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# AUDIT REPORT



## **HUD APPROVAL OF A STUDENT HOUSING PROJECT FOR COOK INLET HOUSING AUTHORITY**

**OFFICE OF PUBLIC AND INDIAN HOUSING AND  
OFFICE OF NATIVE AMERICAN PROGRAMS**

2001-SE-107-0001

MARCH 30, 2001

OFFICE OF AUDIT, NORTHWEST/ALASKA  
SEATTLE, WASHINGTON

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Issue Date

March 30, 2001

Audit Case Number

2001-SE-107-0001

MEMORANDUM FOR: Marcella Belt, Acting Deputy Secretary, SD

(ORIGINAL SIGNED)

FROM: Frank E. Baca, District Inspector General for Audit, OAGA

SUBJECT: Final report on audit of HUD's approval of a student housing project for Cook Inlet Housing Authority (Alaska), Office of Public and Indian Housing and Office of Native American Programs

In response to complaints received by our office, we performed an audit to determine if HUD properly approved a student housing project for the Cook Inlet Housing Authority. We found that HUD officials improperly approved an ineligible student housing project that was not needed and did not meet the intent of the Native American Housing Assistance and Self-Determination Act (NAHASDA). In addition, HUD improperly waived requirements that limit costs on affordable housing.

Within 60 days, please provide us for each recommendation in this report, a status on: (1) corrective action taken; (2) the proposed corrective action and expected completion date; or (3) why action is not considered necessary. Also, please furnish us with copies of any issued correspondence or directives related to the audit.

Should your staff have any questions, please contact me or Robert Woodard, Assistant District Inspector General for Audit, at (206) 220-5360.



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## Executive Summary

In response to complaints received by our office, we performed an audit to determine if HUD properly approved a student housing project for the Cook Inlet Housing Authority (Authority). We found that HUD officials approved an ineligible student housing project in that it (1) approved pre-development costs for the project as a standard activity without adequate justification for doing so, and did not timely notify the Authority once it found out the project was not a standard activity, (2) approved the student housing project as a model activity without any evidence that there was a need for the project, and (3) improperly waived HUD cost guidelines and did not adhere to statutory subsidy layering requirements that limit project funding to reasonable costs. In addition, the audit disclosed that the Authority did not fully comply with certain eligibility requirements pertaining to its local co-operation agreement and the tax-exempt status of the student housing project.

As a result, (1) the Authority spent almost \$1.4 million in “pre-development” costs for an ineligible project, and (2) HUD authorized \$9.5 million for a project that HUD estimated should not cost more than \$2.28 million. We believe these improper actions occurred because HUD officials’ based their decisions primarily on political considerations rather than statutory and regulatory requirements. Also, noncompliance with local co-operation agreement and tax-exempt status requirements may result in housing units not being provided with public services and facilities, and in increased costs.

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HUD did not have adequate justification for approving a student housing project as a standard activity
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Eligible affordable housing activities under the Native American Housing Assistance and Self-Determination Act (NAHASDA) include “Model Activities,” which are housing activities “...designed to carry out the purposes of NAHASDA and are specifically approved by the Secretary as appropriate for such purposes.” In its review of the Authority’s Indian Housing Plan activities, HUD staff in the Alaska Office of Native American Programs (Alaska ONAP) should have requested guidance from Headquarters since student housing was not listed as a standard activity. Instead, Alaska ONAP staff approved pre-development costs for the student housing project as a standard activity. Shortly afterwards, Headquarters found that student housing is a model activity requiring the Secretary’s approval. Further, more than six months passed after Alaska ONAP staff found out that the project was a model activity before they notified Headquarters and the Authority that the student housing project was a model activity that needed the Secretary’s approval. During this period and beyond, the Authority spent almost \$1.4 million in “pre-development” costs.

The Deputy Assistant Secretary approved the student housing project as a model activity without any evidence that there was a need for a project

The Deputy Assistant Secretary for the Office of Native American Programs approved a student housing project that was not needed and therefore did not carry out the purposes or intent of NAHASDA. The Deputy Assistant Secretary and HUD staff were aware that college student housing had been recently built, and units remained vacant in Anchorage. The Authority never provided HUD officials with evidence or information that showed there was a need for the additional student housing. Further, information that was available indicated that housing was not needed. Nevertheless, the Deputy Assistant Secretary for the Office of Native American Programs approved the activity without adequately reviewing the student housing project to determine whether it was needed and designed to carry out the purposes of NAHASDA. The Authority's student housing project does not carry out the purposes NAHASDA intended to achieve. The housing project is not needed to house college students nor does it solve the economic and cultural challenges facing Alaskan Natives coming from rural areas desiring academic opportunities. Therefore, the project does not meet the eligibility requirements for affordable housing as a model activity under NAHASDA.

The former Assistant Secretary improperly waived HUD guidelines and subsidy layering requirements

The former Assistant Secretary for Public and Indian Housing improperly waived a regulation limiting funding to reasonable costs and did not disclose the waiver in the federal register as required. The waiver was improper because it (1) was not for good cause, and (2) did not comply with statutory requirements relating to subsidy layering that limit costs on affordable housing. As a result, HUD authorized \$9.5 million for a project that should not have cost more than \$2.28 million.

HUD officials allowed political considerations to eclipse statutory and regulatory requirements

In our opinion, the improper approval of the student housing project occurred because HUD officials made decisions based primarily on political considerations rather than statutory and regulatory requirements. Although political considerations and influences are a reality that HUD officials cannot ignore, they should nevertheless ensure that decisions related to politically sensitive issues are consistent with established laws and regulations. We are recommending that HUD (1) issue guidance for dealing with political influences, (2) provide additional guidance to staff regarding when and how to approve standard and non-standard activities, (3) notify the Authority that the

student housing project is not an eligible activity, and to stop spending NAHASDA funds relating to the project, (4) obtain legal opinions regarding reported issues, (5) consider taking administrative actions against current and prior HUD officials for improprieties, and (6) ensure that subsidy layering requirements are adhered to.

Authority needs to ensure its co-operation agreement and tax-exempt status comply with HUD requirements

The Authority does not have an agreement with the local governing body regarding public services and tax-exempt status for new units the Authority may develop. This occurred in part because HUD relied upon a Certification of Compliance statement that the tribe complied with “other applicable Federal statutes.” ONAP needs to develop a more meaningful Certification of Compliance that lists the statutory compliance items.

Former Deputy Secretary disagreed with the draft audit report

We provided the former Deputy Secretary a draft report on November 17, 2000 for comment. We received written comments on December 19, 2000 in which the former Deputy Secretary disagreed with the findings and requested the report not be issued. The former Deputy Secretary’s comments are in Appendix A of this report. With the change in administrations, we sent the draft report on March 2, 2001 to the transitional Acting Deputy Secretary, providing the opportunity to meet with us or submit any additional or revised comments. No written or verbal comments were provided.

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# Table of Contents

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Management Memorandum	i
Executive Summary	iii
Introduction	1
Findings	
1. HUD Improperly Approved a Student Housing Project	3
2. Authority Needs to Ensure Its Co-operation Agreement and Tax-Exempt Status Comply With HUD Requirements	27
Management Controls	31
Appendices	
A. HUD's Comments	33
B. Distribution	37

## Abbreviations

Authority	Cook Inlet Housing Authority
CFR	Code of Federal Regulations
CIHA	Cook Inlet Housing Authority
CIRI	Cook Inlet Region, Inc.
DAS	Deputy Assistant Secretary for Native American Programs
DC&E	Dwelling Construction and Equipment
HUD	Housing and Urban Development
IHBG	Indian Housing Block Grant
IHP	Indian Housing Plan
NAHASDA	Native American Housing Assistance and Self-Determination Act
NRC	National Review Committee
OIG	Office of Inspector General
ONAP	Office of Native American Programs
UAA	University of Alaska-Anchorage
USC	United States Code

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# Introduction

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## Background

In 1961, the United States government began to make public housing money available to Indian tribes pursuant to the U.S. Housing Act of 1937. To participate in this program, tribes and Alaska Native communities had to create Indian housing authorities, and federal funds were restricted to federally prescribed programs supervised by the U.S. Department of Housing and Urban Development. In October 1996, Congress passed and the President signed into law a new U.S. Indian housing program. The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) eliminates several separate programs of assistance and replaces them with a single block grant.

In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance.

### *Anonymous complaints.*

We received several anonymous complaints regarding a student housing project that the Cook Inlet Housing Authority (an Indian housing authority located in Anchorage, Alaska) planned to build. The complaints alleged NAHASDA funding was being misused and wasted because: (1) the dormitory was extravagant, costing \$9.5 million to house 40 Native American students, (2) HUD waived cost limits based on political pressure, and (3) the housing did not meet the urgent housing needs of Alaskan Natives.

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Audit objective, scope and methodology
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Objective: We wanted to determine the validity of the allegations; specifically, whether HUD properly:

- approved the Authority's 1998 planned student housing project,
- adhered to Departmental regulatory cost limits and waiver requirements, and
- ensured that the project met other NAHASDA eligibility requirements.

Scope and methodology: To achieve our objectives, we:

- Reviewed proposed and final NAHASDA regulations, the HUD Reform Act of 1989, HUD waiver regulations, HUD's Indian Housing Plan Review Manual, and other NAHASDA guidance.

- Reviewed all available documents related to HUD's review and approval of the student housing project.
- Reviewed all documents provided related to HUD's waiver of cost limit regulations.
- Reviewed the Authority's records related to its planned student housing project.
- Discussed legal issues with OIG Counsel.
- Interviewed HUD and Authority staff.

The audit covered the period April 16, 1998 to October 1, 2000. We performed preliminary assessment of complaints in December 1999 and on site work at the Alaska Office of Native American Programs (Alaska ONAP) in Anchorage, Alaska from June to September 2000.

We conducted the audit in accordance with generally accepted government auditing standards.

## HUD Improperly Approved a Student Housing Project

HUD officials approved an ineligible student housing project for Cook Inlet Housing Authority (Authority). Specifically:

- The Alaska Office of Native American Programs (1) approved pre-development costs for the project as a standard activity without adequate justification for doing so, and (2) did not timely notify the Authority once it found out the project was not a standard activity.
- The Deputy Assistant Secretary for the Office of Native American Programs approved the student housing project as a model activity without any evidence that there was a need for the project.
- The former Assistant Secretary for the Office of Public and Indian Housing improperly waived HUD cost guidelines and did not adhere to statutory subsidy layering requirements that limit project funding to reasonable costs.

As a result, (1) the Authority spent almost \$1.4 million in pre-development costs for an ineligible project, and (2) HUD authorized \$9.5 million for a project that HUD estimated should not cost more than \$2.28 million. We believe these improper actions occurred because HUD officials based their decisions primarily on political considerations rather than statutory and regulatory requirements.

<p>NAHASDA requirements for model activities</p>
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Native American Housing Assistance and Self-Determination Act (NAHASDA) Section 202 *Eligible Affordable Housing Activities* states that affordable housing activities are those activities to develop or to support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing through one of six activities. Affordable housing activity number six is referred to as “Model Activities,” and is described as:

“Housing activities...that are designed to carry out the purposes of NAHASDA and are specifically approved by the Secretary as appropriate for such purpose.”

The Deputy Assistant Secretary for the Office of Native American Programs (DAS) has been delegated the authority to approve NAHASDA Model Activities for the Secretary.

Departmental regulations at 24 CFR 1000.112 remind HUD to review all model activities with the goal of approving those activities and encouraging the flexibility, discretion, and self-determination granted to Indian tribes under NAHASDA *to formulate and operate innovative housing programs that meet the intent of NAHASDA.*

NAHASDA gives Indian tribes the flexibility to design housing activities tailored to their needs

NAHASDA allows tribes to establish and run their own housing programs. It also radically changed how tribes address housing needs. No longer are tribes limited to building and maintaining rental and mutual help housing. Now opportunities exist for leveraging funds, borrowing capital, mortgaging property, providing grants and assistance, partnering with private and non-profit entities and developing housing assistance services. NAHASDA clearly gives tribes the capacity and freedom to comprehensively address their housing needs.<sup>1</sup> Now tribes have the ability to decide what types of affordable housing activities best meet their needs and receive funding on an annual basis to support those needs.

*Indian Housing Plans are comprehensive approaches to prioritize and solve housing needs.*

NAHASDA Section 102(a) authorizes the Secretary to make grant funds available each fiscal year to Indian tribes to carry out affordable housing activities. However, an Indian tribe must submit an Indian Housing Plan (IHP) that complies with NAHASDA's IHP requirements to receive grant funds. The Office of Native American Programs (ONAP) reviews IHPs to ensure all required information has been included and planned housing activities are eligible.

Indian Housing Plans are the core of individual tribal housing programs. They formalize and document the tribe's assessment of housing needs and their planned housing activities. These comprehensive plans contain a mission statement, and the goals, objectives and policies of tribes to meet the housing needs of low income families in their jurisdictions. A critical component of all IHPs under NAHASDA is an accurate and comprehensive assessment of tribal affordable housing needs.

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<sup>1</sup> Indian Housing Law Quarterly, Volume 1, Issue 3. Big Changes in the U.S. Housing Program: The Native American Housing Assistance and Self-Determination Act of 1996.

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*Tribal needs assessment is a critical Indian Housing Plan component.*

A tribal needs assessment is about people. Identifying and understanding community housing and tribal profiles is essential to develop responsible strategies to meet its housing needs.

A tribal needs strategy begins by obtaining required information about the Indian area and tribal population including the housing needs of low income families residing in a tribe's jurisdiction, describing how those needs will be addressed, and describing how the geographical distribution of planned assistance will be consistent with housing needs and the needs for various categories of housing assistance.

The Indian Housing Plan must also include an inventory describing all affordable housing resources available to the tribes, including significant characteristics of the local housing markets, and other public sources and private market housing. The description must also include the involvement of public, private and non-profit organizations in the tribe's planned affordable housing activities.

*The Authority's housing plan includes a student dormitory.*

On April 15, 1998, the Authority submitted its 1998 Indian Housing Plan to the Alaska Office of Native American Programs. The IHP included a student dormitory in its Statement of Needs. The Statement of Needs explained why a student housing complex was being developed:

“Native students who are enrolled in the two universities in Anchorage, the University of Alaska and Alaska Pacific University, experience the highest drop-out rates of any racial or ethnic group at those universities. The causes of this unfortunately high failure rate include two housing problems. The first is an economic one; most Native university students have little or no income and are struggling to survive with little assistance from their families, no or only minimal scholarship support, and high costs of living, including very high rents in

Anchorage; dormitory space is either non-existent or extremely limited at either university. The second problem is cultural: most students have come to Anchorage from largely Native schools in rural Alaska and are not used to being immersed in a predominately non-Native setting, with little or no support. If a Native student dormitory were available that would provide low-rent and subsidized housing for low-income Native students, both problems would be remedied, and CIHA plans to address this need, starting with land acquisition, architectural and engineering designs in Year One, construction in Year Two, and continuing support in Years Three through Five.”

Alaska ONAP improperly approves the student housing project as a standard activity

The Alaska Office of Native American Programs (Alaska ONAP) approved the student dormitory pre-development as a standard activity without having adequate justification for doing so. Alaska ONAP officials could not explain why this occurred.

Alaska ONAP reviewed the Authority’s Indian Housing Plan for compliance with NAHASDA requirements. On July 22, 1998, Alaska ONAP notified the Authority that its 1998 Indian Housing Plan complied with NAHASDA. The review determined that the student housing project was a standard activity (not a model activity requiring the Secretary’s approval).

*ONAP’s limited review determines eligibility of planned affordable housing activities.*

Section 103 of NAHASDA specifies that the Office of Native American Programs (ONAP) will conduct a limited review of each Indian Housing Plan. In summary, limited review means that HUD must review each IHP to determine whether the *contents* of the plan:

- Set forth NAHASDA required submission information.
- Are consistent with the information and data available to HUD.
- Are not prohibited by or inconsistent with any provision of NAHASDA or other applicable law.
- Include the appropriate certifications.



No later than 60 calendar days after receiving the plan, ONAP must review and notify each Indian tribe that submitted an Indian Housing Plan whether the IHP complies with the provisions of NAHASDA and the regulations, including whether or not its planned affordable housing activities are eligible.

There are two levels of review for each IHP: an initial review for completeness (referred to as the completeness review), and the technical review. The completeness review determines if all required elements are included in the IHP.

The purpose of the technical review is to review the IHP for substance. There are two levels to this review. The first is to determine if the IHP includes any activities that are considered non-standard or model activities. The second level of review, referred to as the substantive review, involves looking at the plan to determine if it is consistent with the requirements and data/information available to HUD.

*Alaska ONAP should have obtained more information before approving the student housing project as a standard activity.*

ONAP staff have a list of items considered to be standard and non-standard activities when reviewing Indian Housing Plan activities. Student housing was not on this list when Alaska Office of Native American Programs staff reviewed Cook Inlet Housing Authority's 1998 IHP. As such, Alaska ONAP staff should have asked Headquarters officials for guidance before approving the student housing project as a standard activity. This should have prevented the Authority from proceeding with its planned Year One student housing activities, including site acquisition and architectural and engineering designs. Instead, Alaska ONAP designated the student housing project as a standard activity, and on July 22, 1998 approved the Authority's 1998 IHP as complying with NAHASDA requirements.

*General Counsel's office states college housing is a model activity needing the Secretary's approval.*

The Deputy Assistant Secretary requested guidance from the Associate General Counsel, Office of Assisted Housing

and Community Development, about the scope of eligible activities under NAHASDA. In a memorandum dated July 1, 1998, the Associate General Counsel responded by discussing certain classes of housing within NAHASDA's eligible affordable housing activities, and specifically mentioned college housing:

“You also asked about college housing. While in a way dormitory and other college residences comprise part of a transition to new careers, they are not the kind of transitional housing undertaken directly prior to, and as part of an immediate process for, permanent housing. Accordingly, in our view, college housing could be an eligible activity but only pursuant to the special authority for model activities specifically approved by the Secretary as appropriate for carrying out the purposes of NAHASDA, pursuant to Section 202(6).”

Accordingly, college housing must be a model activity to be eligible for NAHASDA funding. To be approved as a model activity, the activity must be (1) a housing activity and (2) designed to carry out the purposes of NAHASDA.

*Alaska ONAP did not timely notify Headquarters or the Authority once it became aware that the student housing project was a model activity.*

Alaska Office of Native American Program officials state they did not receive a copy of Counsel's July 1, 1998 memorandum until July 30, 1998, which was shortly after they had approved the Authority's Indian Housing Plan and the student housing project. Alaska ONAP should have immediately notified the Authority that the model activity needed to be approved by the Secretary (or his designee), and requested Headquarters to review the activity for eligibility. However, it was not until January 1999 that Alaska ONAP submitted the Authority's 1998 IHP proposal to construct a student housing project to the National Review Committee (a Headquarters group of Office of Native American Programs officials) to determine whether the proposal was an eligible model activity. Also, not until February 1999 did Alaska ONAP staff notify the Authority that the project was a model activity requiring approval. From the time Alaska ONAP approved the Authority's 1998 IHP in July 1998 through January 1999,

the Authority obligated or spent \$74,709 in costs relating to the student housing project, mainly for consulting services. Further, the Authority continued to spend large amounts of money on the project even after Alaska ONAP notified them that the project was a model activity needing approval. From July 1998 through August 2000 the Authority obligated or spent \$1,394,081 on the housing project, including \$1,052,647 for architectural and engineering costs and \$257,853 for consulting services.

The Deputy Assistant Secretary approved the student housing project as a model activity without any evidence that there was a need for the project

The Deputy Assistant Secretary for the Office of Native American Programs approved a student housing project that was not needed and therefore did not carry out the purposes or intent of NAHASDA.

*Chronology of the student housing project's approval as a model activity.*

January 12, 1999: Alaska ONAP submitted the Authority's 1998 Indian Housing Plan proposal to construct a student housing project to the National Review Committee for its review to determine whether the proposal was an eligible model activity.

February 3, 1999: Alaska ONAP staff requested more information from the Authority regarding the student housing project to assist the National Review Committee. Among other items it specifically requested that the Authority identify the existing need for low-income student housing and if there was a projected future need.

February 10, 1999: The Authority responded to Alaska ONAP's February 3, 1999 request by stating that the approved 1998 Indian Housing Plan Statement of Needs already addresses the existing need question, and the tribe also anticipates a growing need for this type of assistance even beyond what's addressed in their five year plan. No additional information was provided.

February 18, 1999: The National Review Committee met to review the Authority's student housing project. Numerous concerns were discussed, including eligibility of proposed educational items and activities, determining Dwelling Construction and Equipment costs (DC&E), and questions concerning useful life and affordability of the project. The Committee decided to request additional information from the Authority regarding these issues.

March 8, 1999: The Deputy Assistant Secretary sent Alaska ONAP a memorandum advising that the review (National Review Committee's review) had been completed of the proposed model activity. Based on information available the activity could not be approved at this time.

The memorandum mentioned there were several questions or concerns about the proposal, and more information was needed to decide whether the project was a model activity designed to carryout the purposes of NAHASDA.

The four issues outlined were:

1. Cost of the facility. Requested a floor plan to determine whether the facility could be built within regulatory Dwelling Construction and Equipment amounts.
2. Computer lab and library. The memorandum stated that these activities appeared to be educational and would not be eligible under NAHASDA.
3. Useful life. The Authority had only a 20 year lease on land, and needed binding commitments to extend the useful life 30-40 years.
4. Housing need. Questioned whether the facility would remedy both the economic and cultural problems. Requested more information on the actual need by natives attending these universities or applying for admission.

March 12, 1999: Letter from the Authority to the Deputy Assistant Secretary requested assistance in resolving problems with Alaska Office of Native American Program staff about needing approval of the student housing project as a model activity. The Authority listed several concerns, but regarding the housing need, did not provide any factual information or data demonstrating how they determined such a need for student housing existed or how housing could resolve economic or cultural problems. The following was stated about the need for student housing:

“There is an unacceptably high drop out rate for Native students at the University of Alaska and Alaska Pacific University in Anchorage due to the Native students’ inability to afford the high cost of living in Anchorage and due to the difficulty of the transition from a rural Native village culture to an urban non-Native culture. It was determined by CIHA’s tribal authority that low-cost Native housing with a Native support system would remedy both these problems and allow low-income students to complete college successfully.”

March 23, 1999: Letter from the President of Cook Inlet Region, Inc. (CIRI) to former Secretary Cuomo seeking support for the Authority’s student housing project. The letter mentioned there had been some confusion about whether the project was a model activity, but believed a letter to the Deputy Assistant Secretary resolved that issue (referring to the above March 12, 1999 letter).

April 12, 1999: The Deputy Assistant Secretary responded to the Authority’s March 12, 1999 letter. The letter stated the DAS and the former Secretary had met with CIRI’s President, indicated the Department’s full support of the student housing project, and said HUD’s goal was to work with the Authority to make this project a success. The letter also stated the main issue on the complex involved determining Dwelling Construction and Equipment costs (DC&E) for the project and specific information was needed to determine those costs. The issue of whether the project was going to be approved as a model activity appeared to now be discounted when the letter said: “As we have indicated above, the issue is not whether this activity will be approved as a model activity in your FY 1999 IHP. The issue is the cost of the construction as it relates to the regulatory requirements of DC&E costs.”

[OIG note: The Deputy Assistant Secretary and the National Review Committee staff were aware that college student housing had been recently built, and units remained vacant in Anchorage. Alaska ONAP email correspondences to and between NRC officials and the Deputy Assistant Secretary in early April 1999 commented that the University of Alaska-Anchorage, dormitory had a 20% vacancy rate—180 beds out of approximately

950 beds. Those student housing units were built in 1998 and were considered state of the art dormitory units.]

April 15, 1999: A Community Builder in the Anchorage HUD office, responding to a request to review and comment on the Authority's 1998 Indian Housing Plan, stated "...the level of need for student housing does not justify the funds reserved. UAA (*University of Alaska – Anchorage*) in partnership with AHFC (*Alaska Housing Finance Corp.*) has just developed new units out around both universities. It is my understanding that those existing units are not full and are available for all students. The level of funding proposed for student housing seems to be out of line with the level of priority of unmet need."

May 25, 1999: The Deputy Assistant Secretary sent a letter informing Alaska ONAP that the Authority's 40 unit student housing project had been approved as a model activity and determined to carry out the purposes of NAHASDA for use by Alaskan Native students attending classes at the Alaska Pacific University campus. The DAS' letter approved the activity with conditions that (1) the cost of the facility was limited to an appropriate Dwelling Construction and Equipment amount...\$2,280,000 for an elevator structure or \$2,000,000 for a walk up structure, (2) the Authority provide documentation indicating the facility would remain affordable for low-income Alaska Natives for a period extending beyond the 20-year lease, and (3) the computer lab and library were ineligible expenses. Subsequently, Alaska ONAP notified the Authority its project was approved.

*The student housing project should not have been approved.*

As the chronology shows, the Authority never provided HUD officials with evidence or information that showed there was a need for the additional student housing. Further, information that was available indicated that housing was not needed. Nevertheless, the Deputy Assistant Secretary for Office of Native American Programs approved the activity without adequately reviewing the student housing project to determine whether it was needed. Further, there was no explanation why the housing project was approved only for Alaska Pacific University, even though the Authority's Indian Housing Plan stated the project was for the University of Alaska at

Anchorage and Alaska Pacific University. The Deputy Assistant Secretary should not have approved the student housing project as a model activity. College housing was not needed for Alaskan Native students in Anchorage nor could the housing solve the economic and cultural challenges facing rural Alaskan Natives seeking academic opportunities in urban areas.

*The Authority has not demonstrated a need for additional student housing.*

The Authority's statement of needs says that developing student housing will remedy the two problems believed to be causing the unacceptably high rate of Native student drop outs, the first being financial and the second cultural. However, the needs statement does not present any data or statistics to support or explain the extent of the problem or how it was determined the drop out rate was actually attributed to financial matters or a lack of cultural services or support. Further, the needs statement does not explain how Alaskan Natives are successfully attending and graduating from those Anchorage based universities without the need for a 40 unit student housing project.

We requested from the Authority any information or data used in deciding student housing was needed for Alaskan Natives in Anchorage, Alaska. The Authority responded by providing a consultant's report, referred to as a Needs Assessment and Preliminary Development Plan, completed August 5, 1997. The assessment gathered demographics for Native students attending both universities and for housing options available in Anchorage, Alaska. However, the study presented no information and no data or statistics to demonstrate that high Native student drop out rates (study mentioned first year students drop out rates are high) were due to a shortage of Native student housing. However, the study did disclose that Native Alaskan students are attending and graduating from both under graduate and graduate universities in Anchorage. For the fall of 1996 the study reported the University of Alaska-Anchorage had 672 registered Alaska Natives, while the Alaska Pacific University had 52 registered Alaskan Native students, all apparently successfully attending college and being adequately housed. In addition, the Needs Assessment indicated that developing a student dormitory facility would increase housing costs for students. The study states student housing costs for a semester at

University of Alaska-Anchorage ranges from \$1,350 to \$1,550 depending on the complex. However, the study estimated the proposed Authority student dormitory would cost students \$3,000 per semester. Thus, the information provided by the Authority appears to argue against both the cultural and financial problems cited in the statement of needs.

*Former Executive Director's statements indicate housing not the answer.*

The Authority's student housing project was designed to include space for a computer lab and library. As discussed above, the Deputy Assistant Secretary had previously told the Authority that educational activities and services were not eligible under NAHASDA. However, the Authority's former Executive Director, who was responsible for designing the student housing project, indicated that educational activities or services are actually what is needed to contribute to lowering the drop out rate. A January 17, 2000 newspaper article about the student housing project said the project would house the Cook Inlet Tribal Education Center, a computer lab, tutors and advisors, then quoted the former Executive Director as stating "*That's what is going to make the difference. If we just build housing, it wouldn't help the success rate.*" referring to the high drop out rate.

*The Authority's student housing project is not a model activity.*

The Authority's student housing project does not carry out the purposes NAHASDA was intended to achieve. The housing project is not needed to house college students nor does it solve the economic and cultural challenges facing Alaskan Natives coming from rural areas desiring academic opportunities. Therefore, the project fails to meet the model activity test and is not an eligible affordable housing activity under NAHASDA.

The former Assistant Secretary improperly waived HUD guidelines and subsidy layering requirements

The former Assistant Secretary for Public and Indian Housing improperly waived a regulation limiting funding to reasonable costs and did not disclose the waiver in the federal register as required. The waiver was improper because it (1) was not for good cause, and (2) did not comply with statutory requirements relating to subsidy layering that limit costs on affordable housing. As a result,



HUD authorized \$9.5 million for a project that should not have cost more than \$2.28 million. We believe these improper actions occurred because HUD officials made decisions based primarily on political considerations rather than statutory and regulatory requirements.

*A Secretarial waiver must be for good cause and comply with statutory limitations.*

NAHASDA regulations waiver authority is set forth at 24 CFR 1000.8, which states that “Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this part...” and must also comply with “...section 106 of the Department of Housing and Urban Development Reform Act of 1989.” Also, public disclosure of all Departmental program waivers is required.

In addition, Section 206 of NAHASDA places a statutory limitation on housing assisted under the Act. It requires HUD subsidy layering requirements be met. Those requirements limit funding to only the amount necessary to provide affordable housing.

*There is limited guidance on what constitutes “good cause.”*

NAHASDA regulations do not define “good cause.” Further, the preamble to the final regulations (24 CFR 1000.8) is vague in explaining what HUD intends “good cause” to mean:

“Section 1000.8 provides that HUD may waive any non-statutory provision of this rule in accordance with 24 CFR 5.110. This section requires that the waivers be based upon a determination of good cause. In making this determination, HUD may consider such factors as undue hardships. Under Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) waivers will be in writing and published in the Federal Register.”

Other than hardship, the preamble to the proposed regulations does not identify factors that may warrant a determination of good cause.

*HUD estimates the student housing project should not cost more than \$2.28 million.*

The Authority's needs assessment (completed in August 1997) estimated the 40 unit student housing project would cost between \$3.2 and \$6.2 million. In its 1998 Indian Housing Plan, the Authority budgeted \$6.2 million for the project, including \$1,000,000 for Year One for "pre-development" costs and \$5.2 million for Year Two construction costs. Subsequently, in an April 4, 1999 letter to HUD, the Authority increased its estimate to \$9.2 million:

"Finding a reasonable comparison to this project will be difficult. The student dorms that were recently constructed by the University of Alaska-Anchorage (UAA) lack many of the features that differentiate a student housing project for a *Living and Learning Community*, UAA's project also lacked our unique site challenges and utility development expenses. UAA's project also benefited through economies of scale further complicating a unit-to-unit cost comparison.

We submit that our design is appropriate and reasonable in light of the considerations listed above. Our planned \$9.2M development cost will benefit an entire generation of Alaskan Natives and is consistent with the traditional values of our Tribe."

In a May 14, 1999 letter to the Authority, the Deputy Assistant Secretary stated that they had researched recently constructed projects in the Anchorage area to provide a basis for comparability, included two Section 202 (elderly, low-income) projects, and new residence halls constructed by the University of Alaska-Anchorage. Using these comparables, as well as published Development, Construction and Equipment cost limits, HUD determined appropriate DC&E limits for the proposed student housing would be \$50,000 per unit (\$2 million for 40 units) for a walk up structure, and \$57,000 per unit (\$2,280,000 for 40 units) for an elevator structure.

*Cost limits waived without “good cause.”*

On September 15, 1999 the former Assistant Secretary for Public and Indian Housing issued the waiver of the regulation limiting federal funding without giving a reason, “good cause” or otherwise, for the waiver.

Two memoranda to the former Assistant Secretary from the Deputy Assistant Secretary requesting the waiver appear to indicate the impetus for the waiver. The first of these memorandums, dated September 14, 1999, came from Alaska ONAP’s files. ONAP Headquarters staff provided the second memorandum, dated September 15, 1999. The official version appears to be the September 15th version of the waiver request. Yet, that version appears to argue against a waiver rather than in favor of one as discussed below.

The September 14, 1999 memorandum refers to a letter from a Senator that is dated the following day. The letter indicated that the request for the waiver was at the Senator’s direction and for “environmental protections built into the development which are not normally included in affordable housing projects.” The Senator’s office sent two letters to HUD. The first letter, dated July 1, 1999, was addressed to the former HUD Secretary and was signed by the Senator. The letter urged the former Secretary to grant approval of the “\$9.5 million” project. The second letter, dated September 15, 1999, was addressed to the Deputy Assistant Secretary and signed by a Legislative Assistant to the Senator. The letter stated it was to clarify the July 1, 1999 letter, and confirm that the Senator “directs” the Department to waive the cost cap for the project.

The September 15, 1999 memorandum from the Deputy Assistant Secretary does not refer to environmental protections or to the Senator’s letter. In fact, the waiver request actually appears to argue against the waiver when it states that “The waiver request is not based upon documentation of unusual costs associated with the project...No information has been provided that would persuade us the limits established in the May 14, 1999 letter are not appropriate for the proposed project.”

Regardless of the lack of guidance regarding “good cause,” the waiver of cost guidelines for the student housing project was not supported by a determination of good cause.

Documentation clearly shows the decision to waive the regulation was based on political considerations, rather than undue hardships or other tribal burdens. In our opinion, political considerations do not constitute “good cause” for waiving a regulation controlling development costs.

*Departmental waiver not disclosed.*

As previously mentioned, federal regulations (24 CFR 1000.8) require waivers be published in the federal register to comply with Section 106 of the HUD Reform Act. The Act requires that the grounds for the waiver be stated. According to the Deputy Assistant Secretary, the September 15, 1999 waiver of 24 CFR 1000.156 had inadvertently not been published. As such, the waiver did not comply with the statutory requirement to publish the waiver and the grounds for the waiver, and the regulatory requirements at 24 CFR 1000.8.

*Subsidy layering requirement exceeded.*

Federal regulations at 24 CFR 1000.8 also require that waivers comply with Section 102(d) of the HUD Reform Act. The subsidy layering provision of Section 102(d) of the HUD Reform Act states, “The Secretary shall certify that assistance within the jurisdiction of the Department to any housing project shall not be more than is necessary to provide affordable housing....”

Similarly, Section 206 of NAHASDA provides that, “...the requirements of Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 shall be satisfied upon certification by a recipient to the Secretary that the combination of federal assistance provided to the housing project involved is necessary to provide affordable housing.” Thus HUD is required to rely upon the statement of the recipient regarding subsidy layering. This was a change from the original statutory requirement which required the Secretary to certify to the subsidy layering requirement. However, neither ONAP nor Authority files included a certification from either the Authority (the recipient) or the former Secretary to the effect that the \$9.5 million assistance provided for the project was no more than necessary to provide affordable housing. Indeed, as discussed above, documents from ONAP and Authority files show that \$9.5 million far exceeds what is necessary to construct affordable housing.

<p>HUD should be sensitive to political considerations but at the same time adhere to statutes and regulations</p>
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In our opinion, Native Americans and other taxpayers are not well served when HUD officials place political considerations ahead of regulatory and statutory requirements. Political considerations and influences are a reality that HUD officials cannot ignore. Nevertheless, HUD officials should ensure that decisions related to politically sensitive issues are consistent with established laws and regulations.

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### **HUD comments - Overall**

In its written response to the draft audit report, the former Deputy Secretary concluded, "...all findings are wrong. We have not addressed the recommendations because no corrective action is needed. Because there have been no violations, we are requesting that no report be issued by the Office of Inspector General." Appendix A contains HUD's written response in its entirety.

### **OIG evaluation of HUD comments – Overall**

We disagree with HUD's comments and maintain the accuracy of the audit findings. As discussed below, in our opinion HUD's response did not substantially address relevant facts or recognize programmatic issues, and it overlooked serious instances of mismanagement. In addition, HUD officials did not address the primary cause of the finding, which was improper decision making based on political considerations. If HUD does not address this matter, similar situations may reoccur in the future.

**HUD comments – *The Alaska Office of Native American Programs (1) approved the project as a standard activity without adequate justification for doing so, and (2) did not timely notify the Authority once it found out the project was not a standard activity.***

*Alaska ONAP only approved planning, not construction activities.* The Alaska Office of Native American Programs only approved the Authority's Fiscal Year (FY) 1998 Indian Housing Plan for *planning* of low-rent housing for low-income Native University students.

- The Alaska ONAP office initially viewed this activity as a low-rent housing project, even though it recognized the Authority was focusing on providing housing for Native students in Anchorage. Section 102(c)(4)(G) of NAHASDA specifically addresses college housing.
- The Alaska ONAP office approved planning, not construction of the project. Not until the Authority submitted its 1999 Indian Housing Plan did it include any construction costs for the project. ONAP field offices are only required to transfer non-standard or model activities to the National Review Committee for review and approval in the year actual construction would be funded. Planning costs for these activities occurring prior to

actual construction are not reviewed, but are considered eligible if planning for affordable housing activities.

- Being the first year of the NAHASDA program, HUD had not yet provided guidance to the Alaska and other ONAP offices indicating planning was only eligible for affordable housing activities as outlined in Section 202(1) through (5) of NAHASDA, unless a model activity was approved.

*Alaska ONAP timely referred the activity to the National Review Council.* Alaska ONAP staff followed program guidance when it learned the project was not a standard activity and timely referred the proposed model activity to the National Review Committee for the required review:

- Subsequent to learning about the Office of General Counsel memorandum regarding college housing, the former Executive Director was verbally told on several occasions that the student housing project in the Authority's FY 1999 Indian Housing Plan was considered a model activity needing Assistant Secretary approval.
- Sometime in January 1999, when Alaska ONAP staff became aware that the Authority was moving beyond planning stages and expediting their plans for construction of the student housing during the 1999 construction season, it submitted the activity to the National Review Committee in anticipation of the Authority's FY 1999 Indian Housing Plan.

*Issues are moot.* The processing issues are moot because the project was subsequently approved as a model activity, and therefore the planning costs are eligible.

**OIG evaluation of HUD comments – *The Alaska Office of Native American Programs (1) approved the project as a standard activity without adequate justification for doing so, and (2) did not timely notify the Authority once it found out the project was not a standard activity.***

*Alaska ONAP only approved planning, not construction activities.* The comments explaining what was approved and how Alaska ONAP viewed the activity when it was approved are inconsistent with established guidelines both for reviewing and approving Indian Housing Plan activities. Moreover, Section 102(c)(4)(G) provides no additional understanding about approval requirements or decisions.

- The draft report accurately states Alaska ONAP improperly approved the pre-development of low-rent housing for low-income Native University students in Anchorage, Alaska. We have added wording to the finding to make this clearer. Section 102(c)(4)(G) provides no authority for approving a college housing project. That section only requires program recipients to include in their IHP a statement of the affordable housing resources currently available and to be made available during the period.
- As discussed in the draft report, the Indian Housing Plan review and approval guidelines require that each approved affordable housing activity be eligible. Planning of a low-income student housing project was not identified in those

guidelines as an eligible affordable housing activity, which would therefore require the project to be submitted to ONAP's National Review Committee to determine eligibility.

- Existing guidelines for the this first year program were clear, specific and thorough enough for the experienced and knowledgeable Alaska ONAP staff to recognize that this planning activity was neither standard nor the type of project HUD had previously developed. Alaska ONAP reviewers were well aware of procedures to identify non-standard or model activities. The reviewers identified three non-standard housing activities in the Authority's FY 1998 IHP, which they referred to the National Review Committee to determine eligibility.

*Alaska ONAP timely referred the activity to the National Review Council.* We disagree that Alaska ONAP staff took appropriate action when it discovered that building a student dormitory facility needed Assistant Secretary approval as a model activity to be an eligible NAHASDA activity. Verbally advising the Authority's former Executive Director that the facility needed approval as a model activity before it could be built, while a positive step, is no substitute for formal written notification, or for more immediate technical assistance needed to safeguard already approved program funds. Also, during the audit Alaska ONAP staff never told us, nor did they provide us with any documentation to indicate they had verbally advised the former Executive Director about this matter.

HUD's comments emphasize that planning not construction activities was approved. To support that position, the response states that the Authority's 1998 Indian Housing Plan did not include any construction costs for student housing until its 1999 IHP submission. However, HUD's response confuses direct "planning" costs, which are really pre-development costs, with general administrative planning costs. Also, the comments do not accurately reflect what and when Alaska ONAP staff knew or should have known about the Authority's construction related activities, nor do they accurately portray what were the approved planning activities.

Both the Authority's 1998 and 1999 Indian Housing Plan's were identical in presenting its planned construction activities. In both IHPs, the Authority complied with HUD's format when it entered the following in Year One use of resources:

Low-Rent Development	
Construction: Student Housing	\$1,000,000.

The Authority's 1998 Indian Housing Plan clearly indicated that its student housing project was in development. For 1998, the \$1 million for construction included site acquisition, contracting with an A&E firm, and planning activities directly related to development. These are pre-development costs directly related to the development of a housing project (Section 202(a) of NAHASDA), as contrasted with Section 102(h) administrative and planning expenses. Section 102(h) administrative and planning activities relate to costs of preparing an IHP, approved cost allocation plans, collection of data and other undefined activities, but *not* development related costs. The Authority properly entered and disclosed Section 102(h) administrative and planning costs separately in the in its FY 98 IHP.

*Issues are moot.* We disagree that the issues addressing Alaska ONAP's processing of the Authority's FY 1998 Indian Housing Plan are moot because the Deputy Assistant Secretary subsequently approved the student dormitory project as a model activity. The issue pertains to controls over the IHP review process. The subsequent approval of the activity (which we also found inappropriate) does not invalidate the need for good controls over the review process. Subsequent events are not viable management controls, and the IHP review process remains susceptible to misuse or abuse if reviewers can arbitrarily decide what proposed activities are eligible or ineligible.

**HUD comments – *The DAS approved the student housing project as a model activity without any evidence that there was a need.***

HUD's response stated that the draft report is fundamentally flawed because it equates "need" to the purposes of NAHASDA, which is not the statutory or regulatory test. The response stated that:

- The test (Section 202(6) of NAHASDA) is whether the model activity is designed to carry out the purposes of NAHASDA and is specifically approved by HUD as appropriate for such purpose.
- The Authority's Indian Housing Plan's did show a need for this activity. Specifically:
  - FY 1998 IHP indicates a need for college housing for 40 low-income families and in the 1999 IHP, a need for college housing for 60 low-income families.
  - The IHP also contains a narrative of need and addresses the college housing issue.
  - Correspondence from Mr. Carl Marrs, President and CEO of Cook Inlet Region, Inc. states that this is one of the Authority's top priorities.
  - There is no requirement in NAHASDA or the regulations that "need" be documented any further than the IHP. Also, HUD/ONAP does not have any information nor has any information been provided in the draft report indicating the Authority falsely misrepresented that information.
  - The report does correctly state that NAHASDA gives Indian tribes the flexibility to design housing activities tailored to their needs.

**OIG evaluation of HUD comments - *The DAS approved the student housing project as a model activity without any evidence that there was a need.***

We strongly disagree with HUD's position. Senior Departmental officials need to be reminded that Congress authorizes grants, not gifts, to assist Indian communities address their housing *needs*, and expects those activities to be accomplished within program rules and requirements.



Need is a common thread and reoccurring theme throughout the NAHASDA statute; for example (emphases added):

- *Congressional findings*, Section 2(6) states, "...the *need* for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal Government should work not only to provide housing assistance..."
- Section 102 discusses the prescribed format and contents of Indian Housing Plans that are required to be submitted and reviewed for compliance with NAHASDA requirements to receive grant funds. Those plans are in essence a tribal housing profile and needs assessment.

The Five Year Plan must contain a Mission Statement, which is "A general statement of the mission of the Indian tribe to serve the *needs* of the low-income families in the jurisdiction of the Indian tribe during the period." In addition, the Plan must contain a Goals and Objectives section, which is "A statement of the goals and objectives of the Indian tribe to enable the tribe to serve the *needs* identified..."

The One Year Plan must contain as a Statement of *Needs* section, requiring a detailed tribal statement about the housing needs of its low-income Indian families. The Plan also requires the tribes describe in the Affordable Housing Resource section how the plan will address those needs.

- NAHASDA Section 302 requires the Secretary to establish a formula to allocate annual funding among Indian tribes. The formula must be based on factors that reflect the *need* of the Indian tribes and Indian areas of the tribes for assistance for affordable housing activities.

HUD's own instructions recognize and require that a determination of need be established before approving reoccurring types of housing activities as model activities. The General Deputy Assistant Secretary in a memorandum to ONAP Administrators dated August 12, 1998 approved certain types of activities as model activities based on a determination of need by the area ONAP.

As we discussed at length in the draft audit report (and this report), HUD's own review of this proposed housing activity clearly shows that the issue of need was a concern in approving the facility as a model activity. One of the reasons why the Deputy Assistant Secretary initially did not approve the project was because HUD wanted more information to demonstrate that there was a need for the project. Despite repeated requests, no information to support a need for student housing was forthcoming; on the contrary, available information showed there was *not* a need for additional student housing.

**HUD comments – *The former Assistant Secretary waived HUD cost guidelines and did not adhere to statutory subsidy layering requirements.***

The HUD response disagrees with the audit finding; specifically:

- The draft report misinterprets the regulations at 24 CFR 1000.156. Those regulations only limit the amount of NAHASDA funds that may be spent for dwelling construction and equipment costs. It does not limit total project costs.
- The draft report misinterprets the subsidy layering requirements of Section 206 of NAHASDA. The subsidy layering requirements are only triggered if there is a combination of federal assistance for the housing. No other federal assistance was planned for this project. In addition, Section 102(d) of the HUD reform act does not apply to formula grants and HUD cannot adjust the amount of a formula grant under Section 102(d). Therefore, Congress placed responsibility on recipients under Section 206. Further, Section 206 is going to be repealed.
- Although the waiver acknowledges total project costs of \$9.5 million, not all those project costs are eligible under NAHASDA. The Authority's 1999 Indian Housing Plan only shows \$5.3 million for this activity. Indian Housing Block Grant funds are not the only funds to be used for this project. The Authority's IHP indicates commitments from the private sector including educational expenses, which can be used for expenses that are not eligible under NAHASDA. This activity was not included in the Authority's FY 2000 IHP. The FY 1999 IHP was amended to reprogram the funds.

**OIG evaluation of HUD comments - *The former Assistant Secretary waived HUD cost guidelines and did not adhere to statutory subsidy layering requirements.***

HUD's response does not mention or refer to the main issue in this section of the finding; namely, the former Assistant Secretary's improper waiving of developmental cost limit regulations intended to ensure that reasonable amounts would be spent to build affordable housing. It was the improper waiver that triggered the consequences of having to authorize \$9.5 million to build the dormitory, which in turn triggered the subsidy layering control to be overridden. Instead, the comments focus on rationalizing why the former Assistant Secretary's authorized \$9.5 million to build the student dormitory and our misreading of HUD's subsidy layering requirement. Nevertheless, the following is our response to those comments.

We have not misinterpreted 24 CFR 1000.156 in the draft report. We understand these regulations only limit the amount of NAHASDA funds that can be spent for dwelling construction and equipment costs, and never suggested it limits total project costs. What we *are* saying is that the former Assistant Secretary authorized \$9.5 million of NAHASDA funds to build the facility.

Contrary to HUD's assertion, HUD Reform Act's subsidy layering requirement relating to NAHASDA funded activities are *not* triggered because of other federal funding sources. To begin with other funding sources may be any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is

expected to be made available with respect to the project or activities for which assistance is sought. Such related assistance shall include, but not be limited to any loan, grant, guarantee, payment, insurance, rebate, subsidy, credit, tax credit, or any other form of direct or indirect assistance (subsection 102(b)(1) of the Reform Act). Secondly, the whole intent of Section 102(d) is to limit HUD assistance for housing projects to what is necessary to provide affordable housing. Section 102(d) of the HUD Reform Act, *Limitation of Assistance*, states that Department assistance to any housing project "...shall not be more than is necessary to provide affordable housing after taking account of assistance described in subsection (b)(1)." Although the provision requires HUD to take into consideration other assistance, it does not mean that the *Limitation of Assistance* provision does not apply when HUD funds are the only source of federal assistance.

In our opinion Section 102(d) of the HUD Reform Act of 1989 applies to formula grants whether or not HUD can adjust its funding formula. In discussing applicability, the HUD Reform Act states that Section 102 applies only to projects for which an application for assistance or insurance is submitted. The Indian Housing Plans that tribes submit for NAHASDA funding qualify as an application for assistance.

We agree that Congress has shifted the responsibility for determining and certifying compliance with the subsidy layering requirement from the Secretary to the recipient of NAHASDA funding. However, this change occurred subsequent to events that this report deals with. HUD cannot argue that subsequent changes to requirements are a valid reason for not following the requirements that were in place when decisions were made. We also agree that Section 206 of NAHASDA is being repealed. Again, this change occurred after the decisions affecting the issues in this report. More importantly, the only effect of the repeal is that tribes no longer have to *certify* that they have complied with Section 102(b) of the Reform Act. However, tribes must still *comply* with Section 102(b) even though the certification requirement no longer exists.

The response states that (1) the waiver for the \$9.5 million is clear that not all costs of the project are eligible under NAHASDA, (2) the FY 1999 Indian Housing Plan shows \$5.3 million for the activity, and (3) NAHASDA funds are not the only funds to be used for this project. However, rather than supporting the waiver, these statements appear to indicate that the former Assistant Secretary was not justified in authorizing \$9.5 million of NAHASDA funds for the project. Neither HUD nor the Authority has been able to provide any documentation supporting the \$9.5 million amount. Further, the \$5.3 million amount cited does not include almost \$1.4 million in pre-development costs already spent on the project as of August 2000. Also, our review of the Authority's IHPs for FYs 1998, 1999, and 2000 and all amendments to these documents does not identify any other private or public sources of contributions for any NAHASDA activities.

Because HUD asserts we have misinterpreted statutes and regulations regarding the issues reported, we have added a recommendation that HUD obtain legal opinions regarding these issues.

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## **Recommendations:**

We recommend the Deputy Secretary:

- 1A. Issue written Departmental guidance regarding procedures for dealing with political influences that may conflict with statutory and regulatory requirements.
- 1B. Ensure that the Office of Native American Programs provides additional guidance to its staff regarding reviews of standard and non-standard activities, and the need to ensure that tribes do not spend funds for projects that have not been approved.
- 1C. Instruct the Assistant Secretary for Public and Indian Housing to require that the Deputy Assistant Secretary for the Office of Native American Programs notify Cook Inlet Housing Authority (1) that their student housing project is not a model activity eligible for NAHASDA funding, and (2) to stop spending NAHASDA funds relating to the project.
- 1D. Obtain legal opinions from the Office of General Counsel to determine whether:
  - The Authority’s student housing project qualified as an eligible housing project designed to carry out the purposes of NAHASDA.
  - The former Assistant Secretary for Public and Indian Housing met the “good cause” test when waiving regulations at 24 CFR 1000.156.
  - Section 102(d) of the HUD Reform Act of 1989 applies to NAHASDA funded affordable housing activities.
- 1E. Investigate the actions of current and former HUD officials responsible for violating statutory waiver requirements and take appropriate disciplinary action.
- 1F. Instruct the Assistant Secretary for Public and Indian Housing to require that the Deputy Assistant Secretary for the Office of Native American Programs immediately ensure that all NAHASDA recipients comply with HUD’s subsidy layering requirements.

## Authority Needs to Ensure Its Co-operation Agreement and Tax-Exempt Status Comply With HUD Requirements

Cook Inlet Housing Authority did not fully comply with certain NAHASDA eligibility requirements, namely (1) their local co-operation agreement needs to be amended, and (2) the student housing project needs a tax-exempt status. As a result, new units may not be provided with public services and facilities, and the Authority may incur unnecessary taxes. Without this agreement HUD should not have awarded NAHASDA grant funds to the Authority. This occurred because of apparent oversights by the Authority, and because ONAP relied upon a Certification of Compliance statement from the recipient that it complied with “other applicable Federal statutes” which include those agreements.

Local co-operation agreement needs to be amended

Section 101(c) of the Native American Housing Assistance and Self-Determination Act requires that an Indian tribe must have an existing local co-operation agreement before a grant can be awarded. A co-operation agreement includes exemption from real and personal property taxes, and acceptance of tribal payments in lieu of taxes (PILOT) for public services and facilities.

The Authority agreed with our assessment that the existing co-operation agreement needs to be amended for any new rental or homeownership units developed and owned by the tribe under NAHASDA. If the Authority does not amend the agreement, new units may not be provided with public services and facilities, or the public services and facilities may be provided at greater cost to the Authority. Also, the amendment is needed to ensure that new units are exempt from real and personal property taxes.

Project needs tax-exempt status to qualify for grant

Section 101(d) of NAHASDA requires that Indian tribes can only receive a grant if the affordable housing assisted is exempt from all real and personal property taxes levied or imposed by any State or other political subdivision.

In March 2000 the Authority executed a Site Control Agreement with an Anchorage university to lease land on which a student housing facility would be built. Covenant 11 of the agreement, *Taxes and Assessments* states that the Authority “...agrees to pay all taxes and assessments, general and special, which may be assessed or imposed upon or against the site, the improvements or any part thereof, prorated as necessary for the term of this agreement.” This provision raises doubts as to whether or

not a tax-exempt status exists for any HUD grant associated with the planned student housing activity.

Certification of Compliance should ensure statutory requirements are met before HUD provides funding

Although the deficiencies cited in the Authority's co-operation and site control agreements appear to be oversights, they nevertheless are serious oversights with potentially costly consequences. HUD's Office of Native American Programs (ONAP) should not award grants unless recipients comply with these statutory requirements.

Tribes include a Certification of Compliance when they submit their Indian Housing Plans to the Office of Native American Programs. The certification is supposed to provide ONAP with assurance that the tribe will comply with all other types of requirements that accompany the delivery of housing under NAHASDA, such as insurance coverage or compliance with required policies and procedures. The Certification of Compliance also certifies that the tribe complies with "...other applicable Federal statutes," but the certification does not state what these statutes are.

ONAP needs to develop a more meaningful Certification of Compliance that lists the statutory compliance items. This should minimize the possibility of tribes overlooking significant statutory requirements and associated potential costs, and provide ONAP with better assurance that tribes understand and are adhering to statutory requirements.

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### HUD comments

Local co-operation agreement does not need to be amended. The report misstates Section 101(c) of NAHASDA. This section was amended in 1998 so that the recipient may not use IHBG (NAHASDA) funds for rental housing or leased purchased housing owned by the recipient unless it has a co-operation agreement. The Authority did not get to the point of actually using IHBG funds for construction of the student housing project, thus this statutory requirement was not yet triggered. Moreover, a cooperation agreement between the Authority and the Municipality of Anchorage as of October 1, 2000 shows the Authority can develop an additional 259 units under the current agreement.

Project does not need tax-exempt status to qualify for grant. The report misstates Section 101(d) of NAHASDA. Again, the response states that this section was also amended in 1998 so that the recipient may not use IHBG funds for rental housing, etc. unless the housing is exempt from real and personal property taxes. The Authority did not get to the point of actually using IHBG funds for construction of the student housing project, thus this statutory requirement was not yet triggered.

## OIG evaluation of HUD comments

HUD's comments do not address the main point of the finding, and misrepresent the finding's facts and conclusions. The issue raised in the finding relates to HUD's over-reliance on certifications to ensure statutory compliance. Nevertheless, we will address the comments in HUD's response.

Local cooperation agreement needed to be amended. Using funds for construction does *not* trigger the statutory requirement relating to cooperation agreements. The NAHASDA cooperation agreement requirement prohibited the Secretary from *granting any of its funding* to Indian tribes unless the governing body of the locality within which any affordable housing to be assisted with the grant amounts has entered into a cooperation agreement to cover those units. Clearly, the granting of funds occurs before the funds are used. As presented in the draft report the Authority's cooperation agreement with the Municipality of Anchorage lacked the capacity for including its planned and approved NAHASDA affordable housing activities. The HUD response refers to an amendment dated October 21, 1998, which was not in affect when the grant was awarded, nor did the change affect the finding. The amendment allowed the awarding of grants; however a tribe could not use those granted funds for rental or homeownership units until it obtained the required local cooperation agreement. The Authority obtained a cooperation agreement with the Municipality of Anchorage (dated October 1, 2000) to develop an additional 259 housing units after meeting with us about their existing cooperation agreement capacity problem. The newly hired Executive Director promptly took action to increase the unit capacity to comply with NAHASDA.

Project continues to need tax-exempt status to qualify for grant. HUD's response again relies on the October 21, 1998 amendment which was not in affect when Alaska ONAP approved the Indian Housing Plan and awarded the grant on July 10, 1998. The comments argue that the amendment only prohibited funds from being used for activities other than actual construction until the housing units are exempt from and personal property taxes. As reported in the draft, a tax-exempt status was required to be obtained prior to being awarded a grant. Although the amendment now authorizes grants to be awarded without the existing exemption, tribes still cannot use the awarded funds for affordable housing activities until rental or homeownership units are exempt from all real or personal property taxes.

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## Recommendations:

We recommend you:

- 2A. Instruct the Assistant Secretary for Public and Indian Housing to require the Office of Native American Programs to revise the Certification of Compliance so that it separately lists each statutory requirement that requires certification.

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# Management Controls

In planning and performing our audit, we considered HUD’s management controls as they relate to approving NAHASDA activities and waiving program regulations in order to determine our auditing procedures, not to provide assurance on management controls. Management controls include the processes for planning, organizing, directing and controlling program operation. They include the systems for measuring, reporting and monitoring program performance.

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<b>Relevant management controls</b>
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We determined the following management controls were relevant to our audit objectives:

- Program operations: Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Compliance with laws and regulations: Policies and procedures management has implemented to reasonably ensure that resource use is consistent with laws and regulations.

It is a significant weakness if management controls do not provide reasonable assurance that the process for planning, organizing, directing and controlling program operations will meet an organization’s objectives.

<b>Scope of work</b>
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We evaluated the above management control categories by assessing control design, implementation, and effectiveness.

<b>Significant weaknesses</b>
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Based on our review, we believe the following items are significant weaknesses:

Program operations: HUD’s management controls did not ensure compliance with its procedures for determining eligibility of affordable housing activities. For example, a student housing project was approved as a standard affordable housing activity when review guidance did not support the decision (see Finding 1).

Compliance with laws and regulations: HUD’s management controls did not ensure compliance with statutory and regulatory requirements. For example, (1) the Deputy Assistant Secretary approved an ineligible activity that was not needed, (2) the former Assistant Secretary waived HUD regulations without good cause, (3) recipients are not required to certify their compliance with subsidy

layering requirements (see Finding 1), and (4) HUD's Certification of Compliance did not ensure co-operation agreement and tax-exempt status for affordable housing activities are obtained (see Finding 2).



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
THE DEPUTY SECRETARY  
WASHINGTON, D.C. 20410-0050**

DEC 18 2000

MEMORANDUM FOR: Frank E. Baca, District Inspector General for Audit, OAGA

(ORIGINAL SIGNED)

FROM: Saul N. Ramirez, Deputy Secretary, SD

SUBJECT: Draft report on Audit of HUD's approval of a student housing project for Cook Inlet (Alaska) Housing Authority, Office of Public and Indian Housing, Office of Native American Programs

This memorandum is in response to the draft report on HUD's approval of a student housing project for the Cook Inlet Housing Authority (CIHA). This response only addresses the findings made in the draft report. We conclude that all findings are wrong. We have not addressed the recommendations because no corrective action is needed. Because there have been no violations, we are requesting that no report be issued by the Office of Inspector General.

Our comments on the two findings in the draft report are as follows:

**FINDING 1: HUD Improperly Approved a Student Housing Project.**

**The Alaska Office of Native American Programs (1) approved the project as a standard activity without adequate justification for doing so, and (2) did not timely notify the Authority once it found out the project was not a standard activity.**

**Response:** This subcomponent of Finding 1 is not accurate. The Alaska Office of Native American Programs (ONAP) approved the use of Indian Housing Block Grant (IHBG) funds for planning only. The CIHA Indian Housing Plan (IHP) was the first IHP reviewed in the Alaska ONAP. It was received on April 15, 1998, and determined to be in compliance on July 10, 1998. Under the goals and objective section of the one-year plan, Goal Two stated, "To address the housing and supportive services needs of low-income Native youth living in CIHA jurisdiction." Objective 2 under that goal stated, "To contract for A&E firm, acquire land and complete other planning activities in Year 1, leading to the construction of low-rent housing for low-income Native University students residing in Anchorage in Year 2." The Alaska ONAP approved the Fiscal Year (FY) 98 HIP for planning of low-rent housing for low-income Native University students.

This was the 1<sup>st</sup> year of the program and HUD had not yet provided guidance to the Alaska and other ONAPs that indicated planning was only eligible for affordable housing activities as outlined in Section 202 (1) through (5) of NAHASDA, unless a model activity was approved. However, initially, this was viewed as a low-rent housing project. The fact that CIHA was focusing on Native students did not alter that view. Section 102(c)(4)(G) of NAHASDA specifically addresses college housing. The distinction of low-income rental housing for students as a model activity was not considered as the activity was viewed as planning for a low-rent project. Also, the fact that CIHA had not included any construction costs in the IHP and did not do so until the submission of the FY 1999 IHP confirms the correctness of ONAP's view that its July 10 approval only extended to planning activities--not construction. The National Review Committee (NRC) would not be involved in the review of an activity until it was included in an IHP.

Subsequent to the Office of General Counsel memorandum regarding college housing, and in response to other information received from CIHA regarding the project, the former Executive Director was verbally told on several occasions that the student housing project was considered a model activity and would require the Assistant Secretary's approval in the 1999 IHP. Sometime in early January 1999, Alaska ONAP staff became aware that CIHA was moving beyond the planning stages and expediting their plans for construction of the student housing during the 1999 construction season. The Alaska ONAP submitted the activity to the NRC on January 12, 1999, in anticipation of CIHA's 1999 IHP submission. There were a number of follow-up meetings with CIHA to obtain information requested by the NRC and prior to the approval of the model activity by the Deputy Assistant Secretary. The issue regarding the Alaska ONAP's processing was in line with the processing instructions for IHPs and is moot in any event because HUD subsequently approved the college housing project as a model activity, and therefore the planning costs are eligible.

**The DAS approved the student housing project as a model activity without any evidence that there was a need**

**Response:** The audit report is fundamentally flawed on this point. The report equates “need” to the purposes of NAHASDA. This is NOT the statutory or regulatory test. The test (Section 202(6) of NAHASDA) is whether the model activity is designed to carry out the purposes of NAHASDA and is specifically approved by HUD as appropriate for such purpose.

Moreover, the IHPs did show a need for this activity. The FY 1998 IHP for the CIHA indicates a need for college housing for 40 low-income families and in the 1999 IHP, a need for college housing for 60 low-income families. According to the IHP, the data source for this information is the CIHA; Municipality of Anchorage; State of Alaska and Alaska Housing Finance Corporation. The IHP also contains a narrative of need and addresses the college housing issue. Further, correspondence from Mr. Carl Marrs, President and CEO of Cook Inlet Region, Inc. states that this is one of CIHA's top priorities and the former Executive Director addresses the need for this housing. There is

no requirement in NAHASDA or the regulations that “need” be documented any further than the IHP. Also, HUD/ONAP does not have any information nor has any information been provided in this report which would indicate that the CIHA has falsely represented that information. As correctly stated in the draft audit report on page 4, “NAHASDA gives Indian tribes the flexibility to design housing activities tailored to their needs.”

**The A/S waived HUD cost guidance and did not adhere to statutory subsidy layering requirements**

**Response:** The audit report misinterprets the regulation at 24 CFR 1000.156. The regulation limits the amount of IHBG funds that may be spent for dwelling construction and equipment costs. It does not limit total project costs.

The audit report also misinterprets the subsidy layering requirements of Section 206 of NAHASDA. The subsidy layering requirements are only triggered if there is a combination of federal assistance for the housing. No other federal assistance was planned for this project. In addition, Section 102(d) of the HUD Reform Act does not apply to formula grants. HUD cannot adjust the amount of a formula grant under Section 102(d) of the HUD Reform Act. Therefore, Congress placed the responsibility on recipients under Section 206 of NAHASDA. Section 206 of NAHASDA will be repealed by the “American Homeownership and Economic Opportunity Act of 2000” which the House and Senate passed last week and which is expected to be signed by the President.

Although the waiver acknowledges total project costs of \$9.5 million, the waiver is clear that not all costs of this project are eligible under NAHASDA. The FY 1999 IHP shows \$5.3 million for this activity. IHBG funds are not the only funds to be used for this project. The IHP indicates commitments from the private sector including educational expenses which can be used for expenses which are not eligible under NAHASDA. This activity was not included in CIHA’s FY 2000 IHP. The FY 1999 IHP was amended to reprogram the funds.

**FINDING 2 Cook Inlet Housing Authority did not fully comply with certain NAHASDA eligibility requirements, namely (1) their local co-operation agreement needs to be amended, and (2) the student housing project needs a tax-exempt status.**

**Local co-operation agreement needs to be amended**

**Response:** The audit report misstates Section 101(c) of NAHASDA. This section was amended in 1998 so that the recipient may not use IHBG funds for rental housing or lease-purchase housing owned by the recipient unless it has a cooperation agreement. Cook Inlet did not get to the point of actually using IHBG funds for construction of the student housing project, thus this statutory requirement was not yet triggered.

Moreover, there is a Cooperation Agreement between the CIHA and the Municipality of Anchorage which shows that as of October 1, 2000, the CIHA can develop an additional 259 units under the current agreement.

**Project needs tax-exempt status to qualify for grant**

**Response:** The audit report misstates Section 101(d) of NAHASDA. This section was amended in 1998 so that the recipient may not use IHBG funds for rental housing or lease-purchase housing owned by the recipient unless the housing are exempt from real and property taxes. Cook Inlet did not get to the point of actually using IHBG funds for construction of the student housing project, thus this statutory requirement was not yet triggered.

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