a breach of the Contract:
  - (1) If the Landlord has violated any obligation under this Contract; or
  - (2) If the Landlord has demonstrated any intention to violate any obligation under this Contract; or
  - (3) If the Landlord has committed any fraud or made any false statement in connection with the Contract, or has committed fraud or made any false statement in connection with any Federal housing assistance program.



## Rental Assistance Contract (Page Four)

- B. The (tribe's/TDHE's) right and remedies under the Contract include recovery of overpayments, termination or reduction of payments, and termination of the Contract. If the (program administrator) determines that a breach has occurred, the program administrator may exercise any of its rights or remedies under the Contract. The (program administrator) shall notify the Landlord in writing of such determination, including a brief statement of the reasons for the determination. The notice by the (tribe/TDHE) to the landlord may require the Landlord to take corrective action by a time prescribed in the notice.
- C. Any remedies employed by the (program administrator) in accordance with this Contract shall be effective as provided in a written notice by the (program administrator) to the Landlord. The (program administrator's) exercise or non exercise of any remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

## 9. (PROGRAM ADMINISTRATOR'S) RELATION TO THIRD PARTIES

- A. The (program administrator) does not assume any responsibility for, or liability to, any person injured as a result of the Landlord's action or failure to act in connection with the implementation of this Contract, or as a result of any other action or failure to act by the Landlord.
- B. The Landlord is not the agent of the (program administrator) and this Contract does not create or affect any relationship between the (program administrator) and any lender to the Landlord, or any suppliers, employees, contractors or subcontractors used by the Landlord in connection with this Contract.
- C. Nothing in this Contract shall be construed as creating any right of the Tenant or a third party (other than HUD) to enforce any provision of this Contract or to assess any claim against HUD, the (program administrator) or the Landlord under this Contract.

## 10. CONFLICT OF INTEREST PROVISIONS

- A. No employee of the (program administrator) who formulates policy or influences decisions with respect to the Rental Assistance Program, and no public official or member of a governing body or state or local legislator who exercise his functions or responsibilities with respect to the program shall have any direct or indirect interest during this person's tenure, or for one year thereafter, in this contract or in any proceeds or benefits arising from the Contract or to any benefits which may arise from it.

## 11. TRANSFER OF THE CONTRACT

The Landlord shall not transfer in any form this Contract without the prior written consent of the (program administrator). The (program administrator) shall give its consent to a transfer if the transferee agrees in writing (in a form acceptable to the (program administrator)) to comply with all terms and conditions of this Contract.

## 12. ENTIRE AGREEMENT: INTERPRETATION

- A. This Contract contains the entire agreement between the Landlord and the program administrator. No changes in this Contract shall be made except in writing signed by both the Landlord and the (program administrator).
- B. The Contract shall be interpreted and implemented in accordance with HUD requirements.



Rental Assistance Contract (Page Five)

13. WARRANTY OF LEGAL CAPACITY AND CONDITION OF UNIT

- A. The Landlord warrants the unit is in decent, safe, and sanitary condition as defined by (program administrator), and that the Landlord has the legal right to lease the dwelling unit covered by this Contract during the Contract term.
- B. The party, if any, executing this Contract on behalf of the Landlord hereby warrants that authorization has been given by the Landlord to execute it on behalf of the Landlord.

Landlord Name (Type or Print):	(Program administrator) Representative (Type or Print):
(Signature/Date)	(Signature/Date)

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statements or entries, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000, or imprisoned for not more than five years, or both.

LANDLORD'S CHECK TO BE MAILED TO: SS NO. \_\_\_\_\_

NAME(S): \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF OWNER                      DATE

\_\_\_\_\_  
SIGNATURE OF OWNER                      DATE