

E
98
.H58
N362
1993

NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

WASHINGTON, D.C.



SUPPLEMENTAL REPORT AND
NATIVE AMERICAN HOUSING IMPROVEMENTS
LEGISLATIVE INITIATIVE

SEPTEMBER 1993

U.S. Department of Housing and
Urban Development, Room 8141
Washington, DC 20410

NATIONAL COMMISSION ON AMERICAN INDIAN,
ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

Washington, D.C.

SUPPLEMENTAL REPORT
AND
NATIVE AMERICAN HOUSING IMPROVEMENTS
LEGISLATIVE INITIATIVE

SEPTEMBER 1993



National Commission on American Indian, Alaska Native, and Native Hawaiian Housing

Robert Gauthier,
Commission CHAIRMAN
(Salish-Kootenai)

Joe De La Cruz
President, Quinault Nation
(Quinault)

Wilma Mankiller,
Chief, Cherokee Nation of Oklahoma
(Cherokee)

Jackie Johnson
Executive Director,
Tlingit-Haida Regional
Housing Authority
(Tlingit-Haida)

Wayne Chico
Executive Director, Tohono O'Odham
Indian Housing Authority
(Tohono O'Odham)

James Solem
Commissioner, Minnesota Housing
Finance Agency

Louis Weller
President, Weller Architects
(Caddo-Cherokee)

Ms. Hoaliku Drake
Chairwoman, Hawaiian Home Lands
Commission
(native Hawaiian)

Ted Key
Executive Director
Chickasaw Housing
(Chickasaw)

Ms. Eileen Lota
(native Hawaiian)

Warren Lindquist
Former Assistant Secretary
U.S. Department of Housing and Urban
Development
Office of Public and Indian Housing

Bill Nibbelink
Executive Director
Flandreau Santee
Sioux Indian
Housing Authority



COMMISSION STAFF

Francis L. Harjo
Executive Director
(Paiute-Shoshone)

Joann K. Chase
Deputy Director
(Mandan-Hidatsa)

Lois V. Toliver
Administrative Officer

Annabelle M. Toledo
Executive Secretary
(Jemez Pueblo)

Legislative Consultants

Katherine R. Boyce, Esq.
Anne J. Chiaviello, Esq.
(Patton, Boggs, Blow)
Washington, D.C.

Financial and Economic Consultants

Charles W. Blackwell
William L. Stringer
(Blackwell and Associates)
Washington, D.C.



Table of Contents

I.	Chairman's Preface.....	1
II.	Report on Final Year of Commission Activities.....	3
III.	Disposition of the Recommendations of the Commission.....	15
IV.	Native American Housing Improvements Legislative Initiative.....	31

EXHIBITS

1.	Commission Questionnaire on Native Housing Needs (Circulated at April 1993 annual conference of the National American Indian Housing Council)	1-1
2.	Ten-Year Funding Plan of the Commission (To alleviate substandard housing in Native Communities in the United States)	2-1
3.	Justification for Legislative Proposals Addressing the Housing and Infrastructure Needs of Native Hawaiians	3-1
4.	Native American Finance Authority Act of 1993	4-1
5.	Section-by-Section Analysis of the Native American Finance Authority Act of 1993	5-1
6.	Justification Statement for the Native American Finance Authority Act of 1993	6-1

SECTION I

Chairman's Preface

On December 15, 1989, the United States Congress enacted legislation creating the National Commission on American Indian, Alaska Native and Native Hawaiian Housing to examine and recommend solutions to the housing problems of these Native populations. After extensive field hearings, town meetings, site visits and discussions conducted throughout Indian Country, Alaska and Hawaii, the Commission published a report entitled "Building the Future: A Blueprint for Change" on August 6, 1992. This report offered Congress, the Administration, Tribes, Alaska Natives and native Hawaiians a multitude of recommendations for reform of existing federal housing programs and the development of new programs and financing options to begin to meet more effectively the housing needs of Native people in the United States.

The Commission decided that it should spend the balance of its time developing legislative proposals to implement the key recommendations, including the creation of a Native American Finance Authority and a special program for native Hawaiians. To expand its data base, the Commission conducted a survey of Indian housing authorities (IHAs)* to collect more data on Native populations' housing supply and demand. The Commission sought data on housing needs at all income levels--below poverty and homeless, from the poverty line to median income, and from moderate income and above (recognizing that in increasing numbers people are wishing to return to their Native communities but cannot because no housing exists for them). The Commission's goal was to recommend programs to improve housing conditions, enhance home-ownership opportunities, and provide housing-related infrastructure throughout Native areas, particularly those where the trust or restricted status of the land (such as the Hawaiian Home Lands) impedes housing and infrastructure development.

This Supplemental Report discusses in Section II Commission's progress in its final year, the results of the informal housing survey, and the particular housing conditions and needs of native Hawaiians. Section III reports on the current status of the Commission's recommendations set forth in the August, 1992 report. Most important, this Supplemental Report presents the Commission's Native American Housing Improvements Legislative Initiative in Section IV. The legislative initiative proposes: 1) expansion of existing federal housing and infrastructure programs to include native Hawaiians,

*/ The term as used in this Supplemental Report includes regional housing authorities in Alaska.

2) creation of a Native American Finance Authority, and 3) changes to the United States Housing Act of 1937 and other statutes. The Commission also proposes a rough ten-year funding plan designed to eliminate the unconscionably long waiting lists for new and improved housing, infrastructure and access roads in Native communities. (See Exhibit 2 to this Supplemental Report.)

It has been an honor to serve this year as Chairman of this important National Commission, working with distinguished tribal leaders: the Commission's past Chairman George Nolan, Vice Chairman of the Sault Saint Marie Chippewa Tribe; President Joe Delacruz of the Quinalt Nation; and our newest member, Principal Chief Wilma Mankiller of the Cherokee Nation; and the many talented IHA Executive Directors and other Native housing experts.

I am very appreciative of the determination of the Commission members and many others who helped develop the Commission's recommendations. Contributions of their time, energy and wisdom have combined to produce an historic legislative initiative which, we hope, will revolutionize the delivery of housing to Native communities. Special thanks are due to the Commission's dedicated staff, including its Executive Director Francis Harjo, Deputy Director JoAnn Chase, and able assistants Lois Toliver and Ann Toledo. I also want to acknowledge and thank Ben Henderson, Joel Thompson, Alan Parker, Dick Trudell, Patricia Zell, Bob Arnold, Dom Nessi, Kate Boyce, Anne Chiaviello, Charles Blackwell, Bill Stringer, Eric Olson and many others who helped guide us in our undertakings.

Most of all, I am grateful to have had the opportunity to meet several hundred Native individuals and their families, and some of the housing officials trying -- with virtually tied hands -- to deliver decent, safe and sanitary housing in Native communities. It is the millions of Native people in the United States for whom we served and who, we hope, will benefit from implementation of our legislative initiative.

Robert Gauthier
Chairman
National Commission on American Indian,
Alaskan Native, and Native Hawaiian Housing

SECTION II

Report on Final Year of Commission Activities

The Commission's August, 1992 report recited findings that (1) federal funding for native housing must increase substantially, and (2) other approaches beyond existing federal housing programs must be pursued to solve the housing needs in our Native communities. In this last year, we scrutinized the existing federal housing programs and delivery systems in these communities. Our focus centered on Indian housing authorities (IHAs) which administer two of the most widely used federal housing programs -- the Mutual Help Homeownership and Low-Income Rent programs. Below is a brief summary of the existing Indian housing delivery system and ways it can be improved.

Federal Housing Delivery in Native Communities

Nearly all the housing in Native communities is provided by various federal programs which use direct spending grants and subsidies from the Department of Housing and Urban Development (HUD), the Bureau of Indian Affairs (BIA) of the Department of the Interior, the Indian Health Service (IHS) of the Department of Health and Human Services, the Farmers Home Administration (FmHA) of the Department of Agriculture and the Department of Veterans Affairs (VA). Of them all, the most widely used are the programs administered by HUD. (Exhibit 2 of this report recommends specific funding proposals for the most important of these programs.)

1. The HUD Native Housing Programs

The HUD Indian Housing programs operated, until recently, through a decentralized three-tiered structure which included a Headquarters in Washington, D.C. and six Offices of Indian Programs which serviced a given geographic area and reported to the Regional Administrator in the respective jurisdiction. This additional layer of unnecessary bureaucracy was eliminated in the Housing and Community Development Act of 1992. After HUD implements these structural changes, the six Offices of Native American Programs^{1/} will report directly to the Director of Native American Programs under the Assistant Secretary for Public and Indian Housing in HUD Headquarters.

^{1/} In May of 1993, the HUD "Office of Indian Programs" changed its name to the "Office of Native American Programs". The two office names are used interchangeably throughout this Supplemental Report.

The Director of Native American Programs administers Indian housing programs pursuant to the U.S. Housing Act of 1937. Program oversight includes: (i) establishing administrative guidelines; (ii) establishing technical, architectural and construction standards; (iii) providing guidance on the control and assignment of Indian program funds; and (iv) conducting liaison with other agencies concerned with Indian housing.

HUD works through its six Offices of Native American Programs to provide assistance to IHAs. The federal regulations^{2/} governing the relationship between HUD and the IHAs provide for a great deal of IHA autonomy; HUD oversight is only tightened when the IHA is judged to be "high risk." The IHAs set development priorities subject to some HUD approval, may sell housing developments under delegated HUD authority, and must comply with all applicable tribal, local and regional plans. The IHAs also develop their own policies for the admission of tenants and home buyers, but must adhere to federal preferences for admission and income limits. Federal regulations limit total tenant payments to 30% of tenant adjusted income (the so-called "30% Rule").

HUD oversight is limited for the Comprehensive Improvement Assistance Program (for IHAs with less than 250 units) and the Comprehensive Grant Program (for IHAs with over 250 units).^{3/} The Comprehensive Grant Program in particular is designed to give IHAs a more reliable and predictable flow of funds as well as greater control in planning and expending funds.

The IHAs use HUD's financial and technical assistance to provide housing services to members of Indian tribes and others. IHAs are similar to public housing authorities except that they can be established by tribal ordinance or state law.

The IHA administers both tracks of the basic HUD Indian housing program. The Annual Contributions Contract (ACC) between HUD and the IHA includes the program requirements and sets out the subsidy payments for the HUD-regulated properties under the control of the IHA.

^{2/} See generally 24 C.F.R. Part 905 (1992).

^{3/} 58 Fed. Reg. 13,925 (1993) (to be codified at 24 C.F.R. § 906.609, governing funds for "the modernization of Indian housing developments, including emergency and other modernization", and 24 C.F.R. § 905.660, governing funds to "operate, upgrade, modernize, and rehabilitate Indian housing developments").

First, for renters, the IHA acts as landlord and runs the Low-Income Rental Housing program under HUD oversight.^{4/} HUD assistance comes primarily in the form of ACC payments which cover rental costs above the tenant's required payment. All HUD subsidies are included in the ACC, which specifies the amounts and timing of payments and who is to receive them. The same rent-income ratios and minimum rent rules used for public housing apply. The initial term for the ACC is 25 years for the Mutual Help Homeownership program and 40 years for the Low-Income Rental Housing program.

Second, for potential home buyers, the Mutual Help Homeownership Opportunity program provides a means for applicants to achieve home-ownership. The applicant must provide an initial contribution of \$1500 in the form of land, cash, materials or labor, or any combination of these.^{5/} The tribe can contribute all but the labor component. The buyer then pays maintenance and utilities plus a reduced monthly payment. The IHA can amortize the balance over a period not less than 15 years or greater than 25 years and give credits in special reserve and equity accounts to allow the buyer to assume ownership eventually. The IHA provides a mortgage at an interest rate not to exceed the mortgage loan rate established by the Veterans Affairs and more recently established by the IHA.

Other HUD housing and related programs which Native communities can and should utilize are the Indian HOME program (to which tribes, rather than IHAs, apply for funding), Indian Housing Section 8 vouchers or certificates, Indian Emergency Shelter Grants, and Substance Abuse Programs.

Discussed briefly below are each of the four key players in the delivery of Indian housing: 1) tribal government; 2) IHA Board of Commissioners; 3) IHA staff; and 4) program participants.^{6/}

First, the tribal government issues the ordinance to create an IHA (for those not created by state law) and sets the goals for the organization, for example, construction of new units or rehabilitation of existing ones. The tribal government also appoints the IHA Board of Commissioners and delegates authority

^{4/} The IHA also administers the Indian Housing Family Self-Sufficiency Program from rent funds. See 58 Fed. Reg. 30,883 (1993) (to be codified at 24 C.F.R. § 905.3001 et seq.)

^{5/} 24 C.F.R. § 905.419.

^{6/} This description derives from Indian Housing Authorities - Roles and Responsibilities, by the HUD Office of Indian Housing.

to them. IHAs created under state law have additional powers beyond those created by tribal law. For example, state-created IHAs have the power of Eminent Domain.

Second, the IHA Board of Commissioners exercises the authority to set IHA policy by passing resolutions, and also monitors IHA staff for adherence to those policies. The Board and local tribal government are responsible for the success of the operation, and ultimately responsible for fiscal matters.

Third, the IHA staff, working under an Executive Director, administers both the Rental Housing Program and the Mutual Help Homeownership Program. The Director is responsible to the Board for compliance with federal laws, regulations and IHA policies.

Fourth, the program participants are responsible for promptly paying their adjusted monthly obligations and complying with conditions of occupancy. Participants must meet the criteria for "lower income", which means their annual income may not exceed 80% of the area median income.^{7/}

2. Community Development Block Grant Program

A separate non-entitlement Community Development Block Grant (CDBG) program provides funds for Indian tribes and Alaska Native villages because the criteria for HUD's basic CDBG program does not include these governments.^{8/} The separate CDBG program is competitive in nature and provides two types of grants.

The first are single purpose grants designed to meet a specific community need, such as housing rehabilitation, infrastructure, and job creation.^{9/} Applications for these grants must compete for funding with other single purpose applications.

The second are imminent threat grants designed to address a pressing threat to the public health or safety. The six HUD Offices of Native American Programs administer the grants. The Indian tribe or Alaska Native village can delegate authority to work with HUD under a grant, but the tribe or village itself is

^{7/} 24 C.F.R. § 905.102.

^{8/} See 24 C.F.R. § 571. Eligible CDBG participants are metropolitan cities with over 50,000 population and urban counties with over 200,000 population; housing authorities are not authorized to administer the CDBG program.

^{9/} 58 Fed. Reg. 11,842-3 (1993) (to be codified at 24 C.F.R. §§ 571.303-5).

considered to be the applicant.^{10/} These grants are awarded if the HUD office determines that the appropriate conditions exist and if funds are available.^{11/} Each HUD office involved in the program receives a basic allocation of \$500,000 for such grants plus a formula share of additional funds based on the number of Indians or Alaska Natives in the region.^{12/}

3. Other Native Housing Programs

There are other federal programs available for use in Native communities. To be at all effective in meeting some of the housing needs in these communities, however, these programs must be more tailored and expanded. These programs include: The HUD HOME and HOPE programs and the newly created Indian Housing Loan Guarantee Program; the BIA Housing Improvement Program (HIP) and Road Construction Program; the FmHA loan and grants programs and VA direct and guaranteed loan programs.

The HUD HOME program is a direct block grant program whose funds are distributed directly to the tribe and may be used for new construction, substantial rehabilitation or rental assistance for low-income housing. The HOPE program provides funds to low-income tenants to purchase their units as well as other uses. The Loan Guarantee program, (discussed in more detail below) is a new Indian program enacted last year to provide a federal guarantee on housing mortgages. When implemented, it should be a valuable tool in housing development in Native communities. The Commission is pleased to see that the HUD Office of Native American Programs is being quite proactive in developing regulations quickly to implement the program.

In addition to the HUD programs, the BIA HIP provides housing improvement and road construction funds to the tribes. The FmHA programs include guaranteed and direct loans for housing in rural areas and technical assistance grants. The new VA direct loan program finances new construction, purchase, and rehabilitation as does its guaranteed loan program.

Many of the Commission's recommendations include ways to improve these programs and make them more adaptable and accessible to Native communities.

^{10/} 24 C.F.R. § 571.501.

^{11/} 58 Fed. Reg. 11,843 (1993) (to be codified at 24 C.F.R. § 571.305).

^{12/} 24 C.F.R. § 571.101.

Native Housing Needs and Commission Questionnaire

The Commission's hearing record is replete with references to federally-assisted properties in many Native areas that are dilapidated, substandard and grossly overcrowded. To augment its record, this year the Commission conducted a housing needs survey by distributing to IHAs a questionnaire, attached as Exhibit 1. Although the response rate was somewhat disappointing, the results were nonetheless revealing. Thirty-four IHAs reported 11,163 homes in their communities constructed with HUD funds, while only six IHAs reported slightly more than 1,000 housing units constructed with non-federal or other resources.

Only two responses indicated that Indian communities have access to a local Indian bank or credit union. The survey underscored the dominance of HUD programs in Native areas, verified that Indian communities do not have Native financial institutions, and evidenced a need for housing alternatives beyond the federally-assisted programs. Most of the questionnaire's respondents stated that overcrowding is a problem in their areas. According to HUD data, as much as 34% of all Indian housing is in need of basic plumbing. Hundreds of Indian homes are so deteriorated that substantial rehabilitation is required to meet minimum needs, and thousands more are beyond repair and should be razed and replaced.

The questionnaire also indicated that some of the federal programs available to Native communities are not being used. In particular, the survey revealed that FmHA programs are seldom if ever used, and in most cases IHA officials have not been trained to use them. The Commission concluded that the FmHA's delivery system is inadequate, whether this inadequacy is due to the failure of FmHA to market the program properly and provide training, or due to a lack of knowledge on the part of IHA officials of how to use FmHA programs.

Expanded Native Housing Options Necessary

From testimony, the questionnaire results, and other data collected during the Commission's field hearings and other meetings, it is clear that tribal leaders and federal government officials know that massive infusions of funds are needed to address the housing crisis in our Native communities. Some of these funds must be federal -- hence, the Commission suggests its ten-year funding plan presented in Exhibit 2.

It is equally clear that there are dangers in total reliance on federal funds for Native housing. Those funds were cut drastically over the last decade, leading to ruinous conditions in Native communities. Funding cuts could occur again, depending on the direction of federal deficit reduction actions in the future.

The Commission has found that another risk of total reliance on federal housing programs is the constraint on Native communities to structure their housing developments more to suit federal program requirements than to meet their own needs. Furthermore, such reliance on the federal government runs counter to Native communities' goals of self-determination and economic self-sufficiency.

For these reasons, the Commission calls for more federal funding and alternatives to total federal dependence, in order for the Congress and the Clinton Administration to achieve a long-term solution to the Native housing crisis. Furthermore, the solutions must involve some new programs and heightened efforts to attract non-federal investments into Native communities. The focus must be on the broad spectrum of Native housing needs of the homeless, the elders, the low-income families, and the more moderate-income families. In Indian nations today, for example, many tribal leaders are struggling towards self-governance and self-sufficiency for their tribes. They are trying desperately to attract their most educated, skilled and financially stable tribal members back to the reservation or tribal territory. Yet, why should capable young tribal members return, only to be homeless or forced to live below their means, because there is no available housing on or near their Native home lands?

Little, if any, conventional lending is available to Native people seeking to buy or construct homes on trust lands or other restricted areas. Consequently, many "financially able" individuals have no choice but to utilize the federal housing programs designed for low-income applicants. Eventually, they become trapped in the public-assistance system, when instead, they should secure conventional mortgage financing. Programs to provide single-family mortgages, as well as appropriate conventional market-rate loans to develop rental housing, are now nonexistent in rural areas with high concentrations of Native people. These conditions must change.

The Commission is encouraged to see that many Native leaders are promoting aggressive housing and economic development agendas in the halls of Congress and the Executive Branch. The Commission is pleased that, as indicated in Section III of this report, many of its recommendations have been adopted or implemented. The combined efforts of Native communities and the federal government to develop adequate housing programs are finally beginning to result in some innovative solutions.

One such innovation is the recently enacted Housing and Community Development Act of 1992 (12 U.S.C. § 1715z-13a) authorizing Congress to appropriate up to \$50 million in loan guarantees for Indian families, IHAs and Alaska Native families. The so-called "Indian Housing Loan Guarantee Program" is the first (and perhaps revolutionary) program to facilitate private financing of homes for Native families. So successful do we believe the Indian Loan Guarantee Program will be, that the

Commission recommends expansion of the program to housing on the Hawaiian Home Lands.

The Commission has recommended in testimony to the House and Senate Subcommittees on VA-HUD Appropriations that ample funding be appropriated to implement the loan guarantee program (which uses federal funds as a guarantee in the event of default on mortgages). We were pleased that the House approved an initial appropriation of \$2 million and hope the Senate will increase the appropriation level.

The Commission also was encouraged greatly by the support given the program by the Washington Mutual Savings Bank of Seattle, Washington, a community development bank that makes 25% of its loans to low-income and moderate-income families. The support of the bank represented a breakthrough to private financing sources. Heretofore, private sector and other lenders have not extended loans in Indian Country, because the trust status of Indian lands prevented foreclosure in the event of borrower default.

Commission Recommendations

In its August, 1992 report, the Commission presented many recommendations for improvement of the Native housing delivery system in the United States. Section III of this Supplemental Report summarizes the current status of each of those recommendations. This year, the Commission devoted its attention to those of its recommendations requiring legislative enactment. The Commission presents its Native American Housing Improvements Legislative Initiative in Section IV. In addition, the Commission suggests a ten-year funding plan for Native housing in Exhibit 2 of this report.

This endeavor prompted the Commission to reach out to numerous private and public organizations for their opinions and guidance. For example, on April 5, 1993, Commission members appeared before the National American Indian Housing Council (NAIHC) annual conference. The Commission circulated its informal housing needs survey (attached as Exhibit 1 and previously discussed), and presented the Commission's recommendations and legislative initiatives. The NAIHC members heartily endorsed the Commission's legislative initiative, including the creation of a Native American Finance Authority. In addition, Commission and NAIHC members debated and agreed to work with tribal leaders and Alaskan and Hawaiian officials to develop the ten-year funding plan to eliminate substandard housing in Native communities.

The Commission also sought reactions to its recommendations from key Congressional and Administration officials, and from HUD, FmHA, BIA, Fannie Mae, tribal, IHA, Alaskan and Hawaiian officials and many others.

The Commission has been especially delighted that the Clinton Administration recognizes the need for funding and improving the current housing programs for Native communities. For example, the Commission was pleased that HUD Secretary Henry Cisneros included funding for 2,700 Native housing development units in the HUD budget request for FY 1994, the first such Administration request in many years. As unbelievable as it seems, prior administrations recommended eliminating funding for new development units even in the face of the overwhelming need for new units in Native communities.

The Commission recommended FY 1994 funding for 5,500 units in Congressional testimony and in its ten-year funding plan (Exhibit 2), and hopes that next year Secretary Cisneros will double his request.

Another encouraging action by Secretary Cisneros was his recently proposed legislation that would change significantly the rent policy for Indian and public housing tenants. One major provision would "disengage the relationship" between rising incomes and rising rents at Indian and public housing properties.

To capitalize on this more receptive climate, the Congress must consider not just minor improvements to current programs, but also major new initiatives to meet the needs of low-income and moderate income Native people. Accordingly, the Commission's legislative proposals not only include modifications to existing programs, but they also call for extension of these programs to native Hawaiians for use on Hawaiian Home Lands, and the establishment of a Native American Finance Authority (NAFA).

1. Modifications to Existing Programs

The modifications proposed in the Commission's legislative initiative improve delivery and make the housing programs more compatible with the way of life of Native people. For example, the Commission recommends a set-aside of FmHA programs for Native people, and a mandate for better outreach by FmHA. This recommendation will encourage greater participation by Native Americans in FmHA programs.

In the HUD low-income rental program, the Commission recommends further adjustments to "gross income" to arrive at an "adjusted income" that better reflects the actual income stream available to a tenant family. The Commission also recommends reducing the 30% Rule to a 20% rule. The first recommendation would tailor the program to the needs of Native people, and the second would alleviate the hardship faced by extended families who must pay 30% of their adjusted income for rent.

Other recommendations would (i) provide greater flexibility, (ii) apply a Native preference and (iii) promote better efficiency, in the Native housing programs.

2. Native American Finance Authority (NAFA)

The Commission recommends the creation of NAFA based upon two fundamental concerns:

- A crucial need exists for more and better housing and related infrastructure to meet basic standards for Native people.
- Financial structures and institutions necessary to provide housing and ancillary infrastructure do not exist for this segment of the American population.

NAFA would be empowered to work with Native American governing bodies and housing authorities, and public and private lenders, to create and administer housing programs. These housing programs would enable Native people to meet their current needs better by helping them find private capital to build housing and related infrastructure in Native communities. For the first time, a program would create real economic opportunities and real home-ownership in Native communities.

The United States must adopt a broader approach not only in developing housing programs, but also in determining who should be served by them. All Native communities suffer horrendous housing shortages and infrastructure problems. While these problems are not identical, they are all serious. Perhaps most serious -- shameful, in fact -- is that federal programs are not uniformly provided when they are needed.

3. Native Hawaiian Housing Problems

Nowhere is this apparent discrimination in the delivery of federal housing assistance more disturbing than in the State of Hawaii. The native Hawaiians have federally authorized access to their Hawaiian Home Lands, but key federal housing programs are not extended to them. The native Hawaiians' history, their socio-economic condition, and legal precedents justify extension of federal housing programs to the Hawaiian Home Lands.

There are striking similarities between the problems confronting native Hawaiians^{13/} and those facing American Indians and Alaska Natives who live on reservations or other restricted home land areas. Loss of tradition and culture, limited access to urban centers, limited availability of capital, lack of

^{13/} As defined in section 201(a)(7) of the Hawaiian Homes Commission Act, 1920, Pub. L. No. 67-34, 42 Stat 106. The Act defines eligible native Hawaiians as those with at least 50% quantum of Hawaiian blood.

infrastructure, and restricted use of lands held in trust, are among the problems faced by all three Native groups. Just as federal housing programs have been expanded to include American Indians and Alaska Natives, so too should they be extended to native Hawaiians.

According to testimony received by the Commission, native Hawaiians occupy the lowest rung of the social and economic ladder of the Hawaiian islands. State figures show that the incomes of 15% of native Hawaiians, compared to 8% of the total population, fall below the poverty line. Further, native Hawaiians have twice the unemployment rate of the state's general population and represent 30% of the state's recipients of Aid to Families with Dependent Children (AFDC). Approximately 15% of native Hawaiians, versus 5% of the total population, receive AFDC assistance. In addition to their dismal economic status, the native Hawaiians have the lowest life expectancy, the highest death rate, and the highest infant mortality rate of any other group in the state. Moreover, they have the lowest education levels and the highest suicide rate in Hawaii.

Housing for native Hawaiians is equally bleak. A 1990 state study found that over 1,000 native Hawaiians are homeless, representing 30% of the state's homeless population. This percentage is far higher than their percentage of the general population. The native Hawaiians also have the worst housing conditions in Hawaii. The U.S. Census shows that they live in the most crowded conditions and are the most likely to live in substandard housing of any ethnic group on the islands.

Hawaii's housing costs, among the highest in the United States, further exacerbate the housing dilemma. The current median price of a single-family residence is estimated at over \$353,000. Rental housing offers little relief as the median monthly rent in Hawaii for an apartment or small townhouse as of April 1, 1993 was \$1,000.

The aforementioned factors -- plus a lack of infrastructure, restrictions on land alienation, and a host of federal regulations -- have thwarted development of adequate, affordable, low-income rental, single-family or other housing and related infrastructure for native Hawaiians on their own home lands.

A tragic irony exists. The very federal government that gave native Hawaiians exclusive right to their home lands now denies them access to existing federal housing and infrastructure programs which would promote development of adequate housing and related infrastructure on these lands. In short, native Hawaiians have the use but not the enjoyment of their birthright. This predicament is unacceptable.

The housing needs of native Hawaiians are similar to those of Alaska Natives and American Indians. The native Hawaiians,

however, have never been given the tools to implement adequate housing and related infrastructure so they can enjoy the rightful use of their home lands. The disadvantaged economic and social status of native Hawaiians, as well as legal precedents, provide sufficient justification for the federal government to extend the Low-Income Rental, Mutual Help Homeownership Opportunity, HUD Loan Guarantee, and Community Development Block Grant (CDBG) programs to native Hawaiians for use on the Hawaiian Home Lands. Accordingly, the Commission proposes the creation of a Native Hawaiian Housing and Infrastructure Assistance Program as a first step in addressing the housing shortages facing native Hawaiians who wish to live on their home lands.

The Commission urges the Congress to enact this proposed legislation promptly.

SECTION III

DISPOSITION OF THE RECOMMENDATIONS OF THE COMMISSION

FUNDAMENTAL CHANGES IN POLICY

Recommendation #1: The Commission recommended that the United States government honor its commitment to provide safe, decent, and affordable housing for Native people by adequately funding Native housing programs.

Status: The Commission encourages the Clinton Administration to publish a strong policy statement wherein the federal government reaffirms its commitment to fulfill its legal and moral obligations to Native people by providing affordable housing. The previous Administrations were forthcoming with policy statements asserting their commitment to the well-being of Native Americans, yet they cut new construction dollars for Native housing by approximately 87%.

Therefore, in addition to general policy changes, the Commission suggests a ten-year funding plan designed to eliminate the problems of substandard housing, homelessness, and long waiting lists for homes in Native communities by increasing the number of new construction units to 5,500 (up from 2,700 units), among other funding proposals.

The Commission conducted panel discussions on this recommendation during a recent meeting of the National American Indian Housing Council (NAIHC). A clear consensus exists: greater funding is needed to address the critical housing needs in Native communities in the United States. Commission and NAIHC members agreed that they would work with tribal leaders, and Alaskan and Hawaiian officials to develop a ten-year funding plan to address the substandard living conditions in Native communities. The Commission's proposed ten-year funding plan is attached as Exhibit 2.

The Commission also submitted appropriations testimony advocating increased federal funding in Fiscal Year 1994 and beyond for Native housing programs.

- - -

Recommendation #2: The Commission recommended the acknowledgment and fulfillment by the federal government of its trust responsibility to native Hawaiians^{14/} under the amended Hawaiian Homes Commission Act, 1920, Pub. L. No. 67-34, 42 Stat. 106.

^{14/} Under Section 201(a)(7) of the Hawaiian Homes Commission Act, native Hawaiians are defined as those with greater than 50% blood quantum.

Status: The Commission, in consultation with the appropriate Hawaiian officials, sent correspondence to President Clinton urging acknowledgment of the federal trust responsibility to native Hawaiians. This recognition is necessary for the U.S. Government to provide native Hawaiians with the same financial assistance afforded American Indians and Alaska Natives. Such assistance would begin to correct past wrongdoings and prevent future improprieties with trust lands. With federal recognition of native Hawaiians as a sovereign people, federal money can be made available to benefit them.

Federal policy is not the only area needing change; a cooperative effort among all Native American organizations is recommended. Therefore, the Commission urges tribal leaders, leaders of the Alaska Native and native Hawaiian communities and housing authorities to fulfill their responsibilities to their constituents by working together and lobbying aggressively for an improved housing delivery system for all Native American people.

- - -

Recommendation #3: The Commission recommended that the Congress authorize and fund a comprehensive housing inventory and needs survey in each Native area receiving federal assistance to determine more accurately the present and future needs for Native housing. The study must quantify in a uniform manner the current Native housing inventory, needs for improvements, demand for new housing by category of housing, and income level of current and potential Native housing inhabitants. On the basis of the collected data, each area would receive assistance targeted to meet its particular community needs.

Status: The Commission conducted its own informal housing needs survey by distributing questionnaires to IHAs across the country. From the limited and sometimes incomplete responses received, it is obvious that a much more thorough survey is required. The Commission considered several options for conducting a formal survey. It concluded that the best option is to provide additional funding through HOME or some other federal source to enable each Indian housing authority (IHA) to conduct its own survey. As another approach to achieve this objective, the Commission met with HUD officials and representatives of the Urban Institute to request that the Institute ensure, in conducting its housing survey for the HUD Office of Indian Housing Programs, that Institute representatives meet with IHAs, tribal leaders, and Alaskan and Hawaiian officials to collect all available housing needs data. HUD and the Urban Institute seemed receptive and committed to work with Native people to assure accurate results.

ENHANCING HOME FINANCING OPPORTUNITIES

Recommendation #4: The Commission recommended the creation of a Native American Finance Authority.

Status: The Commission has considered several approaches to expand the availability of housing finance for Native people. As part of its Native American Housing Improvements Legislative Initiative, contained in Section IV, the Commission proposes the creation of a Native American Finance Authority (NAFA) designed to overcome the obstacles to conventional home financing and to enhance home-ownership opportunities in Native areas by serving as an intermediary financing institution. The legislative initiative includes legislative language for NAFA and other Commission proposals, a section-by-section analysis of NAFA and justifications for each proposal. This package has been submitted to Congress, HUD, Farmers Home, and others for consideration.

As proposed, NAFA's major functions would include originating loans, buying and selling loans, issuing tax-exempt bonds and other financing products, and providing technical assistance needed in the development of housing programs. In addition to direct federal funding for the development of a lending capacity within the Native housing organizations, the Commission recommends introducing financial incentives for private or public lenders to assist Native organizations in securing loans for the families of their communities. The Commission also advocates the development of demonstration programs to show conventional lenders that loans to Native communities, if packaged correctly, would perform and be worthwhile investments.

The Commission strongly advocates establishment of NAFA as proposed because, as a financial intermediary, it would provide a more complete solution to, and better address, the lack of private and public financing in Native communities. The Commission considered the Clinton Administration's proposed Community Development Bank legislation. Although some of the objectives of NAFA could be accomplished through the creation of a national Native Community Development Bank, the Commission believes NAFA and local Community Development Banks could work in concert to address aggressively the financing shortage in Native communities.

The Commission discussed the NAFA concept and other financing options during the NAIHC annual conference in April, 1993. The NAIHC members passed overwhelmingly a resolution in support of NAFA's creation.

If Congress is serious about a long term solution to the housing crisis in Native communities, it must enact NAFA legislation.

TRAINING AND TECHNICAL ASSISTANCE

Recommendation #5: The Commission recommended that training on the cultural and political realities of Native American communities should be made available to federal government personnel responsible for housing programs but who often have little or no experience in dealing with Native American governments and individuals.

Status: The Commission discussed with the NAIHC officials and its membership suggestions on how to structure training and educational programs for federal agency personnel. The Commission also has recommended such programs to officials at HUD, Farmers Home, and various other government agencies. The Commission was delighted to learn, at its last meeting, that HUD is developing such a culturally sensitive training program for its field offices. It is hoped that other federal, as well as state and local, agencies will institute similar training programs for their housing program personnel.

- - -

Recommendation #5a: The Commission recommended that Congress apply a Native preference to the hiring of the successor to the Director of Native American Programs at HUD. The preference should apply to all positions with responsibility for administering Native housing programs. Application of the preference to positions in the six geographic Offices of Native American Programs is especially important because operational control exists there. This recommendation ensures that the primary career employees overseeing the Native housing programs fully understand the lifestyle needs of Native people.

Status: The Commission added this recommendation, based on a consensus developed after additional meetings with Native groups, that a Native preference would result in selection of the best qualified people to administer HUD's programs for Native Americans. The Commission's Native American Housing Improvements Legislative Initiative further discusses this proposal. See Section IV.

IMPROVEMENTS TO EXISTING PROGRAMS

Recommendation #6: The Commission received testimony during its hearings recommending a waiver of the provisions of the Davis-Bacon Act (40 U.S.C. § 276(a))--which sets minimum wages for all contracts for construction, alteration, or repairs for the painting and decorating of any Indian housing project. Mandatory wage rates are not appropriate for most Native area economies because of the high unemployment rates and unskilled labor, the rates for which are very low. Tribes are justifiably concerned that federal contractors will substitute imported skilled labor.

Status: This issue was discussed in a panel discussion by the Commission and NAIHC members during the NAIHC's recent annual meeting. Although most believe the waiver is a worthwhile objective, many believe it is politically infeasible to pursue at this time.

- - -

Recommendation #7: The Commission recommended that HUD review and amend its prescribed Model Ordinance for establishing Indian housing authorities to reflect current conditions and relationships among various levels of tribal, federal, and state government.

Status: Pursuant to the Commission's recommendation, HUD reviewed and proposed withdrawal of the existing Model Ordinance. The Commission has had discussions with HUD officials about allowing the tribes themselves, with some guidance from HUD, to develop new ordinances with certain standard provisions. This approach should result in more flexible ordinances better addressing the unique conditions of each tribe. It also encourages self-governance by tribes and their housing authorities.

- - -

Recommendation #8: The Commission recommended the amendment of the ranking criteria for all existing HUD programs to allow for the allocation of units based on actual need rather than family size.

Status: New HUD regulations implement this Commission recommendation to permit Indian housing authorities to determine the proper size of housing units based upon the needs of the qualifying families and individuals. Under the previous regulations, requests made by IHAs under Category "C" (two bedrooms or less) received minimal consideration, if any, since the ranking system required that three-bedroom and larger units have top priority. The Commission received testimony that this ranking criteria had a particularly devastating impact on housing initiatives for the elderly. The revised criteria provide for greater flexibility and eliminate the problem of minimal or no consideration for smaller units.

- - -

Recommendation #9: The Commission recommended that the Mutual Help and Occupancy Agreement (MHOA) (42 U.S.C. § 1437bb(e)) be amended to require the IHA to take a mortgage and convey the Mutual Help unit when the participants' monthly payment equals the monthly debt service on the unit plus the monthly administrative charge. The IHA has the discretion under the MHOA to convey a unit and the Commission believes this transfer should occur when participants can afford to contribute to their housing costs.

Status: Upon further study and discussion, the Commission concluded that, because the disparities in participants' economic circumstances are so great and unpredictable, an IHA's decision on conveyance should continue to be discretionary.

- - -

Recommendation #10: The Commission recommended that HUD evaluate the existing Indian housing accounting system and develop accounting and reporting processes that follow generally accepted accounting principles. A simplified format would save money currently spent on technical assistance and fee accountants as well as improve management capacity.

Status: The Commission has offered specific recommendations to bring HUD and its Indian housing accounting system into compliance with general accounting principles to improve the accessibility and over-all efficiency of the accounting system.

- - -

Recommendation #11: The Commission recommended that participants and IHAs monitor accessibility to the Monthly Equity Payment Accounts (MEPA) established under the Mutual Help Occupancy Agreement and that such accessibility be limited.

Status: Upon further study and discussion, the Commission has concluded that the monitoring of, and accessibility to, MEPAs are left appropriately to the discretion of each IHA.

- - -

Recommendation #12: The Commission recommended the expansion of the Annual Contributions Contract to allow for an operating subsidy to assist Mutual Help participants with incomes of less than 50% of the area median income.

Status: The Commission received testimony suggesting that a large number of participants selected after 1976 for the then-new Mutual Help Homeownership Program did not have adequate income to support home ownership responsibilities. Furthermore, apparently some of the six HUD Offices of Indian Programs encouraged the selection of Mutual Help over low-income rental units because no subsidy was provided for maintenance and IHA operation. Financial devastation resulted when such families were required to pay an administration charge plus utilities and routine maintenance. Many of these families would have qualified for a monthly federal subsidy to the IHA had they been placed properly in the low-income rental program.

This recommendation would alleviate the hardship by providing an operating subsidy for home maintenance, utility assistance, and a waiver of administration charges for eligible Mutual Help Program participants. Eligibility would be limited

to those families whose income is less than 50% of the medium for specific reservation, trust, and otherwise restricted areas and who were placed in such units prior to the income certification requirement currently in place. The Commission recommends new funding for this operating subsidy for the Mutual Help Program as part of the ten-year funding plan suggested in Exhibit 2 of this report.

- - -

Recommendation #13: The Commission originally recommended that all income derived from treaty and trust rights be excluded from the definition of income under the HUD programs. Upon further discussion, the Commission has modified its original recommendation and now recommends that such income be excluded for purposes of establishing tenant rent.

Status: This issue concerning Native groups' rights to hunt, trap, gather on, or work and operate their land for subsistence was addressed in one of the hour-long panel discussions among the Commission, NAIHC members, and tribal leaders during the April, 1993 NAIHC annual conference. Most agree that trust income should be excluded for purposes of establishing tenant rent.

- - -

Recommendation #14: The Commission recommended a waiver of the application of Title I, Section 3(a)(2)(A) of the U.S. Housing Act of 1937 (42 U.S.C. § 1437a(a)(1)(A)) which contains the Brooke Amendment known as the 30% Rule. As discussed below, the Commission has decided to recommend reducing the percentage rent calculation from 30% to 20%.

Status: The Commission received a significant amount of testimony asserting that the 30% Rule when applied in Native communities places an extreme burden on many Native families and IHAs. The Rule, set forth apparently as a tenant protection measure intended to benefit larger, urban housing authorities, has had a devastating effect throughout Native communities.

The Commission has gathered data to support the assertion that the Rule places an unreasonable burden on Indian families due primarily to their unique circumstances of maintaining large households comprised of extended family members. The combined income of the cohabitating family members results in an excessive rent under the 30% Rule. Yet there is no alternative housing into which such an extended family can move to escape the high rents. On the basis of its findings, the Commission recommends that families assisted by IHAs should be entitled to have the household rent set at 20% of the family's adjusted income. The legislative initiative further addresses this issue. See Section IV.

- - -

Recommendation #15: The Commission recommended Congress amend Subtitle C, Section 573(c), the income exclusion provisions of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 U.S.C. § 12701 et seq.), by applying these income exclusion provisions to Indian housing programs.

Status: This Commission recommendation was heeded in the recently-enacted Housing and Community Development Act of 1992 (42 U.S.C. §§ 1437a(b)(5)(A),(F)(ii)). The Commission presented testimony for the Congress in May, 1993 recommending appropriation of adequate funds to implement this provision.

- - -

Recommendation #16: The Commission recommended that a handicapped assistance allowance deduction (to gross income) be allowed so that a member of a handicapped person's family may further his or her education.

Status: Current law allows a deduction for handicapped assistance to enable a member of a handicapped person's family to be employed but not to pursue an education. The deduction for child-care and travel expenses cover both employment and education. The handicapped assistance allowance deduction should be equally flexible. This recommendation is included in the Commission's legislative initiative. See Section IV.

- - -

Recommendation #17: The Commission recommended the amendment of Title I, Section 3(a)(5)(D) of the U.S. Housing Act of 1937 (42 U.S.C. §§ 1437a(b)(5)(D, G)) to permit deductions for both child-care and travel expenses since they significantly burden the income of Native Americans who work far from home and have children.

Status: This Commission recommendation was achieved when the Congress enacted the Housing and Community Development Act of 1992 (42 U.S.C. § 1437 et seq.) and provided a deduction for both child-care and work-related travel expenses. HUD has implemented these two deductions by issuing a HUD Notice.

- - -

Recommendation #18: The Commission recommended that IHAs deduct the amounts actually paid in alimony and/or child support by a member of a tenant family's household from the adjusted income against which the household's rent is determined.

Status: This deduction would reflect more accurately the income stream available to such family. Currently, the provider receives a deduction of \$480 annually per dependent regardless of whether the amount paid exceeds this allowance, a situation which the Commission found to be true in most instances. (Although the Cranston-Gonzalez National Affordable Housing Act of 1990, as

modified by the Housing and Community Development Act of 1992, helps by raising the deduction from \$480 to \$550, Congress failed to appropriate funds to permit the deduction.) The Commission's proposed deduction would decrease adjusted income and thereby reduce the amount of rent charged. This recommendation is included in the legislative initiative. See Section IV.

- - -

Recommendation #19: The Commission recommended that IHAs be permitted to apply Indian preference to the low-income rental program. This could be accomplished in one of two ways. First, the Indian preference provisions of Section 202(d)(1) of Title II of the Mutual Help Homeownership Opportunity Program (42 U.S.C. § 1437aa) could be incorporated into Title I of the U.S. Housing Act of 1937 (42 U.S.C. § 1437 et seq.). Alternatively, a super preference could be used in the priority of tenant selection preferences set out in Section 6(c)(4)(A) of the U.S. Housing Act of 1937 (42 U.S.C. § 1437d(C)(4)(A)).

Status: This recommendation would permit IHAs to apply Indian preference to their low-income rental housing stock. No such preference is currently allowed, and IHAs, particularly in Oklahoma, must rent scarce low-income rental housing units to those first on the waiting list regardless of whether a family has an Indian tribal member. The Commission advocates correcting this situation which resulted from a misunderstanding by the IHAs when designating their new construction of low-income units as low-income rental units (for which Indian preference does not apply) instead of Mutual Help Homeownership units (for which it does). The preference should apply not only because the housing is part of the Indian Housing Program, but also because the tribe's right of self-determination should encompass the right to pick the plan more appropriate to its tribal members' needs. The Commission understands that HUD is in the process of promulgating a rule to allow such a preference. Nevertheless, this recommendation also is included in the legislative initiative. See Section IV.

- - -

Recommendation #22: The Commission recommended that the Family Self-Sufficiency Program (FSS program), authorized under Title I, Section 23 of the U.S. Housing Act of 1937 (42 U.S.C. § 1437u) be optional for IHAs and amended to permit participants who have successfully completed the FSS requirements to participate in state and federally assisted housing programs (i.e. Mutual Help, HOPE, and HOME) without forfeiture of their escrow accounts. The design of the program allows eligible families to achieve financial independence through the assistance of numerous social services which provide job skills, higher education, transportation, and child-care so that participating families can hold jobs. By requiring participants to move to privately financed housing, the program cannot succeed since so few housing alternatives to federally subsidized housing exist in Native communities.

Status: The first part of this recommendation was addressed in a provision of the Housing and Community Development Act of 1992 (42 U.S.C. § 1437u) which allows IHAs to opt into the FSS Program. The second part of the recommendation was dealt with in regulations recently published by HUD. 58 Fed. Reg. 30858 (to be codified at 24 C.F.R. § 905.3001 et seq.)

- - -

Recommendation #23: The Commission recommended that the word "single" be deleted from Section 202(b)(2) of Title II of the U.S. Housing Act of 1937 (42 U.S.C. § 1437bb(b)(2)) so that multiple grants under the Comprehensive Improvement Assistance Program are possible in the Mutual Help Homeownership Opportunity Program and available for existing Turnkey III units.

Status: This Commission recommendation was implemented with the enactment of the Housing and Community Development Act of 1992, 42 U.S.C. § 1437bb. While the former restrictive language severely limited IHAs' ability to meet their long-term maintenance demands, the change permits multiple grants for maintenance and repair of existing housing stock. The Commission believes this provision will facilitate a longer life for Mutual Help homes and a better quality of life for people living in them.

- - -

Recommendation #24: The Commission received testimony from urban Indian groups recommending that Congress amend Section 8 of Title I of the U.S. Housing Act of 1937 (42 U.S.C. § 1437f) to include urban IHAs that have been created under state law and provide appropriate additional funding. Since over 60% of American Indians no longer live on a reservation and are thereby excluded from HUD Indian housing programs, the need of the majority of Indians currently is not met.

Status: The Commission has worked with and encouraged urban Indian groups to form non-profit housing entities or Community Housing Development Corporations as an alternative to amending the Section 8 program. As noted in the Commission's suggested ten-year funding plan in Exhibit 2, the Section 8 voucher and certificate program is an option which can be used to a greater extent in Native communities. This option would afford urban Indian groups use of the Section 8 voucher program and HOME program, and give them an institutional framework for housing initiatives. This approach also would bypass the controversy likely to be generated by an attempt to amend the Section 8 Program.

- - -

Recommendation #25: The Commission's original recommendation provided that ceiling rents in the low-income rental program be limited to no more than 50% of the average established fair-market rental of a given area. After further research and discussion, the Commission has modified its recommendation. The Commission now proposes that ceiling rents be limited to an amount (i) not to exceed the average monthly amount of the computed debt service at zero interest rate plus the allowable expense level and (ii) not less than the allowable expense level, attributed to similar properties administered by the IHA.

Status: The Commission presented its original recommendation during panel discussions at the NAIHC annual conference in April, 1993, and collected additional information and viewpoints from the NAIHC membership. Thereafter, the Commission modified its original recommendation. The Commission members also met with HUD officials and attended HUD Rent Reform Conferences. Subsequent to these meetings, HUD proposed legislation to allow greater flexibility in setting ceiling rents. The Commission decided to support the proposal by HUD to allow greater flexibility in setting ceiling rents so that such rents can be tailored to the unique needs of the various Native communities. Establishing a reasonable ceiling rent would guarantee that inflation will not make housing unavailable and that the rent being paid is not in excess of the amount needed for the upkeep of the property.

ADDITIONAL RECOMMENDATIONS

Recommendation #26: The Commission received testimony urging authorization of a federal source of funding designated specifically for Native community fire protection.

Status: The Commission has been unable to identify a federal policy regarding fire protection for public and publicly assisted housing. Although most American communities can rely on a local fire department, Native governments and IHAs often must assume fire protection responsibility for Native communities. The Commission has investigated alternatives to enhance fire protection in Native areas, and has suggested that the feasibility of a federal fire protection policy be considered by HUD, BIA, and FmHA officials.

- - -

Recommendation #27: The Commission recommended that the Department of Veterans Affairs provide direct home mortgage loans to Native veterans on trust land and Hawaiian Home Lands.

Status: The Congress partially implemented this recommendation in enacting the Native Americans Veterans Home Loan Pilot Program in 1992 (38 U.S.C. § 3761). The Pilot Program permits the Department of Veterans Affairs to offer direct home loans to

Native American veterans, including native Hawaiians living on Hawaiian Home Lands. Complete implementation is expected when the Department publishes final regulations for this program later in 1993.

- - -

Recommendation #28: The Commission recommended that the Farmers Home Administration (FmHA) reaffirm its commitment to and become more active in addressing the housing needs of Native Americans.

Status: The Commission met with FmHA officials to discuss more effective outreach efforts to assist Native communities. The Commission explored with them such options as promoting a better understanding of the needs of Native communities through hiring practices or outreach initiatives more sensitive to Native needs. With greater focus on Native communities in need of the FmHA loan programs and technical assistance grants, the FmHA would increase Indian participation and better serve Indian communities. FmHA officials seem very willing to work with Native people and to make FmHA programs more accessible. The Commission's specific recommendations are discussed more fully in the legislative initiative in Section IV, and its ten-year funding plan in Exhibit 2.

- - -

Recommendation #29: The Commission recommended increases in federal funding to fund adequately the BIA's Housing Improvement Program (HIP), including new construction and existing housing rehabilitation and access roadway construction. The HIP is particularly important to Indian communities because it is often the only source of funding for a tribe to provide 1) some modest sum towards a downpayment for an elder's small home, 2) small housing grants for very low income, disabled or other needy tribal members, and 3) emergency and other necessary rehabilitation of existing tribal member housing.

Status: The Commission received substantial testimony asserting that both the HIP and the BIA Road Construction Program are so seriously underfunded that they cannot fulfill their purposes mandated by Congress. Concern also was expressed that there is not sufficient coordination and/or cooperation between BIA and HUD to ensure that each department's road funds are spent effectively to provide roadway access to Native housing. The Commission submitted testimony to the appropriate Congressional committees recommending funding increases for these programs in FY 1994. The Commission urges the Clinton Administration to propose higher funding for all of these programs in FY 1995 and future years along the lines suggested in the Commission's ten-year funding plan in Exhibit 2.

RECOMMENDATIONS FOR ADDRESSING
THE NEEDS OF NATIVE HAWAIIANS

Recommendation #20: The Commission originally recommended amending Title II of the U.S. Housing Act of 1937 (42 U.S.C. § 1437aa et seq.) to include native Hawaiians. The Commission has modified its proposal and now recommends that the Congress create a new Title of the U.S. Housing Act of 1937 to include native Hawaiians in the Mutual Help Homeownership Program with appropriate additional funding. The native Hawaiians are a sovereign people and the U.S. government should recognize them as such by making them eligible for the Mutual Help Homeownership Program which already serves American Indians and Alaska Natives. Both NAIHC and the National Congress of American Indians (NCAI) have passed resolutions supporting the inclusion of native Hawaiians in the existing Indian programs with appropriate additional funding.

Status: The Commission, with the guidance and help from Hawaiian officials, developed more specific recommendations which are included in the legislative initiative. See Section IV.

- - -

Recommendation #21: The Commission originally recommended amending the definition of Indian housing authorities in Title I of the U.S. Housing Act of 1937 (42 U.S.C. § 1437) to include native Hawaiians. The Commission has revised its original proposal and now recommends that Congress create a new Title to such statute to include native Hawaiians in the Low-Income Rental Program and authorize additional funding.

Status: The Commission has worked with the appropriate Hawaiian officials to develop this proposal which is included in the legislative initiative. See Section IV.

- - -

Recommendation #30: The Commission originally recommended amending the CDBG program to include native Hawaiians. The Commission has modified its original proposal and now recommends that Congress create a new Title to the Housing and Community Development Act of 1974 (42 U.S.C. § 5307 et seq.) to allow Community Development Block Grant (CDBG) funds to be expended on the Hawaiian Home Lands.

Status: Congress appropriated funding under the CDBG for infrastructure development on Hawaiian Home Lands in 1989. However, the Department of Justice blocked the distribution of the funds by asserting that federal dollars cannot be used to benefit a racial class unless that group is a federally recognized Indian tribe. Although Congress subsequently passed corrective legislation, the issue is still unresolved. The Commission has worked with appropriate Hawaiian officials and developed a proposal contained in the legislative initiative to

authorize expenditures of CDBG funds on the Hawaiian Home Lands. See Section IV.

- - -

Recommendation #31: The Commission recommended that the federal government continue to provide funding under HUD's Special Purpose Grants program to the State of Hawaii for infrastructure development on the Hawaiian Home Lands. The Department of Hawaiian Home Lands has a waiting list of over 22,000 native Hawaiians who are entitled to a homestead award, but are denied due to the lack of funding by Congress.

Status: The Commission addressed this concern by including this recommendation in testimony submitted in May, 1993 to appropriate Congressional Appropriations Subcommittees.

- - -

Recommendation #31a: The Commission recommended that the Department of Veterans Affairs explore the feasibility of allowing native Hawaiians to participate in its direct loan program. This loan program would be an additional source of funding to increase the amount already provided by the FHA and FmHA mortgage loan programs.

Status: This recommendation was recently implemented by statute. See status on Recommendation #27 of this Supplemental Report.

- - -

Recommendation #32: The Commission recommended that any federal home-financing programs available to housing agencies for individuals meeting specific eligibility criteria should also include the Department of Hawaiian Home Lands.

Status: The Commission worked with the appropriate Hawaiian officials and developed a comprehensive legislative proposal. See Section IV.

- - -

Recommendation #32a: The Commission recommended amending the HUD Indian Housing Loan Guarantee Program, enacted as part of the Housing and Community Development Act of 1992 (12 U.S.C. § 1715z-13a), to include native Hawaiians.

Status: This is a new Commission recommendation developed with guidance from Hawaiian officials. The participation of native Hawaiians in the program is necessary and justifiable. This recommendation is contained in the legislative initiative. See Section IV.

Recommendation #37: The Commission recommends that HUD return to

the Department of Hawaiian Home Lands (DHHL) the funds which were provided by DHHL and are currently held by HUD in a reserve for implementation of the FHA-insured mortgage program (the so-called 247 program) on the Hawaiian Home Lands.

Status: This recommendation did not appear in the Commission's initial report, but after further consultation with HUD and Hawaiian officials, the Commission learned that HUD requires no other participant in its FHA-insured mortgage program to fund such a reserve. It is fundamentally unfair to require it of native Hawaiians. The funds should be returned and the program continued without them.

OTHER RECOMMENDATIONS NOT INCLUDED IN THE AUGUST, 1992 REPORT

Recommendation #33: The Commission recommends the immediate funding and implementation of the HUD Indian Housing Loan Guarantee Program in the recently enacted Housing and Community Development Act of 1992 (12 U.S.C. § 1715z-13a) which authorized up to \$50 million with budget outlays of \$1 million for FY93 and \$2-3 million for FY94. Should the loan guarantee program be funded and implemented, the Commission would not oppose repeal of the so-called Section 248 program which allowed FHA-insured mortgages in Indian Country but was unsuccessful. In over seven years of operation, fewer than twenty single-family home mortgages have been insured by FHA under the Section 248 program.

Status: The Commission's April 1993 panel discussions with NAIHC members addressed the role of the Loan Guarantee Program. Those in attendance agreed it will be a valuable tool in housing development. The Commission submitted testimony to Congress in May, 1993, supporting an initial funding level of \$10 million. The House of Representatives included \$2 million for the program in FY 1994 which is estimated by HUD to provide over \$20 million in guaranteed loans. The Commission believes that the Congress should increase the funding level for this new loan guarantee program to \$10 million, as suggested in the Commission's ten-year funding plan in Exhibit 2.

- - -

Recommendation #34: The Commission recommends extending to Indian tribes the authority to issue tax-exempt mortgage revenue bonds; only state and local governments now have this authority. The Commission believes firmly that the NAFA, the HUD Indian housing loan guarantee program, and/or mortgage revenue bond authority, implemented separately or in combination, will be key elements of any comprehensive economic development plan. Any one of these options would increase substantially the availability of financing to improve housing and infrastructure conditions on reservations, restricted areas, and trust lands.

Status: The Commission has included the tribal mortgage revenue bond authority proposal in its legislative initiative. See Section IV.

- - -

Recommendation #35: The Commission recommends that the Congress make technical corrections to Sections 103(a)(1), 112, 114, 116, 118, 119, 903, and 927 of the Housing and Community Act of 1992, so that such sections apply specifically to Indian housing.

Status: HUD has proposed legislation to the Congress including these technical amendments. The Commission's proposal is included in its legislative initiative. See Section IV.

- - -

Recommendation #36: The Commission recommends that a needs assessment be undertaken to evaluate the infrastructure needs within Native communities throughout the United States. The Indian Health Service's report, dated February, 1992 entitled "Annual Report on Sanitation Facilities Deficiencies for Indian Homes and Communities Public Law 100-713" is helpful in providing some information. Nevertheless, more statistical and detailed information is needed to reflect accurately the current infrastructure needs of Native people throughout the United States.

Status: Upon further consideration and discussion by Commission members regarding the severity of the infrastructure needs, the Commission has added this recommendation. The Commission held hearings and traveled throughout the United States, hearing about and witnessing personally the deplorable infrastructure conditions. These conditions are particularly appalling in remote and rural areas such as Alaska. The Commission has discussed its concern with Congressional staff and encourages leaders of the Native American community to press for an infrastructure needs assessment. The Commission applauds and appreciates the efforts of the Senate Committee on Indian Affairs which held hearings in January, 1993 to explore this issue. Finally, the Commission recommends adequate funding, through the Indian Health Service, for its Sanitation Facilities Construction Program, as suggested in the Commission's ten-year funding plan in Exhibit 2 to this report.

SECTION IV
NATIVE AMERICAN HOUSING IMPROVEMENTS
LEGISLATIVE INITIATIVE
OF THE
NATIONAL COMMISSION ON AMERICAN INDIAN,
ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

PROPOSALS, SUGGESTED STATUTORY LANGUAGE AND JUSTIFICATIONS

TITLE I. Native Hawaiian Housing and Infrastructure
Assistance Program

Proposal: Amend the U.S. Housing Act of 1937 (42 U.S.C. § 1437 et seq.) by adding a new Title, "Native Hawaiian Housing Assistance Program" to expand the Mutual Help Homeownership, Low-Income Rental Housing Assistance and federal loan guarantee programs to allow their use on the Hawaiian Home Lands. (Recommendation #20 IR, SR and #21 IR, SR)^{15/}

Proposal: Amend the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.) by adding a new Title, "Native Hawaiian Infrastructure Assistance Program" to provide a separate program for infrastructure development on Hawaiian Home Lands. (Recommendation #30 IR, SR)

Suggested Statutory Language:

NATIVE HAWAIIAN HOUSING AND INFRASTRUCTURE
ASSISTANCE PROGRAM OF 1993

"Sec. 1 Short Title

This act may be referred to as the "Native Hawaiian Housing and Infrastructure Assistance Program of 1993".

^{15/} Recommendation numbers follows by "IR" refer to the corresponding recommendation in the Commission's initial report released in August, 1992: "Building the Future: A Blueprint for Change". Recommendation numbers followed by "SR" refer to the corresponding recommendation in the Commission's Supplemental Report, released in september, 1993.

Sec. 2 Declaration of Policy

With assistance from the National Commission on American Indian, Alaska Native and Native Hawaiian Housing established by Public Law 101-235 (the "Commission"), Congress has determined that there is a serious housing crisis and a great need for infrastructure development within the native Hawaiian community. The Congress recognized that native Hawaiians are an indigenous people with their representation on the Commission and their inclusion in the Native American Veterans' Home Loan Pilot Program of 1993. To address the housing crisis and infrastructure needs more specifically, the Congress has determined to provide to native Hawaiians greater access to federal housing and infrastructure assistance programs currently available to other Native American groups.

Sec. 3 Purpose

The U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended by adding a new Title to establish and implement a program under which the Secretary may provide mutual help homeownership assistance, federal loan guarantees and low-income rental assistance for use on Hawaiian Home Lands. The Housing and Community Development Act of 1974 (42 U.S.C. 5307) is amended to establish and implement a program to allow the Secretary to provide Community Development Block Grants to native Hawaiians for use on the Hawaiian Home Lands.

Sec. 4 Definitions

The term "native Hawaiian" means native Hawaiians as defined in section 201(a)(7) of the Hawaiian Homes Commission Act, 1920, Public Law 67-34, 42 Stat. 106.

The term "Hawaiian Home Lands" means those lands set aside pursuant to section 203 of the Hawaiian Homes Commission Act, 1920, Public Law 67-34, 42 Stat. 106.

Sec. 5 Mutual Help Homeownership

The Mutual Help Homeownership Program provided under Title II of the U.S. Housing Act of 1937 (42 U.S.C. 1437aa), is hereby extended to allow its use on the Hawaiian Home Lands.

Sec. 6 Low-Income Rental Housing

The HUD Low-Income Rental Housing Program authorized under Title I and Title II of the U.S. Housing Act of 1937 (42 U.S.C. § 1437 et seq.) is hereby extended to eligible low-income native Hawaiian families residing on the Hawaiian Home Lands.

Sec. 7 Federal Loan Guarantees for native Hawaiians

The Indian Housing Loan Guarantee Program as authorized under Section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a), is extended to eligible native Hawaiian families or the _____ for use on the Hawaiian Home Lands.

Sec. 8 Native Hawaiian Infrastructure Assistance

The Housing and Community Development Act of 1974 (42 U.S.C. 5307 et seq.) is amended by adding the following new Title:

"TITLE ___ Native Hawaiian Infrastructure Assistance Program

"The program as set forth in Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) shall apply to native Hawaiians for use on the Hawaiian Home Lands."

Sec. 9. Authorization of Appropriations

There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act."

Justification:

1. Inalienability of Hawaiian Home Lands. Like American Indian tribal lands, Hawaiian Home Lands are trust lands and are therefore inalienable. Since these lands cannot be sold or subjected to foreclosure, they cannot be mortgaged and lenders find them unacceptable as collateral for borrowing purposes. Therefore, Hawaiian Home Lands lessees have extreme difficulty in obtaining mortgage financing from conventional lenders.

2. Consistent With Existing Federal Policy. The Native American Veteran's Home Loan Pilot Program of 1992 established a precedent for the expenditure of federal funds on the Hawaiian Home Lands.

3. Funding for Infrastructure Development. Funding for infrastructure development is needed to provide for the health and safety of native Hawaiian families residing on the Hawaiian Home Lands. Neither since its inception as a federal program, nor now in its current role within the state government, has the Hawaiian Home Lands Program ever been provided the resources needed to carry out its mission successfully. Lack of adequate funding for infrastructure development results in a multitude of problems including long waiting lists, and overcrowded and

substandard housing conditions on the home lands. Since 1989, Congress has appropriated Community Development Block Grant funds and HUD Special Purpose Grants to try to meet these needs. However, the appropriations are made from year to year without any stated intent for future funding. It is estimated that in excess of \$1 billion will be needed for the construction of roads, utilities, drainage, sewer and water systems to serve Hawaiian homestead developments on the Hawaiian Home Lands. A permanent source of funding for infrastructure development on these home lands must be established.

For additional justifications and a discussion of the current conditions under which native Hawaiians live, please see "Justification for Legislative Proposal Addressing the Housing and Infrastructure Needs of Native Hawaiians", attached as Exhibit 3.

TITLE II. Legislative Proposal for Native American Finance Authority

Proposal: Creation of a Native American Finance Authority ("NAFA"), administered primarily by Native people, to operate as a state housing finance agency but without limiting its authority to service a particular geographical area. NAFA would provide financing alternatives to all Native populations. The agency would be an intermediary financing institution empowered to issue tax-exempt bonds and other financing products as well as to provide technical assistance so that Native communities can develop affordable housing and related infrastructure.
(Recommendation #4 IR, SR)

Suggested Statutory Language: See the two documents, "Native American Finance Authority Act of 1993 and the Section-by-Section Analysis," attached as Exhibits 4 and 5.

Justification: See document entitled "Justification Statement for the Native American Finance Authority Act of 1993", attached as Exhibit 6.

TITLE III. 1937 Act and Other Legislative Amendments

A. Modify 30% Rule

Proposal: Modify Title I, Section 3(a)(1)(A) of the United States Housing Act of 1937, the Brooke Amendment (so-called 30% Rule) to require that a tenant household's rent be set at 20% of

its adjusted income, reduced from 30%, for families assisted by Indian housing authorities.
(Recommendation #14 IR, SR)

Suggested Statutory Language:

Make the following changes to Section 3(a)(1)(A) of the U.S. Housing Act of 1937 (42 U.S.C. § 1437a(a)(1)(A)) (additions are underlined and deletions are in brackets):

"(1) . . . a family shall pay as rent for a dwelling unit . . . the highest of the following amounts, rounded to the nearest dollar:

(A) 30 per centum of the family's monthly adjusted income, provided that the amount shall be 20 per centum for families assisted by Indian housing authorities;

(B) 10 per centum of the family's monthly income; or

(C) if the family is receiving payments for welfare assistance . . . and a part of such payments . . . is specifically designated . . . to meet the family's housing costs, the portion of such payments which is so designated."

Justification:

1. Nontraditional Households: The 30% Rule was originally based on an urban model and the traditional family of parents and children. In Native American communities, households are usually made up of more than immediate family members (e.g., aunts, uncles, grandparents, etc.). Often these other family members are taken in because they cannot afford housing on their own. Also, the extended Native American family prefers to live together. To the extent the other family members receive income, 30% of it must be contributed to the rent. Over-crowded households spend an excessively high amount for rent.

2. No Alternative Housing: Most of the available housing in Native American communities is federally subsidized by HUD. Very few if any alternatives exist. If large families desire to live together in housing in Native communities, they pay excessive rent required by the 30% Rule. This is not the case in urban areas where other housing options exist. Also, Native American families have more limited housing alternatives because they lack stable income resources.

3. More Available Income: Reducing the amount of rent paid by Native American families would provide additional income to low-income families. This extra income would be

helpful to those experiencing hardship due to severe economic recession. Also, having extra available income would promote self-sufficiency.

B. Deductions to Gross Income

1. Deductions for Child Support and Alimony

Proposal: Allow deduction of alimony and/or child support paid by a member of a tenant family's household from the gross income to arrive at a more realistic adjusted income against which the household's rent is determined. (Recommendation #18 IR, SR)

Suggested Statutory Language:

Modify Section 3(b)(5)(F) of the U.S. Housing Act of 1937 (42 U.S.C. § 1437a(b)(5)(F)) as follows:

"(5) The term "adjusted income" means the income which remains after excluding--

(F) any payment made by a member of the family for the support and maintenance of any child, spouse, or former spouse who does not reside in the household, except that the amount excluded under this subparagraph, for families not assisted by Indian housing authorities, shall not exceed the lesser of (i) the amount that such family member has a legal obligation to pay; or (ii) \$550 for each individual for whom such payment is made; and . . ."

Modify Section 103(a)(3) of the Housing and Community Development Act of 1992 as follows:

"(3) Budget compliance - To the extent that the amendments made by paragraphs (1) and (2) result in additional costs under this title, such amendments shall be effective only to the extent that amounts to cover such additional costs are provided in advance in appropriation Acts; provided, however, this section shall not apply in the case of families assisted by Indian housing authorities."

Justification:

1. Income Stream: This deduction would reflect more accurately the income stream available to such families. Currently, the provider receives a deduction of \$480 annually per dependent regardless of whether the amount paid exceeds this allowance (in most instances it does). (Although the Cranston-Gonzalez National Affordable Housing Act of 1990, as modified by the Housing and Community Development Act of 1992, helps by

raising the deduction from \$480 to \$550, Congress failed to appropriate funds to permit the deduction.) The proposed deduction would decrease the adjusted income amount and thereby reduce the amount of rent charged. Rent is based on 30% of adjusted income.

2. Payments Counted Twice: Most of the housing in Indian Country is HUD-controlled. Most often, both the provider and those receiving the support or alimony live in such housing. HUD counts alimony and child support as income to the recipient and includes amounts paid above \$480 per year per dependent in the provider's income. For example, if the provider is paying \$100 per month in child support and alimony, those payments equal \$1,200 per year but the provider only receives a deduction of \$960. Therefore, \$140 is unfairly included in the provider's income. This proposal would allow the entire \$1,200 to be deducted from gross income.

3. Encourage Child Support and Alimony Payments: In Native American communities, like other parts of the United States, many providers do not meet their obligations to their children and former spouse. Such a deduction would encourage providers to do what they are legally obligated to do, and the community would benefit greatly.

2. Deduction for Handicapped Assistance Allowance

Proposal: Expand the deduction from gross income of handicapped assistance allowance to allow a family member to further his or her education. (Recommendation #16 IR, SR)

Suggested Statutory Language:

Modify Section 3(b)(5)(C) of the U.S. Housing Act of 1937 (42 U.S.C. § 1437a(b)(5)(C)) as follows:

"(5) The term "adjusted income" means the income which remains after excluding --

(C) the amount by which the aggregate of the following expenses of the family exceeds 3 percent of annual family income: (i) medical expenses for any family; and (ii) reasonable attendant care and auxiliary apparatus expenses for each handicapped member of any family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed or to further his or her education;"

Justification:

A deduction is permitted for a handicapped assistance allowance to enable a family member to be employed. It should be expanded to allow a family member to further his or her education. The statute allows a child care and travel expense deduction for both employment and education. The handicapped assistance allowance should be equally flexible.

C. Indian Preference

Proposal: Allow Indian housing authorities ("IHAs") to apply Indian preference to their low-income rental housing stock. No such preference is allowed and IHAs, particularly in Oklahoma, must rent scarce low-income rental housing units to those first on the waiting list regardless of whether family members belong to an Indian tribe. (Recommendation #19 IR, SR)

Suggested Statutory Language:

Modify Section 6(c)(4)(A) of the United States Housing Act of 1937 (42 U.S.C. § 1437d(c)(4)(A)) by deleting the word "and" at the end of (iii) and deleting the period at the end of (iv) and inserting "; and" and by adding a new subsection (v) as follows:

"(4) the public housing agency shall comply with such procedures and requirements . . . including requirements pertaining to--

(A) . . . the establishment of tenant selection criteria which--

(v) for projects assisted by Indian housing authorities a first preference may be established for families with at least one member of an Indian tribe."

Justification:

1. Corrects Historical Accident: It is an historical accident that Indian preference was not initially applied to the low-income rental program. When IHAs applied to HUD for new construction of low-income rental units, they were asked to designate whether they planned to construct Mutual Help units or low-income rental units. If the IHA requested Mutual Help, an Indian preference applied and if they requested low-income rental, it did not. It was not until the low-income rental units were constructed and available for occupancy that the tribe and IHA learned Indian preference would not apply. The preference should apply, because appropriations for new housing rental units

are made pursuant to the Indian Housing Program. Applying the preference would permit Indian people to be served first. The Mutual Help program and HIP program administered by the Bureau of Indian Affairs ("BIA") allow for Indian preference. The low-income rental program should not be treated differently.

2. Right of Self-Determination: Indian tribes and IHAs are not political subdivisions of federal, state or local governments. Nor are they merely members of any racial classification. The application of Indian preference is part of the inherent right of self-determination reinforced in case law. See, Morton v. Mancari, 417 U.S. 535 (1974) (affirmed right of Indian preference within personnel policies of BIA). Indian preference should be applied in the low-income rental program.

D. Ceiling Rents

Proposal: Limit ceiling rents in the low-income rental program to an amount (i) not to exceed the average monthly amount of computed debt service at zero interest rate plus the allowable expense level and (ii) not less than the allowable expense level, for the average of similar properties under the control of particular IHA. (Recommendation #25 IR, SR)

Suggested Statutory Language^{16/}:

Modify Sections 3(a)(2)(A)(i) and (iii) of the U.S. Housing Act of 1937 (42 U.S.C. §§ 1437a(a)(2)(A)(i) and (iii)) as follows:

"(2)(A) Any public housing agency may provide that each family residing in a public housing project . . . shall pay as monthly rent an amount determined by such agency to be appropriate that does not exceed a maximum amount that--

(i) is established by such agency [and approved by] with notice to the Secretary;

(ii) is not more than the amount payable as rent by such family under paragraph (1); and

(iii) is not less than the average monthly amount of debt service and operating expenses, and for families assisted by Indian housing authorities an amount

^{16/} The Commission also supports legislation, recently submitted by HUD to Congress, which would provide greater flexibility in establishing ceiling rents.

(i) not to exceed the average monthly amount of computed debt service at zero interest rate plus the allowable expense level and (ii) not less than the allowable expense level, attributable to dwelling units of similar size in public housing projects owned and operated by such agency."

Justification: Many Indian households are paying rent in excess of the amount needed to meet the physical and financial needs of the property. This overpayment results from the rental payments based on 30% of the household's adjusted income and the nontraditional nature of Native American families. Ceiling rents currently allowed by HUD are not specifically tailored to Native communities. Providing a more realistic ceiling rent would satisfy this concern and eliminate the current inequity.

E. Farmers Home Administration Programs

Proposal: Explore options for greater utilization of Farmers Home Administration ("FmHA") programs by Native people, such as a funding set-aside for Native American loan applications, technical assistance grants for capacity building, creation of a Director of Native Programs to coordinate USDA assistance to Native Americans, and intensify outreach efforts by FmHA to educate Native people about the availability of the various FmHA programs. (Recommendation #28 IR, SR)

Suggested Statutory Language:

a. Director of Native Programs

At the end of Section 501 of the Housing Act of 1949 (42 U.S.C. § 1471), add the following new subparagraph (j):

(j) (i) There shall be established in the Office of the Secretary of Agriculture, a Director of Native Programs.

(ii) The Director of Native Programs shall be appointed based on merit and shall be covered under the provisions of title 5, United States Code, governing appointments in the competitive service, provided that a preference shall be employed for members of Indian tribes, Alaska Natives or native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920 (42 Stat. 106).

(iii) The Director of Native Programs shall be responsible for--

(A) administering, in coordination with the relevant offices in the Department, the provision of housing assistance to persons who reside on reservations or in villages of Indian tribes or who are members of Indian tribes or who are Alaska Natives or native Hawaiians, under each program of the Department that provides for such assistance;

(B) administering the loan programs under this title to benefit persons who reside on reservations or in villages of Indian tribes or who are members of Indian tribes or who are Alaska Natives or native Hawaiians;

(C) coordinating all programs of the Department relating to housing for persons who reside on reservations or in villages of Indian tribes or who are members of Indian tribes or who are Alaska Natives or native Hawaiians; and

(D) administering outreach efforts by the Farmers Home Administration to educate persons who reside on reservations or in villages of Indian tribes or who are members of Indian tribes or who are Alaska Natives or native Hawaiians, about the availability of the various programs administered by the Farmers Home Administration.

(iv) Not later than the expiration of the 1-year period beginning on the date of the enactment of this Act, the Secretary shall transfer from offices within the Department to the office of the Director of Native Programs such staff, having experience and capacity to administer the programs within the Department to benefit persons who reside on reservations or in villages of Indian tribes or who are members of Indian tribes or who are Alaska Natives or native Hawaiians, as may be necessary and appropriate to assist the Director to carry out the duties herein authorized."

b. Set-Aside for Guaranteed Loans

Section 502(h) of the Housing Act of 1949 (42 U.S.C. § 1472(h)), is amended by adding the following new paragraph:

"(h) Guaranteed loans

(A) Authority. The Secretary shall, to the extent provided in appropriation Acts, provide guaranteed loans in accordance with this section, Loans shall be guaranteed under this subsection in an amount equal to 90 percent of the loan.

(B) Ten percent of such loans for which appropriations are made in any fiscal year shall be set aside for members of Indian tribes or for persons who reside on reservations or villages of Indian tribes or who are Alaska Natives or native Hawaiians."

Section 504(a) of the Housing Act of 1949 (42 U.S.C. § 1474) is amended by adding the following new subsection (2):

"(a)(1) The Secretary may make a loan, grant, or combined loan and grant to an eligible Sums made available by grant may be made subject to the conditions . . . with respect to contributions made on loans made by the Secretary.

(2) Ten percent of such loans for which appropriations are made in any fiscal year shall be set aside for members of Indian tribes or for persons who reside in reservations or villages of Indian tribes or who are Alaska Natives or native Hawaiians."

Section 515 of the Housing Act of 1949 (42 U.S.C. § 1485), is amended by adding at the end the following new subsection (aa):

"(aa) Set-Aside for Natives. Ten percent of such loans for which appropriations are made in any fiscal year shall be set aside for members of Indian tribes or for persons who reside in reservations or villages of Indian tribes or who are Alaska Natives or native Hawaiians."

Justification: Farmers Home programs are severely under-utilized in Native communities even though they are based on a rural model, as opposed to an urban model, and thus more compatible with the Native lifestyle. Most Native communities are aware of FmHA programs, but they have difficulty making them work. For example, FmHA must recognize the need for off-site water and sanitation disposal when developing properties. USDA must be

directed to improve the marketing of Farmers Home programs to Native communities through a funding set-aside and other coordinated efforts. FmHA must provide training to IHA staff and work with tribes and IHAs to develop compatible processing and funding levels consistent with the HUD programs and other programs available in Native communities. Technical assistance grants would help achieve this dual purpose. The objective of this proposal is to increase substantially Native participation in FmHA programs.

F. Mortgage Revenue Bonds

Proposal: Seek tax amendments to provide independent authority for Indian tribal governments to issue tax-exempt mortgage revenue bonds ("MRBs"). (Recommendation #34 SR)

Suggested Statutory Language:

Subsection (c) of section 7871 (relating to the treatment of Indian tribal governments as states for certain purposes) is amended--

- (1) by striking "paragraph (3) and (4)" and
- (2) by inserting after paragraph (3) the following new paragraph:

"(4) EXCEPTION FOR QUALIFIED MORTGAGE BONDS.--

(A) IN GENERAL.--In the case of a qualified mortgage bond--

(i) paragraph (2) shall not apply,

(ii) section 146 (relating to the volume cap for private activity bonds) shall not apply, and

(iii) paragraph (2)(E) of section 147(f) (relating to the public approval requirement for private activity bonds) shall be applied by substituting "tribal" for "State" each place it appears.

(B) QUALIFIED MORTGAGE BONDS.--For purposes of determining whether an obligation is a qualified mortgage bonds, section 143(j)(3) shall be applied by substituting "Indian tribal government" for "State" each place it appears."

Justification: The Indian MRB proposal would expand the extension of state and local government MRB authority to provide independent authority for Indian tribal governments to issue

MRBs. MRBs are a proven tool in economic and housing development and should be available to Indian tribal governments. The availability of private capital to finance housing in Indian Country is almost nonexistent. Although state and local governments have authority to issue MRBs, tribes do not. Giving Indian tribes such authority would help provide an additional source of financing for housing in Indian Country.

G. Technical Corrections

Proposal: Make technical corrections to Sections 103(a)(1), 112, 114, 116, 118, 119, 903 and 927 of the Housing and Community Development Act of 1992 so that such sections apply specifically to Indian Housing. (Recommendation #35 SR)

Suggested Statutory Language:

Sec. Applicability to Indian Housing.
In General. In accordance with section 201(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437aa(b)(2)), the provisions of sections 103(a)(1), 112, 114, 116, 118, 119, 903 and 927 of the Housing and Community Development Act of 1992 shall apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.

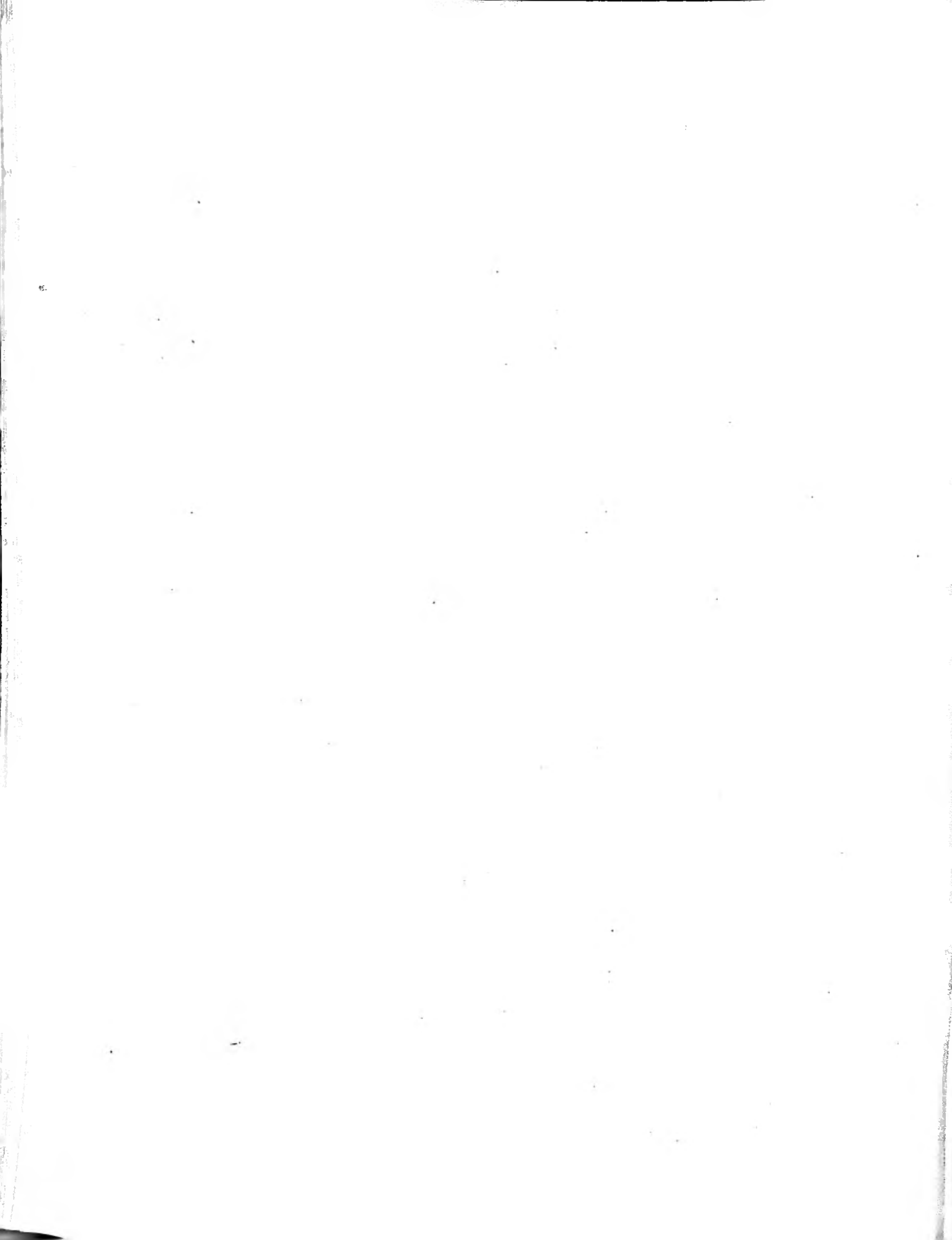
Justification: When Congress passed the Housing and Community Development Act of 1992, these provisions were to apply to Indian housing. The failure to provide specific language was a mere oversight. In fairness and to continue uniform administration of the programs, technical corrections are justified.

H. Native Preference to Select Future HUD Director of Native American Programs as well as other Administrative Positions

Proposal: A preference for Native Americans, Alaska Natives or native Hawaiians should be employed to select the successor to the current Director of Native Programs in the Department of Housing and Urban Development. Further, such a preference should be applied to all positions with responsibility for administering Native American Programs within HUD. Application of a preference to staff positions in the six geographic offices of Native American Programs is especially important because operational control exists there. To the extent other federal hiring laws or requirements defeat hiring pursuant to the preference, such laws should be modified. (Recommendation #5a SR)

Suggested Statutory Language: To be determined by Congress.

Justification: As the primary career government employees responsible for administering Native American housing programs, such persons must have the cultural background to understand fully the variety and differences among Native lifestyles. Allowing a preference is more likely to ensure that a culturally sensitive staff will administer the Native American housing programs.





NATIONAL COMMISSION ON AMERICAN INDIAN,
ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

1726 M STREET, N.W., SUITE 401
WASHINGTON, DC 20036

Telephone (202) 275-0045

Fax (202) 275-3000

Page 1 of 6

Commission Members

QUESTIONNAIRE

Robert Gauthier, Chairman
Ex. Dir., Salish-Kootenai IHA
Pablo, MT

Ted Key, Ex. Dir.
Chickasaw Housing
Ada, OK

Wayne Chico, Ex. Dir.
Tohono O'Odham IHA
Sells, AZ

Louis Weller, President
Weller Architects
Albuquerque, NM

Joseph De La Cruz, Chairman
Quinault Nation
Taholah, WA

Jackie Johnson, Ex. Dir.
Tlingit-Haida Reg. IHA
Juneau, AK

Warren Lindquist, Past
Assistant Sec'y HUD
Seal Harbor, ME

James Solem, Commissioner
Minnesota Housing Finance
St. Paul, MN

Bill Nibbelink, Ex. Dir.
Flandreau Santee Sioux IHA
Flandreau, SD

Hoaliku Drake, Chairman
Hawaiian Home Lands Comm.
Honolulu, HI

Ms. Eileen K. Lota
Honolulu, HI

Wilma P. Mankiller
Principal Chief
Cherokee Nation
Tahlequah, OK

**

Francis L. Harjo
Executive Director

JoAnn K. Chase
Deputy Director

Lois V. Toliver
Admin. Officer

Annabelle M. Toledo
Secretary

The National Commission on American Indian, Alaska Native and Native Hawaiian Housing ("Commission") is interested in obtaining guidance from NAIHC members regarding a number of its findings. Accordingly, the Commission seeks answers to specific questions as set forth below. This additional information will assist the Commission in the final disposition of its recommendations as well as issuance of its supplemental report. Your cooperation is appreciated. If you need more space, please attach additional pages.

ALL QUESTIONNAIRES MUST BE COMPLETED AND GIVEN TO FRANCIS HARJO AS SOON AS POSSIBLE BUT BEFORE COMPLETION OF THE NAIHC ANNUAL MEETING. IF YOU NEED MORE TIME, PLEASE CONTACT FRANCIS HARJO AND REQUEST A SEPARATE QUESTIONNAIRE. YOUR COOPERATION IS GREATLY APPRECIATED.

1. Please set forth the date and print your name, title, address, and telephone number below:

Date: _____, 1993

2. The Commission has recommended funding a comprehensive housing inventory and needs survey. What criteria should be used to identify the housing inventory and needs in your area? _____

Should the tribe and/or housing authority be consulted, and if so in what manner? _____

Should the survey also include recommendations to address the needs, if any, evidenced by the survey? _____ If so, to what extent and if not why not? _____

3. Please complete (a) and (b) below:

a. My area is (check one) _____ a reservation or _____ not a reservation but composed of (please indicate) _____

b. The housing in my area is as follows (please include number of units and percentage):

Of all the housing units:

_____ are owner-occupied, _____% of all units
_____ are tenant occupied, _____% of all units

HUD housing: _____ units, _____% of all units; of these:
_____ are Mutual Help units, _____% of HUD housing units
_____ are Low-Rent units, _____% of HUD housing units

Of all the HUD housing:

_____ are privately owned, _____% of HUD housing units
_____ are HUD owned, _____% of HUD housing units

Other federal housing: _____ units, _____% of all units; of these:

_____ are Farmers Home units, _____% of other federal units
_____ are Vet. Affairs units, _____% of other federal units
_____ are BIA-HIP units, _____% of other federal units

Other housing: _____ units, _____% of all other units of these:

_____ are privately financed units, _____% of others
_____ are from another private source (if known, please indicate) _____

_____, _____% of other housing units

4. What portion of Indian families in your community pay 30% of their income for rent? _____%
What portion pay over 30% but less than 50%? _____%
What portion pay over 50%? _____%

5. To what extent are the households in your area made up of members outside the immediate family of parents and children?

_____ % are nontraditional households. If over 20%, please explain why this is so: _____

6. Is overcrowding a problem in your area? _____

If yes, please explain: _____

7. How do local area monthly rental rates compare to the monthly rental rates of the properties under the control of your housing authority?

	Local Monthly Rent		IHA Monthly Rent	
	Home	Apartment	Home	Apartment
efficiency:	\$ _____	\$ _____	\$ _____	\$ _____
1BR 1B	\$ _____	\$ _____	\$ _____	\$ _____
2BR 1B	\$ _____	\$ _____	\$ _____	\$ _____
2BR 2B	\$ _____	\$ _____	\$ _____	\$ _____
3BR 1B	\$ _____	\$ _____	\$ _____	\$ _____
3BR 2B	\$ _____	\$ _____	\$ _____	\$ _____
4BR 1B	\$ _____	\$ _____	\$ _____	\$ _____
4BR 2B	\$ _____	\$ _____	\$ _____	\$ _____

8. Regarding the HUD low-rent units under the control of your IHA, please indicate the following:

Total units: _____
 Total amount of HUD subsidy: \$ _____
 Total amount of tenant contribution: \$ _____

9. Families receiving alimony and child support must include this income in their adjusted income against which the 30% rent is set. Those paying such alimony and support receive a deduction from their income of only \$480 per year for each dependent. For the following questions, if you do not have actual figures please provide your best estimate. If you are estimating, please check here: _____ Of those paying child support and alimony in your area, what percentage pay an amount above \$480 per year per dependent? _____ %
 What percentage pay between \$480 and \$550? _____ % What percentage pay over \$550? _____ %

10. Is the lack of an Indian preference in the HUD low-rent program a problem in your area? _____ If so, on a property-by-property basis, what percentage of low-rent units occupied by non-Indian families would be acceptable? If zero, please indicate. _____%

11. On an annual basis, to what extent are the Farmers Home programs used in your area? Please check one:
___regularly (at least 11) ___rarely (6-10)
___very rarely (1-5) ___never used (0)

Do you believe the programs can be better utilized in your area? _____ If yes, why? Please check as applicable:

- ___ No knowledge of the programs
- ___ Waiting for a HUD program
- ___ Cannot afford to participate
- ___ Other _____

Which Farmers Home programs are most suited for your community? _____

12. Has anyone from the Farmers Home Administration ever (please check) ___ offered or ___ performed any technical training in your area specifically for Indians? _____

If so, please indicate the date and describe the program: _____

Has any staff member of your housing authority ever attended a Farmers Home training session? _____ If so, please indicate the number of staff attending, date of attendance and describe the program: _____

Did the staff member(s) consider it worthwhile? _____

If so, why, if not, why not: _____

13. Please rate "availability" and "level of actual use" of private capital in your area.

Availability, please check one:

- regularly (at least 11) rarely (6-10)
- very rarely (1-5) not available (0)

Level of actual use, please check one:

- regularly (at least 11) rarely (6-10)
- very rarely (1-5) not used (0)

14. Do you believe allowing tribes and IHAs to issue tax-exempt mortgage revenue bonds would help address the housing needs in your area? If so, please state why: _____

15. When answering the following, assume tribes and IHAs have the authority to issue tax-exempt mortgage revenue bonds. Does the housing authority staff in your area have the technical expertise to issue tax-exempt mortgage revenue bonds? If not, would housing authority staff attend technical training sessions if available? If not, why not: _____

16. Regarding the Indian Loan Guaranty Program enacted as part of the Housing and Community Development Act of 1992, you have, please check one:

- read the provision and understand it
- read the provision and are familiar with it
- read the provision and do not understand it
- not read the provision but am aware of it
- not read the provision and other than as suggested by this question, am not aware of it

Do you support funding of the Indian Loan Guaranty Program? _____

17. Is the water and sanitation disposal capacity in your area sufficient? If not, why not: _____

18. Does your IHA or tribe have any information about tribal member private mortgage lending activity?
If yes, does the information relate to (check as applicable):

- reservation housing
- nonreservation but within my community as described in question 3(a) above
- outside the reservation or community, as described in question 3(a)

Does your IHA have any information regarding default rates?

19. What level of financial institutional lending is available for housing to residents of your reservation or Indian community (see question 3 (a))? Please check as applicable.

	Indian Owned	Non-Indian Owned
Credit Unions	_____	_____
Thrift Institutions	_____	_____
Private Mortgage Companies	_____	_____
Commercial Banks	_____	_____

20. Of the Indian families on your IHA's waiting list, how many currently live on the reservation or within your community (see 3(a))? _____ How many live outside the reservation or outside the community (see 3(a))? _____

ADDITIONAL COMMENTS: Space below is for any additional comments you may have regarding this questionnaire or any aspect of housing conditions in your community.



EXHIBIT 2

TEN-YEAR FUNDING PLAN
TO
ALLEVIATE SUBSTANDARD HOUSING
IN
NATIVE COMMUNITIES

To eliminate waiting lists in Native housing in 10 years, the National Commission on American Indian, Alaska Native and Native Hawaiian Housing recommends that the Congress increase federal funding for Native housing and related infrastructure to achieve annually the following:

I. <u>Department of Housing and Urban Development</u>	(millions)
A. Line Item Funding for Indian Housing Programs	
1. New Construction (minimum) @ 5,500 units (more than double the current number of 2,700)	\$ 478.5
(Recommendation #1 IR, SR)	
2. Indian Housing Loan Guarantee Program (fund initial start-up of program)	10.0
(Recommendation #33 IR, SR)	
3. Comprehensive Planning Grants (300 tribes @ av. \$50,000)	15.0
(Related to Recommendation #1 IR, SR)	
4. Additional Operating Subsidy for Eligible Mutual Help Residents (funding should increase 3-5% per year)	
(Recommendation #12 IR, SR)	45.0
5. Indian Housing Development Amendment Funding for On-Site Roads	30.0
(Recommendation #29 IR, SR)	

B. Formula-Based Funding for Indian Housing Programs

1. Operating Subsidies for the Low Income Rental and Mutual Help Programs
(funding at 100% of need) 65.0

(Related to Recommendation #1 IR, SR)
2. Comprehensive Grant Program
(increase national CGP 3-5% per year
to increase allocation for grants to IHAs) 81.0

(Related to Recommendation #1 IR, SR)

C. Set-Asides for Indian Share of HUD Program Funding

1. Indian Community Development Block Grants
(FY '94 = \$90 million)
(increase current 1% set aside to 3% of total
CDBG funding)

(Related to Recommendation #1 IR, SR)
2. Indian HOME Program (FY '94 = \$18 million)
(increase current 1% set aside to 3% of total
HOME funding)

(Related to Recommendation #1 IR, SR)
3. Indian Comprehensive Improvement Assistance
Program (CIAP) (FY '94) = \$29 million)
(set aside 10% of total CIAP funding for Indian
Housing)

(Related to Recommendation #1 IR, SR)
4. Some of the Other HUD Programs that Could Provide
Greater Assistance to Native Communities:
 - a. Indian Housing Section 8 Certificates/Vouchers
set aside 750 vouchers/certificates per year)

(Recommendation #24 IR, SR)
 - b. Indian Emergency Shelter Grants
(set aside \$2 million per year)
 - c. Resident Management Grants
(set aside \$1 million per year for Native Housing)
 - d. Substance Abuse Programs
(set aside \$4.5 million per year for Native
Communities)

II. Bureau of Indian Affairs

A. Housing Improvement Program (HIP)

Provides for repair of existing houses and provision of new houses when existing cannot be brought up to standard within program limits (FY '94 = \$24.4 million)
(Commission proposes increases for 1,800 units of new construction and repair of 1,800 existing housing units)*

\$125.0

(Recommendation #29 IR, SR)

B. Rehabilitation of existing Indian Housing Access Roadways

\$ 25.0

(Recommendation #29 IR, SR)

III. Farmers Home Administration (FmHA)

A. Section 502 set-aside 500 units \$ 25.0

(Recommendation #28 IR, SR)

B. Section 515 set-aside 500 units 25.0

(Recommendation #28 IR, SR)

IV. Indian Health Service

Sanitation Facilities Construction Program \$125.0

(Recommendation #36 IR, SR)

V. Alternative Sources

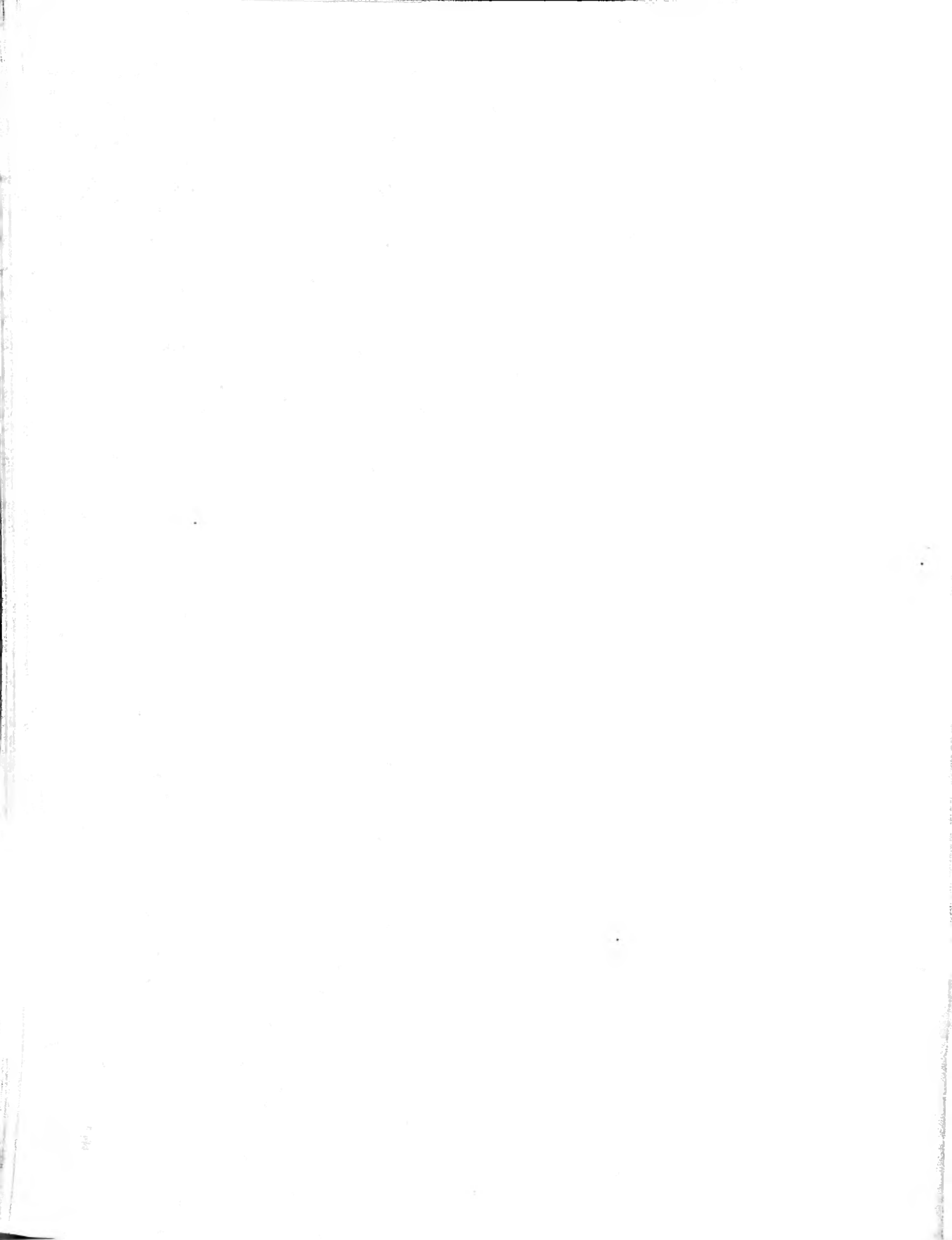
A. Veterans Administration 600 units \$ 5.0

(Recommendation #27 IR, SR)

B. Native American Finance Authority
(first two years start-up) 5.0

(Recommendation #4 IR, SR)

* The BIA established maximum in the HIP is \$45,000 per unit, half that amount is estimated for rehabilitation.



**JUSTIFICATION FOR LEGISLATIVE PROPOSALS ADDRESSING
THE HOUSING AND INFRASTRUCTURE NEEDS OF NATIVE HAWAIIANS**

Introduction

The National Commission on American Indian, Alaska Native and Native Hawaiian Housing held public hearings in Hawaii on December 6, 1991 to identify impediments to safe and affordable housing for native Hawaiians.^{1/} Representatives of citizens groups, Hawaiian housing associations and state agencies testified. Their common message: there exists an overwhelming need for infrastructure and affordable housing for native Hawaiians on the Hawaiian Home Lands.

Since those first hearings, the Commission has worked with officials at the Department of Hawaiian Home Lands and various other state and federal agencies, as well as with native Hawaiian advocacy groups, to identify more specifically the housing needs of native Hawaiians and to develop strategies to increase their access to safe and affordable homes on the Hawaiian Home Lands. Below is an assessment of the housing needs of native Hawaiian beneficiaries and related recommendations with justifications.

Hawaii's Native/native Hawaiian Population

The Commission obtained information on the native Hawaiian population from four different sources -- the 1980 Census, a 1982 study by the Hawaii State Department of Health, the 1990 Census, and a 1992 survey by the Department of Hawaiian Home Lands. This information substantiated the Commission's assessment that the socioeconomic status of native Hawaiians is very similar to that of American Indians and Alaska Natives. The 1980 Census identified the state's total Hawaiian resident population as being 964,961. That is, native Hawaiians accounted for 118,251 or 12% of Hawaii's total resident population. Doubting the reliability of these figures, the State Department of Health

^{1/} Native Hawaiians eligible to reside on Hawaiian Home Lands are those with at least 50% quantum of Hawaiian blood, according to Section 201(a)(7) of the Hawaiian Homes Commission Act, 1920 Pub. L. No. 67-34, 42 Stat 106.

undertook a population survey for the state legislature. The results of that survey follow:

	<u>1980 Census</u>	<u>1982 Health Survey</u>
• Total State Resident Population	964,641	956,118
• Total Native Hawaiian Population	118,251 (12%)	182,870 (19%)
• Total native Hawaiian Population (+50% Hawaiian Ancestry)		49,026 (27% of Native Hawaiians)
• Total native Hawaiian Beneficiaries Eligible for Hawaiian Home Lands (+50% Hawaiian Ancestry/+18 years)		32,847 (67% of native Hawaiians)

In 1990, the Department of Hawaiian Home Lands conducted a survey to determine the Native/native Hawaiiin homeless population in the state. The Department found that native Hawaiiin beneficiaries are seriously overrepresented in the state's homeless population, as the survey results reflected:

- Total State Homeless Population: 8,369
- Total Native Hawaiiin Homeless: 2,327 (28% of total)
- Total native Hawaiiin Homeless: 1,300 (56% of Native Hawaiiin Homeless and 30% of total)

The Department of Hawaiiin Home Lands also commissioned a survey of applicants on the Hawaiian Home Lands waiting list to obtain a profile of the beneficiary group. (The current waiting list is in excess of 22,000 applications). Questionnaires were mailed to 11,300 families, and 5,200 responses were returned. In part, the results of the survey revealed the following:

- 19.5% of the applicants and 17.8% of their spouses are unemployed, figures representing a substantially higher rate than the general state population.
- Average household size is 4.25 persons as compared to the statewide average of 2.97 persons.
- Median family income is substantially below the 1988 state average of \$39,600.
- 20% of the applicants are 55 years or older, and an additional 22.5% are between the ages of 45 and 54.

In summary, Hawaiian Home Lands beneficiaries (i.e., native Hawaiians) are slightly older, have larger families, have a higher rate of unemployment, and earn a lower income than the general population.

Most important to the Commission's investigation was that native Hawaiians have the worst housing conditions in the state and the highest percentage of homelessness, representing over 30% of the state's homeless population.

Department of Hawaiian Home Lands

In 1921 the Congress enacted the Hawaiian Homes Commission Act (the "Act") that led to the establishment of the Hawaiian Home Lands program. The intent of Congress was to assist and encourage native Hawaiians to return to their rural way of life, to promote self-sufficiency and to preserve native culture. The Act set aside approximately 190,000 acres of trust land for homesteading to eligible native Hawaiians on the islands of Hawaii, Kauai, Maui, Molokai and Oahu. In 1959, when Hawaii achieved statehood, it accepted responsibility for administering the Hawaiian Home Lands program and received title to all of the homelands. The Department of Hawaiian Home Lands (DHHL) was created to carry out the policy as set by the Hawaiian Homes Commission.

The DHHL currently administers programs which benefit native Hawaiians through the awarding of 99-year homestead leases to individual beneficiaries for a nominal fee (typically \$1.00 annually). The leases are for residential homesteads, farms, ranches and pasture lands. In addition, DHHL provides lessees with loans and loan guarantees for home construction, home repair and farming.

Despite the efforts of DHHL to address the problems of the homeless and other underserved native Hawaiians, the distressing population data discussed above demands a much more intense multifaceted solution.

Overview of Existing Housing Programs

While there is a tremendous need for infrastructure, few alternatives exist for the development of homes on the home lands. Furthermore, federal funds administered by HUD and Farmers Home are heavily restricted for the most part, and are not available for use on the home lands. The DHHL/HUD mortgage insurance program meets only the needs of those with moderate incomes and leaves virtually no options for the truly poor native Hawaiians desiring to reside on their home lands.

A. Federal Programs

The Federal Low Rent Public Housing Program is a federally subsidized program which enables the public sector to provide housing to low income families. The program provides funds for new construction, modernization, and operating subsidies. Criteria for program participation include an income limit (based

on family size), occupancy standards (based on family definition), and need level categories established by HUD. According to HUD figures, native Hawaiians constitute 22% of those living in federal low income rental housing in Hawaii. However, native Hawaiians desiring to live on their home lands do not have access to the program since HUD refuses to extend the services for the sole benefit of native Hawaiian beneficiaries.

The Section 8 Certificates Program and Section 8 Voucher Program are federally funded rental subsidy housing programs. Participants receive subsidies to live in private sector housing. HUD's program criteria for participation include income limits (based on family size), occupancy standards (based on family definition), for fair market rents (based on county standards). While statistics show that Hawaiians constitute 29% of those utilizing Section 8 certificates and vouchers, access to these programs is not available currently to eligible beneficiaries seeking rental housing subsidies on Hawaiian Home Lands.

The existing FmHA programs offer very few native Hawaiians any benefits. Low participation in FmHA programs results from two major problems. First, FmHA regulations prescribe geographic limitations which exclude many homestead areas from program eligibility. Second, FmHA will not approve loans in excess of \$50,000. This amount is insufficient for larger families wanting to build a four to five bedroom home, especially in a high cost area such as Hawaii. The family either must accept a smaller unit or be forthcoming with additional cash. Since the median income of native Hawaiian families falls significantly below the medium income of the majority of the state population, they find it virtually impossible to afford adequate housing.

Of marginally more assistance is the limited federal funding which native Hawaiians receive through DHHL from HUD Special Purpose Grants and CDBG programs. While helpful, these funds are discretionary and, therefore, not reliable sources of assistance. Each year native Hawaiians must depend on whether the Congress can provide these grant funds. Accordingly, the ability of the DHHL to plan both short and long term is severely limited. Further, the funds fall far short of the estimated need just to accommodate those beneficiaries on the current home lands waiting list.

In short, the unavailability of federal assistance prevents native Hawaiians from living in decent and affordable housing on their home lands, although the federal government set aside those lands for their exclusive access and enjoyment.

B. State Programs

The State Public Housing program is similar to the federal low-income rental housing program except that the state's income limits are higher. Like the federal program, however, the state program is not available on the home lands.

The Rent Supplement program is a state-funded subsidy housing program similar to the federal Section 8 voucher and certificate programs. Participants receive subsidies to live in private sector housing units. The program criteria for participation includes both income limits (based on family size) and occupancy standards (based on family definition) which have been established by the state legislature. Like other programs, again, this one is not available for use on the Hawaiian Home Lands.

C. DHHL/HUD Mortgage Insurance Program

The inalienable character of the Hawaiian Home Lands makes it virtually impossible for native Hawaiians to obtain financing from conventional lenders to build houses on their home lands. Since these lands cannot be sold, they also cannot be mortgaged or used as collateral for borrowing purposes, because a lender cannot foreclose should the borrower default. This restriction against alienation causes the same problems for native Hawaiians that most Indians and Alaska Natives face when they try to obtain mortgage financing from conventional lenders for homes on reservations or other restricted areas.

To begin to address the problems, DHHL and HUD entered into an agreement in 1987 that enables native Hawaiians to obtain an FHA-insured mortgage loan to build a home on the home lands by using the improvements (i.e., the home) as collateral. In addition, before initiating the program HUD required that DHHL fund a reserve of one million dollars with HUD. HUD does not require any other participant in its FHA-insured mortgage program to fund such a reserve. DHHL entered into a similar agreement with FmHA. While these programs are tremendously important to native Hawaiians, they help only borrowers with moderate incomes and assets sufficient to qualify for a mortgage. The programs do not make an otherwise unqualified borrower credit-worthy. Consequently, the FHA and FmHA agreements with DHHL offer no assistance to the thousands of native Hawaiians who cannot meet the credit standards (i.e., traditional renters). They are left with no federal housing assistance option.

Commission's Recommendation

To address the housing shortage facing native Hawaiians who wish to live on their home lands, an important first step is for Congress to extend the federal Mutual Help Homeownership, Low-

Income Rental, HUD Loan Guarantee, and CDBG programs to include native Hawaiians -- just as Congress has done for American Indians and Alaska Natives. Sufficient precedent exists to justify the extension of these programs to native Hawaiians.

First, as the legislative history of the amendment of the U.S. Housing Act of 1937 indicates, the Congress extended the Low-Income Rental and Mutual Help programs to include American Indians to alleviate the problems of inalienability of native lands, high unemployment rates and lack of creditworthiness.^{2/} These same problems plague the native Hawaiians desiring to reside on their home lands.

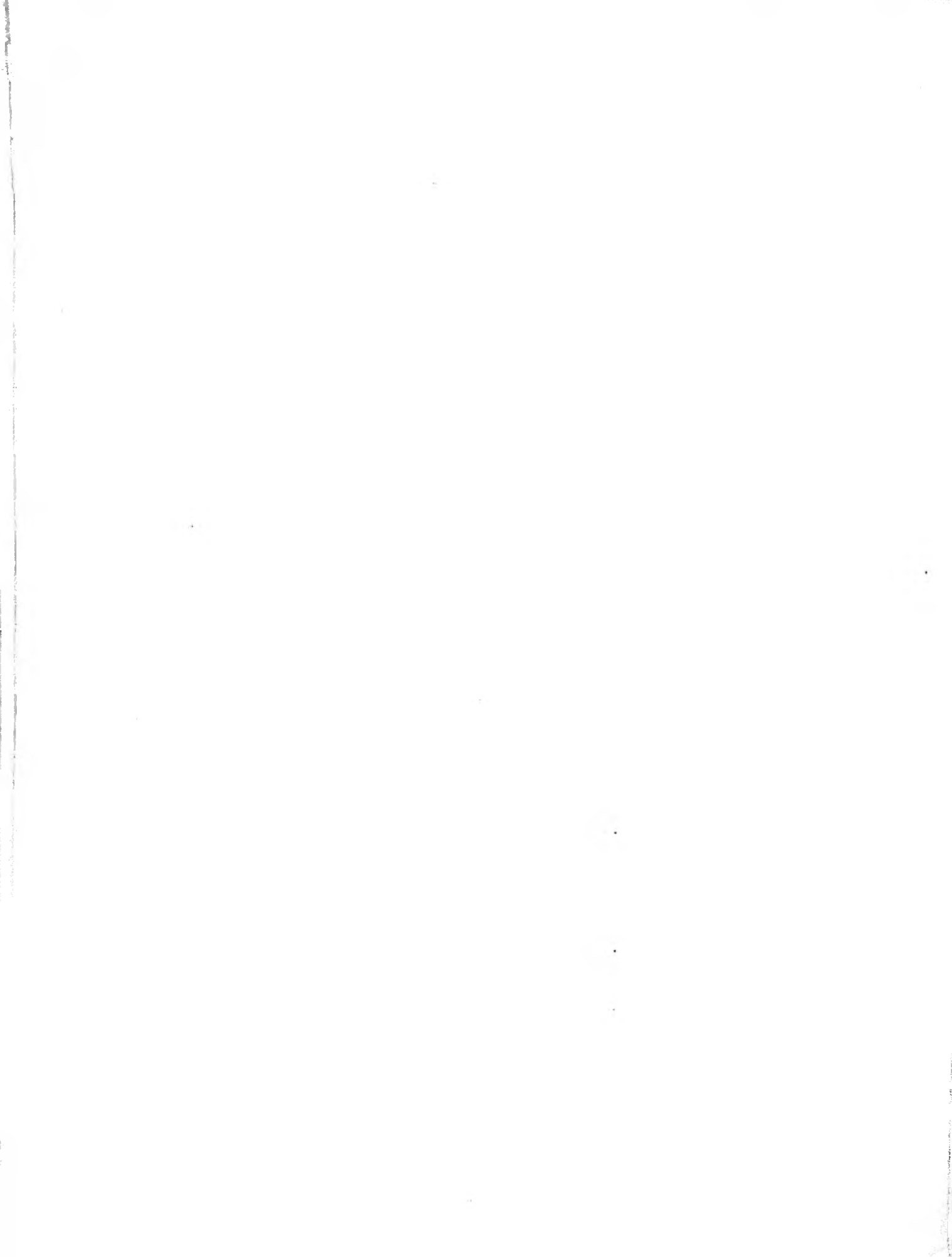
More recently, Congress enacted the Native American Veterans' Home Loan Pilot Program of 1992 (38 U.S.C. § 3761) to provide home loans to benefit Native American Veterans living on trust lands. Congress took this action because, in the nearly 50 years of the Veterans Administration (VA) home-loan guaranty program which assisted 13 million veterans in purchasing homes at a cost of over \$300 billion, not one VA guaranteed home-mortgage was given to a Native American veteran for housing on trust land.^{3/} The VA acknowledged that Native American veterans' nonparticipation was due to the lack of credit, unstable and inconsistent incomes, inalienability of land, lack of physical infrastructure and discrimination among other factors.^{4/} Congress sought to remedy this problem by establishing a pilot program to provide home loans to Native American veterans living on trust lands. Congress recognized that native Hawaiians face the same problems as other Native people and thus included them in the program.

^{2/} See Department of Interior Secretary's Task Force Report dated July 10, 1961. Interior Secretary Stewart Udall established the task force to examine the condition of federal Indian affairs. The Task force report acknowledged the magnitude of the Indian housing crisis. The report suggested that once certain problems were resolved, there would be increased access to and greater use of existing federal loan programs. Among the problems cited were land alienation issues and the disadvantaged socioeconomic status of native people.

^{3/} See "Native American Veterans' Home Loan Equity Act of 1992," Committee on Veterans' Affairs, S. Rpt. 102-378, 9-11 (1992).

^{4/} See "Assessment of the Utilization of the VA Home Loan Benefit by Native American Veterans Living on Trust Land," Department of Veterans Affairs Final Report, Nov. 28, 1990.

Similarly, the Commission has found that native Hawaiians, like American Indians and Alaska Natives, suffer lack of access to conventional financing due to the trust status of their home lands and/or a frequent inability to meet income requirements. Just as Congress saw fit to remedy the problems facing native Hawaiian veterans, so should Congress remedy the housing problems facing native Hawaiians by extending to them the same federal housing programs made available to American Indians and Alaska Natives under the Low-Income Rental, Mutual Help, HUD Loan Guarantee and CDBG programs.



NATIVE AMERICAN FINANCE AUTHORITY ACT OF 1993

Title I General.

- Sec. 100 Short Title.
- Sec. 101 Declaration of Policy.
- Sec. 102 Purpose.
- Sec. 103 Definitions.

Title II Organization of the Authority.

- Sec. 200 Structure.
- Sec. 201 Board of Directors.
- Sec. 202 Advisory Council.

Title III Powers and Duties of the Authority.

- Sec. 200 Debt Obligations of the Authority.
- Sec. 301 Mortgages for Eligible Mortgagors.
- Sec. 302 Consulting Services.
- Sec. 303 Loan Guarantees.
- Sec. 304 Rulemaking.
- Sec. 305 Program Guidelines.
- Sec. 306 Reports.
- Sec. 307 Authorization of Appropriations.
- Sec. 308 Effective Date.

Title I General.

Sec. 100 Short Title.

This Act may be referred to as the "Native American Finance Authority Act of 1993".

Sec. 101 Declaration of Policy.

Based upon the findings and recommendations by the Commission on American Indian, Alaska Native and Native Hawaiian Housing established by Public Law 101-235, the Congress has determined that housing shortages and deplorable living conditions have reached crisis proportions in Native American communities throughout the United States. The lack of private capital to finance housing for Native Americans seriously exacerbates this problem. To begin to address this crisis, it is the policy of the United States to improve the conditions and supply of housing in Native American communities throughout the United States by creating the Native American Finance Authority.

Sec. 102 Purpose.

There shall be established a Native American Finance Authority (the "Authority") to promote the infusion of public and private capital into Native American communities throughout the United States and to direct sources of public and private capital into housing and related infrastructure for Native American individuals and families and other eligible mortgagors, as defined herein. The Authority, alone or in combination with Native American lenders, commercial lenders, or other state, local or public lenders may develop and administer such programs.

Sec. 103 Definitions.

(a) The term "Authority" means the Native American Finance Authority.

(b) The term "Alaska Native" means any person recognized as Alaska Native by the Federal Government or the State of Alaska.

(c) The term "Commission" means the National Commission on American Indian, Alaska Native and Native Hawaiian Housing established by Public Law 101-235.

(d) The term "Indian tribe" means an Indian tribe as defined by the 25 U.S.C. 450(b).

(e) The term "Native American" means any person recognized by an Indian tribe or the Federal Government as being an Indian, an Alaska Native or a native Hawaiian.

(f) The term "Native American housing authority" means any entity that is authorized to engage or assist in the development or operation of lower income housing for Native Americans and is established by exercise of the power of self-governance of an Indian tribe independent of State law or by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska and Homestead Associations in the State of Hawaii.

(g) The term "Native American community" means the area over which a Native American governing body has jurisdiction.

(h) The term "Native American family" means a family which at the time the loan is granted has at least one member who is Native American as defined in subsection (e) of this section.

(i) The term "Native American governing body" means any tribe, band, pueblo, group, association, community, or nation of Indians, Alaska Natives or native Hawaiians.

(j) The term "Native American lender" means a Native American governing body or Native American housing authority which enters into a participation agreement with the Authority and has a plan approved by the Authority pursuant to this Act.

(k) The term "native Hawaiian" means native Hawaiians as defined in section 201(a)(7) of the Hawaiian Homes Commission Act, 1920 42 Stat. 106.

Title II Organization of the Authority.

Sec. 200 Structure.

The Authority shall be a not-for-profit corporation pursuant to Section 501(c)(3) of the Internal Revenue Code and organized under the laws of the District of Columbia with its headquarters located therein. The Authority may locate additional offices throughout the United States, including in Native American communities. The Authority shall be governed solely by a Board of Directors. The Advisory Council shall advise the Board as provided in subsection 202(b) of this Act. The day-to-day operations of the Authority shall be carried out by officers appointed by the Board of Directors as provided in subsection 201(b) of this Act.

Sec. 201 Board of Directors.

(a) **Composition/Selection Process.** The Board of Directors of the Authority shall be composed of nine members. The President of the United States shall appoint such members, each with a three-year staggered term and one of whom shall be designated by the President to be Chairman of the Board. All members must be Native Americans. In choosing the members of the Board of Directors, the President is encouraged to consult with the members of the former Finance Committee of the Commission. Such appointments shall be made by the President within 90 days of enactment of this Act. The first Board shall draw lots on when the term of each member shall expire.

(b) **Duties.** The Board of Directors shall govern the Authority and consult with the Advisory Council on all policy matters and may consult with the Advisory Council on other matters. The Board alone shall make all operational decisions and shall not be required to consult with the Advisory Council on such matters. The Board shall appoint officers as it deems appropriate to carry out the day-to-day operations of the Authority.

Sec. 202 Advisory Council.

(a) **Composition/Selection Process.** The Advisory Council shall consist of 21 members appointed on staggered three-year terms; seven members shall be appointed each year for the first three years. Each member shall be chosen by the Board of Directors. Membership of the Advisory Council shall include representation from each of the 12 districts established by the Bureau of Indian Affairs and Hawaii. No fewer than five of those appointed in the first year shall have been members of the Commission and cannot succeed themselves. Seven of the members of the Advisory Council shall have financial expertise. Not less than two-thirds of the Advisory Council shall be Native Americans. The first Advisory Council shall draw lots on when the term of each member shall expire.

(b) **Duties.** The Advisory Council shall advise the Board of Directors on all policy matters of the Authority. The Council shall provide guidance to the Board to assure that the mandate of the Authority, as provided herein, is properly followed and accomplished. Through the regional representation of its members, the Council shall provide information to the Board from all sectors of the Native American community. The Council shall review and approve the reports prepared by the Authority as set forth in Section 306 of this Act.

Title III Powers and Duties of the Authority.

Sec. 300 Debt Obligations of the Authority.

(a) **General.** The Authority is authorized, upon such terms and conditions as it may prescribe, to borrow, give security, pay interest or other return, and issue notes, debentures, bonds or other debt obligations, including without limitation, mortgage-backed securities guaranteed by the Government National Mortgage Association in the manner provided in section 306(g) of the National Housing Act (12 U.S.C. 1721(g)). The Authority has the power to purchase, make or otherwise participate in the making of loans, and enter into agreements to purchase, to participate in or to make loans. Any obligation of the Authority shall be valid and binding notwithstanding that a person or persons purporting to have executed or attested the same may have died, become disabled, or ceased to hold office or employment before the issuance thereof.

(b) Department of the Treasury Obligations.

(1) The Authority may issue bonds which the United States Treasury may purchase in its discretion.

(2) The Secretary of the Treasury may purchase any obligations issued under subsection (b)(1) of section 300 of this Act. For the purposes of this subsection (b), the term "Secretary" shall mean the Secretary of the Treasury.

(3) In the purchase of obligations as provided in subsection (b)(1), the Secretary may use as a public debt transaction the proceeds of the sale of any securities issued under Chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include such purpose.

(4) The Secretary shall not purchase at any time any obligations under this subsection if the purchase would increase to an amount greater than \$25,000,000 the aggregate principal amount of the outstanding holdings of obligations under this subsection by the Secretary.

(5) Each purchase of obligations by the Secretary under this subsection (b) shall be upon terms and conditions established to yield a rate of return which the Secretary determines to be appropriate and which takes into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the making of the purchase.

(6) The Secretary at any time may sell, upon terms and conditions and at prices determined by the Secretary, any of the obligations acquired by the Secretary under this subsection.

(c) **Mortgage Revenue Bonds.** The Authority shall have the power to issue bonds pursuant to section 143 of the Internal Revenue Code (26 U.S.C. 143). Such authority shall not exceed \$250,000,000 for each of fiscal years 1994 and 1995.

Sec. 301 Mortgages for Eligible Mortgagors.

(a) **General.**

(1) The Authority, alone or together with a Native American lender, a commercial lender, or other state, local or public lender may originate loans to eligible mortgagors, as defined in this Act, for housing and related infrastructure.

(2) The Authority (or lender) may originate loans to Native American governing bodies or Native American housing authorities for housing for eligible recipients hereunder and for related infrastructure.

(3) The Authority shall take into account the housing needs of all Native Americans residing both within and outside of Native American communities and shall develop housing programs responsive to these needs.

(4) All housing programs developed by the Authority must conform to rules established by the Authority concerning program administration, including but not limited to rules concerning cost of administration, the quality of housing, interest rates, fees, charges and other matters determined by the Authority to be necessary or appropriate to effectuate the purposes of this Act. All such housing programs must provide for a reasonable balance in the distribution of funds appropriated between Native Americans residing within and outside of Native American communities.

(5) Any Native American governing body or Native American housing authority may request and receive cooperation, advice, and assistance from the Authority on program development, operation, delivery, financing, or administration.

(6) As a condition to the making of eligible loans, the lender shall enter into a participation agreement with the Authority and have a plan approved by the Authority.

(7) Lenders shall be responsible for any costs and expenses related to administration of the loan program under their respective plans pursuant to this Act.

(b) Participation Agreement.

(1) An agreement shall be entered into between the Authority and the lender. Such agreement shall incorporate the requirements of this Act and govern the housing programs for Native Americans and Native American families as provided in this Act. The agreement may authorize a housing program for Native Americans and Native American families living either within or outside of Native American communities.

(2) The agreement also must provide that the lender will have its books and records of such housing programs audited annually by an independent certified public accountant in accordance with generally accepted accounting principles.

(3) The agreement shall provide the circumstances under which the Authority shall provide assistance to the lender and the fee amount to be paid to the Authority from such entity for such assistance and monitoring. The Authority may waive such fee if it determines that payment of the fee would impose an undue hardship, as defined by the Authority, upon such lender.

(c) Qualifications of Eligible Mortgagors.

(1) Except as otherwise provided in subsection (c)(2) below, each recipient of a loan pursuant to this Act and each person or family initially occupying a dwelling unit financed pursuant hereto shall be Native American or a Native American family. Developers of multifamily housing developments and related infrastructure need not be Native Americans as long as funds advanced are used to construct housing or related infrastructure or to provide permanent financing on properties for resale or rental to Native American recipients.

(2) Native American governing bodies and Native American authorities may qualify as eligible mortgagors, if the funds advanced are used to construct related infrastructure or eligible housing for resale or rental to eligible recipients, and such mortgagor is obligated to return to the Authority the funds loaned when permanent financing is obtained.

(d) Underwriting Criteria. Underwriting criteria for prospective mortgages under this Act shall be established by the Authority in program guidelines.

(e) Appraisal Guidelines. The Authority shall have the power to issue guidelines for appraisal of real estate securing mortgages issued pursuant to this Act.

(f) Refinance of Existing Loans. Loans may be approved or disbursed for the purpose of refinancing an existing loan pursuant to guidelines established by the Authority.

Sec. 302 Consulting Services.

(a) General. The Authority may provide or cause to be provided to Native American governing bodies or to Native American authorities technical services and general consultative project assistance services, including, but not limited to, management training and home ownership counseling. The Authority may charge a reasonable fee for such services.

Sec. 303 Loan Guarantees.

(a) Authority Guarantees. The Authority may pledge funds to underwrite certain obligations as it deems appropriate.

(b) Housing and Urban Development Programs. Pursuant to regulations established by the Secretary of Housing and Urban Development, the Authority is authorized to lend funds to mortgagors who are Native Americans, as defined by section 301(c) of this Act, under the Indian Housing Loan Guarantee program, authorized in section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a), the mortgage insurance programs, authorized in the National Housing Act (12 U.S.C. 1701 *et seq.*), and any other programs governed by the Department of Housing and Urban Development.

(c) Farmers Home Programs. Pursuant to regulations established by the Secretary of Agriculture, the Authority is authorized to lend funds to eligible mortgagors, as defined by section 301(c) of this Act, under Title V of the Housing Act of 1949 (42 U.S.C. 1472) and any other programs administered by the Farmers Home Administration of the Department of Agriculture.

(d) Veterans Affairs Programs. Pursuant to regulations established by the Secretary of Veterans Affairs, the Authority is authorized to lend funds to eligible mortgagors, as defined by section 301(c) of this Act, under the Veterans Affairs Loan Guarantee Program (38 U.S.C. 3724) and Native Americans Veterans Home Loan Pilot Program (38 U.S.C. 3761) and any other programs governed by the Department of Veterans Affairs.

(e) Bureau of Indian Affairs Programs. Pursuant to regulations established by the Bureau of Indian Affairs of the Department of the Interior, the Authority is authorized to lend funds to eligible mortgagors, as defined by section 301(c) of this Act, under the Indian Loan Guaranty program (2 U.S.C. 661) and any other programs administered by the Bureau of Indian Affairs.

Sec. 304 Rulemaking. The regulations as required by this Act for issuance by the Department of Housing and Urban Development, Farmers Home Administration of the Department of Agriculture, Department of Veterans Affairs, or Bureau of Indian

Affairs of the Department of the Interior, shall be issued within 180 days of enactment of this Act.

Sec. 305 Program Guidelines.

The Authority shall have the power to issue program guidelines to carry out the purposes of this Act.

Sec. 306 Reports.

(a) The Authority shall submit a biennial report to the Advisory Council summarizing the activities of the Authority, and describing and evaluating the success of each of its programs.

(b) The Authority shall prepare for review and approval by the Advisory Council, a biennial report specific to each of the following federal departments:

(i) the Secretary of Housing and Urban Development on the lending activity under subsection (b) of section 303 of this Act;

(ii) the Secretary of Agriculture on the lending activity under subsection (c) of section 303 of this Act;

(iii) the Secretary of Veterans Affairs on the lending activity under subsection (d) of Section 303 of this Act; and

(iv) the Bureau of Indian Affairs, Department of the Interior, on the lending activity under subsection (e) of section 303 of this Act.

The reports required by this section may include recommendations on improvements to the programs or lending activities discussed in each report.

Sec. 307 Authorization. There is authorized to be appropriated the sum of \$5,000,000 in each of fiscal years 1994 and 1995 to carry out the purposes of this Act. In each fiscal year, no more than twenty-five (25) percent of such funds shall be used for administrative expenses, including salaries and benefits.

Sec. 308 Effective Date. This Act shall be effective upon enactment.

SECTION-BY-SECTION ANALYSIS
OF THE
NATIVE AMERICAN FINANCE AUTHORITY ACT OF 1993

Title I General.

Sec. 100 Short Title. The Act is entitled the Native American Finance Authority Act of 1993.

Sec. 101 Declaration of Policy. This action declares the Congress' concurrence with the findings of the Commission on American Indian, Alaska Native and Native Hawaiian Housing, that housing shortages and deplorable living conditions have reached crisis proportions in Native American communities and that lack of private capital exacerbates these problems. To begin to address this crisis, the section states that the policy of the United States is to improve the condition and supply of housing and related infrastructure in Native American communities in the United States through the creation of the Native American Finance Authority.

Sec. 102 Purpose. This section summarizes the purpose of the Authority to direct sources of capital to housing and related infrastructure for Native Americans, Native American families and other eligible mortgagors. The Authority is to administer, either alone or in combination with Native American lenders or commercial lenders, programs designed to effectuate this purpose.

Sec. 103 Definitions. This section provides definitions for numerous terms, such as Native American, Native American family, and Native American governing bodies. The term "Native American" includes Indians, Alaska Natives, and native Hawaiians.

Title II Organization of the Native American Finance Authority.

Sec. 200 Structure. The Act establishes the Authority as a not-for-profit entity organized under the laws of, and headquartered in, the District of Columbia. The Authority may locate additional offices throughout the United States, including in Native American communities. The Authority shall be governed by a Board of Directors. An Advisory Council shall advise the Board on all policy matters and review and approve all reports described in section 306. Officers shall be appointed by the Board as necessary. The Authority may sponsor additional corporations under tribal law to carry out certain of its duties.

Sec. 201 Board of Directors. The Board will be chosen by the President who is encouraged to consult with members of the former Finance Committee of the Commission.

Sec. 202 Advisory Council. The 21-member Advisory Council shall be appointed by the Board of Directors.

Title III - Powers and Duties of the Authority.

Sec. 300 Debt Obligations of the Authority. The Authority shall have the power to issue debt obligations, including mortgage backed securities guaranteed by the Government National Mortgage Association. It also will have the power to issue bonds which may be purchased by the Secretary of the Treasury. Purchases of such bonds by the Treasury shall not exceed an aggregate amount of \$25 million. The Authority may issue mortgage revenue bonds not to exceed \$250 million in each fiscal year.

Sec. 301 Mortgages for Native Americans. The Authority alone or in combination with the Native American lender, commercial lender, or other state, local or public lender, may originate loans to Native Americans, Native American families or other eligible mortgagors for housing and related infrastructure. Any lending program must conform to rules established by the Authority. The lender must enter into a participation agreement with the Authority and have an approved plan. The lender will be responsible for any administrative costs and expenses. The participation agreement will set out the requirements of the Act and govern the housing programs. This section establishes the qualifications of eligible mortgagors and provides that the Authority must establish underwriting criteria for prospective mortgages as well as appraisal guidelines for the real estate which secures mortgages. Refinancing of existing loans is allowed.

Sec. 302 Consulting Services. The Authority may provide consulting services.

Sec. 303 Loan Guarantees. The Authority may guarantee obligations. It also may serve as a guaranteed lender under HUD's Indian Housing loan guarantee program and act as an FHA-approved mortgagee. It may also act as a lender receiving a guarantee under the Farmers Home, Veterans Affairs, and BIA programs.

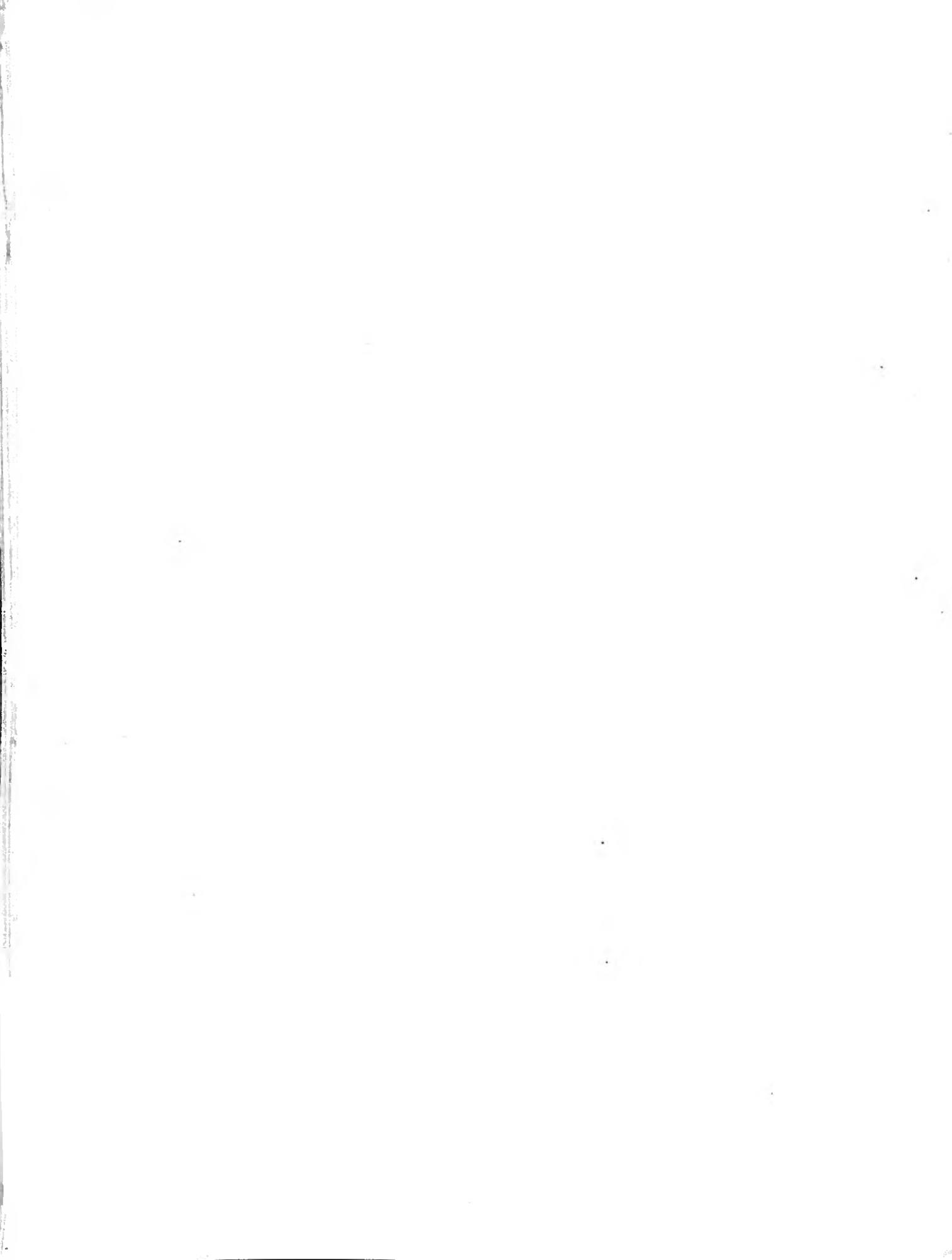
Sec. 304 Rulemaking. Regulations required to be issued by HUD, USDA, VA or BIA must be promulgated within 180 days of enactment.

Sec. 305 Program Guidelines. The Authority may issue program guidelines.

Sec. 306 Reports. The Authority must submit biennial reports reviewed and approved by the Advisory Council to the Secretaries of HUD, USDA, and Veterans Affairs and to the BIA for those programs for which such departments have primary authority. It also must issue a report to the Advisory Council regarding the Authority's activities.

Sec. 307 Authorization of Appropriations. This section authorizes the appropriation of \$5 million in each of fiscal years 1994 and 1995 to carry out the purposes of the Act. In each fiscal year, no more than 25% of such funds may be used for administrative expenses.

Sec. 308 Effective Date. The Act shall be effective upon enactment.



JUSTIFICATION STATEMENT
FOR
THE NATIVE AMERICAN FINANCE AUTHORITY ACT
OF
1993

1. There is a continued need for assistance to Native American, Alaska Native and native Hawaiian housing. The Bureau of Indian Affairs ("BIA") of the U.S. Department of Interior in its 1993 Budget Justification estimates that there is an unmet need of housing assistance for 88,689 Native American families (not including native Hawaiian families). These figures represent a need for 49,913 homes, according to the BIA. In view of BIA's strict definition of "need", even these estimates grossly understate the true need, according to the National Commission on American Indian, Alaska Native and Native Hawaiian Housing ("Commission").

The Native American Finance Authority would help meet this need by increasing housing opportunities in Native communities in the United States. The Authority would work with Native American governing bodies and housing authorities, as well as private and public lenders, to create and administer housing programs with new approaches to meet current needs. The term "Native American" would include American Indians, Alaska Natives, and native Hawaiians.

2. At a time when need is increasing, grant programs for housing are shrinking and not providing the type of stimulus necessary for development of a self-sufficient Native American housing sector. Over the past 12 years, new construction dollars for Native housing have been cut by approximately 87 percent as have the budgets for the BIA housing program and Indian Health Service ("IHS").^{1/}

^{1/} Report of the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing, p. 78 (Washington, D.C., 1992) (hereafter referred to as "Commission Initial Report").

The Native American Finance Authority would be a catalyst to attract private capital into Native American communities so that housing needs and related infrastructure can be addressed.

3. Responsibility for housing assistance is diffuse and sometimes confusing, and thus one entity must coordinate and simplify the process and provide technical assistance. "Housing projects are routinely delayed because of the difficulties in bringing together the relevant parties at the right times and coordinating varying funding cycles throughout the government." Commission Initial Report at 64. Under the Interdepartmental Agreement of 1976, HUD is charged with the construction of new homes, BIA with home improvement and the roadway aspect of ancillary infrastructure, and the IHS with the water and sanitation aspects of ancillary infrastructure. For example, in a questionnaire prepared by the Commission and submitted to Indian housing authorities ("IHA") in 1993, nearly all respondents (representing 2,596 subsidized units) indicated little or no knowledge of housing programs other than HUD's (e.g., the Farmers Home housing programs).

The Authority would coordinate among all these agencies and provide technical assistance to Native American governing bodies and housing authorities. The Authority would help guide these organizations through the confusing and disjointed process.

4. With heavy reliance by tribes and Native Americans on federal grants, there has been little effort or incentive to create other programs or financial institutions necessary to finance Native American housing. There is but one Federally chartered Native American commercial bank. Credit unions are scarce (only one was uncovered in the survey of Native American tribes described below). Secondary markets have shown little interest in the non-conforming mortgages necessary for Native American home ownership.

The Authority would have the power to guarantee loans and package them for sale in the secondary market. It would be a source of information to educate the market on the value of the collateral and the legal status of land. The Authority would actively promote private investment in Native American communities.

5. Non-native financial markets do not recognize their ability to issue mortgages to Native Americans. This failing is due to both the difficulty of perfecting the lien and the lack of standard mortgage contracts. Section 708 of the Cranston-Gonzalez National Affordable Housing Act of 1990 attempts to clarify the nature of the land ownership impediment. Also, loans can be secured with leasehold improvements. Nevertheless, private lenders have shown little confidence or willingness to lend in Native American communities. Traveling to Native

American communities (usually in remote areas), researching the status of trust land, examining the political climate within the Native American governing body and making a loan to a community with questionable economic stability are efforts with risks that most, non-Native financial institutions are unwilling to take. Responses to the Commission's questionnaire to IHAs indicate that local financial institutions, as a matter of policy, do not finance housing on Native American lands. All but one IHA respondent indicated that private capital is rarely or never available to Native Americans seeking housing finance.

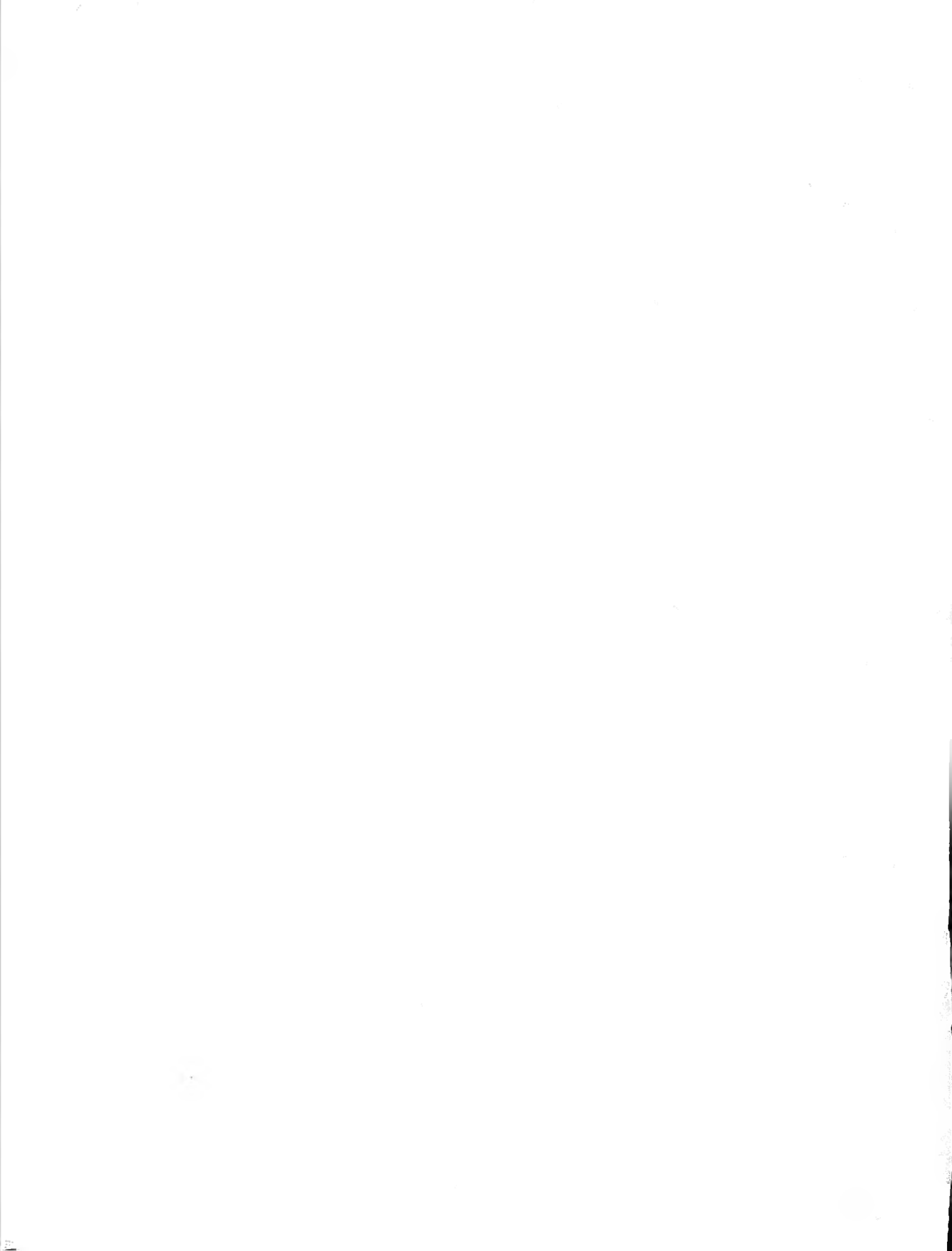
The Native American Finance Authority would be the chief financier involved solely in financial products designed for Native Americans. The Authority would develop new and innovative financial products. It would create a financial market where one is now wanting but nonexistent.

6. General poverty and distressed economic conditions in Native American communities require creative and imaginative mixtures of housing finance. Due to these unique circumstances, mortgage products must be developed with specifically tailored underwriting criteria. Traditionally, conventional financial markets do not understand and are unwilling to accept these creative financial products. Results of a special statistical tabulation prepared by the Bureau of Census in October 1990 indicate that 45% of reservation Indians live in households with incomes below the poverty level. The 1980 Census reports that 14% of Indian reservation households had incomes under \$2,500 and that the median household income was \$12,227 for all Native Americans (not including native Hawaiians) and \$9,772 for Native Americans (not including native Hawaiians) living on trust land. Although this census is now outdated, it is the best demographic data available, and there is evidence that little has changed. An important responsibility of the Authority would be to develop underwriting criteria suitable for loans in such an environment.

7. The chartering of a Native American Financing Authority, with the power to make and guarantee housing loans to Native Americans and to buy and sell as securitized debt obligations certain federally guaranteed loans, has a number of benefits. The Authority will provide an incentive to Native Americans to utilize lending as well as grant programs. Self-reliance will be fostered through the development of financial institutions within Native American communities with the initial appropriation. The Authority will hire a staff with experience and knowledge of Native American communities, existing housing programs and appropriate underwriting standards. The bulk of appropriated funds will be required to capitalize a variety of funds to supplement existing federal lending and guarantee programs. The ability of Treasury to purchase special debt issuances by the Authority will provide comfort to the bond market, and reduce the

Authority borrowing costs by 100 to 200 basis points (according to the Department of Treasury, 1990 study of Government Sponsored Enterprises). The Authority would pass on these savings to the ultimate Native American housing borrower.

8. Through its routine operation, the Authority will standardize lending criteria, improve accountability and coordinate financing responsibility. The Authority will act like the Federal Housing Administration did in the 1930s. It will foster the creation of financial markets in which the newly developed financial products can be bought and sold.



HUD Library



00007870