

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

minnesota housing finance agency

March 7, 1977

Mr. Michael B. Miller
Special Assistant Attorney General
Room 19K
Administration Building
St. Paul, Minnesota 55155

Dear Mike:

Enclosed please find the necessary documents for the proposed rules of the Minnesota Housing Finance Agency governing American Indian Housing.

If you have any questions or if I can be of any assistance to you, please contact me at 296-5738.

Thank you for your cooperation and assistance.

Very truly yours,

Bruce

Bruce D. Campbell
Special Assistant Attorney General

/lmk

Encl.

480 cedar street · saint paul, minnesota 55101 · (612) 296-7608

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE ADOPTION OF)
RULES OF THE HOUSING FINANCE AGENCY) RULES AS ADOPTED
GOVERNING AMERICAN INDIAN HOUSING)

1. Minn. Reg. MHFA Chapter 8 is hereby adopted to read as follows:

MHFA 90. SCOPE

Rules 90 to 108 hereof, together with the Loan Agreement (hereinafter the "Agreement"), govern the housing programs for American Indians of low and moderate income as authorized by Laws 1976, ch. 254 (hereinafter the "Act"), and the disposition of the appropriation made pursuant to Section 16 of said Act, which housing programs are to be developed and administered separately or in combination by the Minnesota Chippewa Tribe, which for purposes of these Rules shall include any corporation established by the Minnesota Chippewa Tribe to carry out the housing program provided for herein and by the Act, (hereinafter collectively the "Tribe"), the Red Lake Band of Chippewa Indians, which for purposes of these Rules shall include any corporation established by the Red Lake Band of Chippewa Indians to carry out the housing program provided for herein and by the Act, (hereinafter collectively the "Band") and the Sioux Communities, which for purposes of these Rules shall include any corporation established by the Sioux Communities to carry out the housing program provided for herein and by the Act, (hereinafter collectively the "Communities").

MHFA 91. DEVELOPMENT OF PLAN

In developing each such housing program, the Tribe, Band, and Communities shall take into account the housing needs of all American Indians residing both on and off reservations within the state. A plan (hereinafter the "Plan") for each such program, which is in accordance with these Rules and which specifically describes the program (a) content, (b) utilization of funds, (c) administration, and (d) operation and implementation, shall be submitted to the Minnesota Housing Finance Agency (hereinafter "MHFA") for its review and approval prior to the making of eligible loans.

MHFA 92. QUALIFICATIONS FOR HOUSING

Except as otherwise provided herein and by MHFA 4, each recipient of a loan pursuant to the Act, Plan and these Rules and each person or family initially occupying a dwelling unit financed pursuant thereto shall be an American Indian as defined by Minn. Stat., Sec. 254A.02, subd. 11, or an American Indian family as hereinafter defined, and of low and moderate

income as defined by MHFA 2(o), provided that developers of multifamily housing developments need not be American Indians or of low and moderate income, and further provided that the Tribe, Band and Communities may qualify as eligible borrowers, if the funds advanced are used to construct eligible housing for resale or rental to eligible recipients and the funds advanced are returned to the revolving loan fund under the jurisdiction of the Tribe, Band or Communities when permanent financing is obtained. An American Indian family for purposes of these Rules is a family which at the time the loan is granted has at least one resident mortgagor who is an American Indian as defined by Minn. Stat., Sec. 254A.02, subd. 11.

MHFA 93. ADJUSTED INCOME

Adjusted income shall be computed in accordance with MHFA 2(n). To calculate adjusted income for purposes of this Rule, the applicant's gross annual income for the two years immediately prior to the date of application for the loan, adjusted in accordance with MHFA 2(n), shall be added to the applicant's projected gross annual income for the year next following the date of application, also adjusted in accordance with MHFA 2(n), and the total thus obtained shall be divided by three.

MHFA 94. REFINANCING EXISTING LOANS

No loan shall be approved or disbursed for the purpose of refinancing an existing loan. The Plan may set funding priorities for the types of housing loans to be made based upon housing need considerations.

MHFA 95. LIMIT ON SALE PRICE OR APPRAISAL VALUE

Each plan submitted to MHFA for approval shall provide for a maximum limitation on the sale price or appraised value, whichever is greater, of a structure or structures designed primarily for residential use by not more than four families, or a dwelling in a planned unit development or a condominium. No loan for rehabilitation of any property shall be made in an amount which, when added to all other existing indebtedness secured by the property, would exceed its market value as determined by a qualified appraiser.

MHFA 96. DURATION OF LOAN

No loan shall be made for a term in excess of thirty (30) years on a structure or structures designed for occupancy by not more than four families, or a dwelling unit in a planned unit development or a condominium. The maximum term of a rehabilitation loan for an existing structure or structures designed for occupancy by not more than four families or a dwelling unit in a planned unit development or a condominium shall not exceed twelve (12) years. For all other residential structures, the maximum term of any loan including a rehabilitation loan, granted pursuant to the Act, Plan and these Rules shall not exceed forty (40) years.

MHFA 97. SECURITY FOR LOANS

Each plan submitted to MHFA for approval shall specify the means by which loans made pursuant to the Plan and these Rules are to be secured.

MHFA 98. RATE OF INTEREST

The rate of interest charged by the Tribe, Band or Communities on housing loans made pursuant to the Act, the Plan and these Rules, shall be not less than 2% and not more than the highest rate of interest authorized by applicable usury and lending laws. The prime consideration in establishing rates of interest for eligible loans shall be to make the Plan self-supporting by generating sufficient interest income to offset the expenses incurred in the development and operation of the Plan, with the exception of the first year's expenses which shall be funded from the appropriation provided in the Act upon MHFA's approval of a detailed budget for that first year.

MHFA 99. REMUNERATING MHFA

The Agreement shall provide the circumstances under which MHFA shall provide assistance to the Tribe, Band or Communities and the amount of remuneration to be received by MHFA from the Tribe, Band and Communities for its assistance and monitoring.

MHFA 100. REVOLVING HOUSING FUND

The Tribe, Band and Communities shall repay to MHFA, without interest, all funds advanced to it pursuant to the Agreement to the extent and in the manner provided in the Agreement.

MHFA 101. CREDIT RATING

Each Plan submitted to MHFA for approval shall contain adequate means for determining that the eligible borrower is an acceptable credit risk.

MHFA 102. AUDIT BY LEGISLATIVE AUDITOR

All of the official books and records of the Tribe, Band, and Communities relating to the housing program shall be subject to audit by the Legislative Auditor in the manner prescribed for agencies of state government as required by the Act.

MHFA 103. FINAL DECISION ON LOANS

Each final decision on applications for loans to eligible borrowers made by the Tribe, Band or Communities from the moneys appropriated by Section 16 of the Act, or from the revolving loan fund under the jurisdiction of the Tribe, Band, or Communities, shall be made by a representative body of the Tribe, Band, or Communities.

MHFA 104. DUTIES OF ORIGINATOR

The Tribe, Band and Communities shall each provide information on their respective Plans to eligible borrowers, receive and process loan applications, provide MHFA with a summary of the applications to be funded on a form provided by MHFA and establish lending procedures which comply,

to the extent applicable, to the Real Estate Settlement Procedures Act, Truth-in-Lending legislation, and applicable usury and other lending laws. The Tribe, Band and Communities shall service or cause to be serviced all loans made by them to eligible borrowers. The provisions regarding servicing shall be detailed in the respective Plans and shall outline all servicing responsibilities including, but not limited to, composition and retention of loan files, escrow accounts, reporting systems, handling of delinquencies, and default and foreclosure policies and procedures. To the extent that the Tribe, Band or Communities enter into housing programs with the Department of Housing and Urban Development (hereinafter "HUD") the Tribe, Band or Communities shall be relieved of the applicable obligations imposed by this Rule if such obligations are assumed by HUD or otherwise discharged in a manner acceptable to MHFA.

MHFA 105. BUILDING CODE

All authorized construction funded by an eligible loan and accomplished pursuant to an approved Plan shall conform to the uniform building code of the State of Minnesota and all applicable federal regulations, rules or codes. Each plan submitted to MHFA for approval shall contain a means of inspection to insure that any such authorized construction conforms to the applicable building code.

MHFA 106. ON AND OFF RESERVATION

Each Plan shall provide for a reasonable balance in the distribution of funds between American Indians residing on and off reservations within the state, as shown by evidence contained in the Plan concerning on and off reservation population, percentage of low and moderate income American Indians, delivery capabilities and similar circumstances. The Plan may provide that at the option of the Tribe, Band or Communities, the origination and servicing of loans to eligible recipients residing off the reservation may, by separate agreement, be performed by a party or parties selected by the Tribe, Band or Communities.

MHFA 107. FEES AND CHARGES

The fees and charges to be paid by an eligible borrower in connection with the making of an eligible loan shall be determined by the Tribe, Band and Communities and specified in the Plan; provided, that if MHFA or its agent originate and service or cause to be serviced eligible loans for qualified borrowers residing off reservations pursuant to Rule 106, above, MHFA shall determine as to those loans, the reasonable fees and charges to be paid to MHFA and/or its agent, in an amount not to exceed the amount authorized by law.

MHFA 108. RIGHTS OF MHFA

MHFA shall have the right to inspect, copy or abstract, at reasonable times and upon ten days notice, all books, records, papers, or any other documents relating to the Plan, or loans made pursuant thereto, or any funds held in a revolving loan fund under the jurisdiction of the Tribe, Band or Communities for the purpose of making eligible loans.

MHFA Hearing Exhibit 1.

RECEIVED
NOV 4 1976
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE MINNESOTA HOUSING FINANCE) ORDER FOR HEARING
AGENCY GOVERNING AMERICAN INDIAN HOUSING)

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in Conference Room D, Veterans Service Building, Capitol Approach, on January 4, 1977, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

/s/ James F. Drugosch
Executive Director

Date: November 2, 1976

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NOV 4 1976
OFFICE OF HEARING
EXAMINERS

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, Robert Mattson, do hereby certify that I am secretary of the Board of the Minnesota Housing Finance Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Board of the Housing Finance Agency duly and properly called and held on the 21st day of October, 1976; that a quorum was present at said meeting; (that a majority of those present voted for the resolution); that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, That James F. Dlugosch, Executive Director of the Minnesota Housing Finance Agency, be and he hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board relating to American Indian Housing, which rules are hereby proposed for public hearing, as well as performing any and all acts incidental thereto, including but without being limited thereto, signing an order for hearing and notice of hearing."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 25 day of October, 1976.

Robert W Mattson
Secretary

Peter L Vanderpoel
Attest by one other Member

MHFA Hearing Exhibit 2

RECEIVED
NOV 4 1976
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE HOUSING FINANCE AGENCY)
GOVERNING AMERICAN INDIAN HOUSING)

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in Conference Room D, Veterans Service Building, Capitol Approach, on January 4, 1977 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted by mail to: George A. Beck, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104 either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would when considered within the framework of the Loan Agreement and Housing Plan set guidelines for the utilization by the Minnesota Chippewa Tribe, the Red Lake Band of Chippewas, the Sioux Communities and other American Indians living in Minnesota of the $5,000,000 appropriation for American Indian Housing made by the Minnesota Legislature by Laws 1976, Ch. 254, Sec. 16. A copy of the proposed rules is attached hereto and one additional free copy may be obtained by writing to the Minnesota Housing Finance Agency, First Floor-Hanover Building, 480 Cedar Street, St. Paul, Minnesota, 55101. Additional copies will be available at the door at the date of the hearing. The Agency's authority to promulgate the proposed rules is contained in Laws 1976, Ch. 254, Sec. 9. A "statement of need" explaining why the Agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that pursuant to Minn. Stat. Sec. 10A.01, Subd. 11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

James F. Drugosch
Executive Director

Date: November 2, 1976

RECEIVED
NOV 4 1976
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE HOUSING FINANCE AGENCY)
GOVERNING AMERICAN INDIAN HOUSING)

PROPOSED RULES

1. Minn. Reg. MHFA Chapter 8 is hereby proposed to read as follows:

MHFA 90. SCOPE

Rules 90 to 108 hereof, together with the Loan Agreement (hereinafter the "Agreement"), govern the housing programs for American Indians of low and moderate income as authorized by Laws 1976, ch. 254 (hereinafter the "Act"), and the disposition of the appropriation made pursuant to Section 16 of said Act, which housing programs are to be developed and administered separately or in combination by the Minnesota Chippewa Tribe, which for purposes of these Rules shall include any corporation established by the Minnesota Chippewa Tribe to carry out the housing program provided for herein and by the Act, (hereinafter collectively the "Tribe"), the Red Lake Band of Chippewa Indians, which for purposes of these Rules shall include any corporation established by the Red Lake Band of Chippewa Indians to carry out the housing program provided for herein and by the Act, (hereinafter collectively the "Band") and the Sioux Communities, which for purposes of these Rules shall include any corporation established by the Sioux Communities to carry out the housing program provided for herein and by the Act, (hereinafter collectively the "Communities").

MHFA 91. DEVELOPMENT OF PLAN

In developing each such housing program, the Tribe, Band, and Communities shall take into account the housing needs of all American Indians residing both on and off reservations within the state. A plan (hereinafter the "Plan") for each such program, which is in accordance with these Rules and which specifically describes the program (a) content, (b) utilization of funds, (c) administration, and (d) operation and implementation, shall be submitted to the Minnesota Housing Finance Agency (hereinafter MHFA) for its review and approval prior to the making of eligible loans.

MHFA 92. QUALIFICATIONS FOR HOUSING

Except as otherwise provided herein and by MHFA 4, each recipient of a loan pursuant to the Act, Plan and these Rules and each person or family occupying a dwelling unit financed pursuant thereto shall be an American Indian as defined by Minn. Stat., Sec. 254A.02, subd. 11, and of low and moderate income as defined by MHFA 2(o), provided that developers of multifamily housing developments need not be American Indians or of low and moderate income, and further provided that the Tribe, Band and Communities may qualify as eligible borrowers, if the funds advanced are used to construct eligible housing for resale or rental to eligible recipients and the funds advanced are returned to the revolving loan fund under the jurisdiction of the Tribe, Band or Communities when permanent financing is obtained.

MHFA 93. ADJUSTED INCOME

Adjusted income shall be computed in accordance with MHFA 2(n). To calculate adjusted income for purposes of this Rule, the applicant's gross annual income for the two years immediately prior to the date of application for the loan, adjusted in accordance with MHFA 2(n), shall be added to the applicant's projected gross annual income for the year next following the date of application, also adjusted in accordance with MHFA 2(n), and the total thus obtained shall be divided by three.

MHFA 94. REFINANCING EXISTING LOANS

No loan shall be approved or disbursed for the purpose of refinancing an existing loan. The Plan may set funding priorities for the types of housing loans to be made based upon housing need considerations.

MHFA 95. LIMIT ON SALE PRICE OR APPRAISAL VALUE

Each plan submitted to MHFA for approval shall provide for a maximum limitation on the sale price or appraised value, whichever is greater, of a structure or structures designed primarily for residential use by not more than four families, or a dwelling in a planned unit development or a condominium. No loan for rehabilitation of any property shall be made in an amount which, when added to all other existing indebtedness secured by the property, would exceed its market value as determined by a qualified appraiser.

MHFA 96. DURATION OF LOAN

No loan shall be made for a term in excess of thirty (30) years on a structure or structures designed for occupancy by not more than four families, or a dwelling unit in a planned unit development or a condominium. The maximum term of a rehabilitation loan for an existing structure or structures designed for occupancy by not more than four families or a dwelling unit in a planned unit development or a condominium shall not exceed twelve (12) years. For all other residential structures, the maximum term of any loan including a rehabilitation loan, granted pursuant to the Act, Plan and these Rules shall not exceed forty (40) years.

MHFA 97. SECURITY FOR LOANS

Each plan submitted to MHFA for approval shall specify the means by which loans made pursuant to the Plan and these Rules are to be secured.

MHFA 98. RATE OF INTEREST

The rate of interest charged by the Tribe, Band or Communities on housing loans made pursuant to the Act, the Plan and these Rules, shall be not less than 2% and not more than the highest rate of interest authorized by applicable usury and lending laws. The prime consideration in establishing rates of interest for eligible loans shall be to make the Plan self-supporting by generating sufficient interest income to offset the expenses incurred in the development and operation of the Plan, with the exception of the first year's expenses which shall be funded

from the appropriation provided in the Act upon MHFA's approval of a detailed budget for that first year.

MHFA 99. REMUNERATING MHFA

The Agreement shall provide the circumstances under which MHFA shall provide assistance to the Tribe, Band or Communities and the amount of remuneration to be received by MHFA from the Tribe, Band and Communities for its assistance and monitoring.

MHFA 100. REVOLVING HOUSING FUND

The Tribe, Band and Communities shall repay to MHFA, without interest, all funds advanced to it pursuant to the Agreement to the extent and in the manner provided in the Agreement.

MHFA 101. CREDIT RATING

Each Plan submitted to MHFA for approval shall contain adequate means for determining that the eligible borrower is an acceptable credit risk.

MHFA 102. AUDIT BY LEGISLATIVE AUDITOR

All of the official books and records of the Tribe, Band, and Communities relating to the housing program shall be subject to audit by the Legislative Auditor in the manner prescribed for agencies of state government as required by the Act.

MHFA 103. FINAL DECISION ON LOANS

Each final decision on applications for loans to eligible borrowers made by the Tribe, Band or Communities from the moneys appropriated by Section 16 of the Act, or from the revolving loan fund under the jurisdiction of the Tribe, Band, or Communities, shall be made by a representative body of the Tribe, Band, or Communities.

MHFA 104. DUTIES OF ORIGINATOR

The Tribe, Band and Communities shall each provide information on their respective Plans to eligible borrowers, receive and process loan applications, provide MHFA with a summary of the applications to be funded on a form provided by MHFA and establish lending procedures which comply, to the extent applicable, to the Real Estate Settlement Procedures Act, Truth-in-Lending legislation, and applicable usury and other lending laws. The Tribe, Band and Communities shall service or cause to be serviced all loans made by them to eligible borrowers. The provisions regarding servicing shall be detailed in the respective Plans and shall outline all servicing responsibilities including, but not limited to, composition and retention of loan files, escrow accounts, reporting systems, handling of delinquencies, and default and foreclosure policies and procedures. To the extent that the Tribe, Band or Communities enter into housing programs with the Department of Housing and Urban Development (hereinafter "HUD") the Tribe, Band or Communities shall be relieved of the applicable obligations imposed by this Rule if such obligations are assumed by HUD or otherwise discharged in a manner acceptable to MHFA.

MHFA 105. BUILDING CODE

All authorized construction funded by an eligible loan and accomplished pursuant to an approved Plan shall conform to the uniform building code of the State of Minnesota and all applicable federal regulations, rules or codes. Each plan submitted to MHFA for approval shall contain a means of inspection to insure that any such authorized construction conforms to the applicable building code.

MHFA 106. ON AND OFF RESERVATION

Each Plan shall provide for a reasonable balance in the distribution of funds between American Indians residing on and off reservations within the state, as shown by evidence contained in the Plan concerning on and off reservation population, percentage of low and moderate income American Indians, delivery capabilities and similar circumstances. The Plan may provide that at the option of the Tribe, Band or Communities, the origination and servicing of loans to eligible recipients residing off the reservation may, by separate agreement, be performed by a party or parties selected by the Tribe, Band or Communities.

MHFA 107. FEES AND CHARGES

The fees and charges to be paid by an eligible borrower in connection with the making of an eligible loan shall be determined by the Tribe, Band and Communities and specified in the Plan; provided, that if MHFA or its agent originate and service or cause to be serviced eligible loans for qualified borrowers residing off reservations pursuant to Rule 106, above, MHFA shall determine as to those loans the reasonable fees and charges to be paid to MHFA and/or its agent, in an amount not to exceed the amount authorized by law.

MHFA 108. RIGHTS OF MHFA

MHFA shall have the right to inspect, copy or abstract, at reasonable times and upon three days notice, all books, records, papers, or any other documents relating to the Plan, or loans made pursuant thereto, or any funds held in a revolving loan fund under the jurisdiction of the Tribe, Band or Communities for the purpose of making eligible loans.

RECEIVED
DEC 10 1976
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE HOUSING FINANCE AGENCY GOVERNING AMERICAN INDIAN HOUSING

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Karl J. Herman, being duly sworn on oath deposes and says:

1) That he is an employee of the Attorney General's Office, assigned to the Minnesota Housing Finance Agency, an Agency of the State of Minnesota.

2) That on the 1st day of December, 1976, he went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M. S. 15.0412.

3) That on the 1st day of December, 1976, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Subscribed and sworn to before me this

1st day of December, 1976.

LINDA M. KLUVE
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My Commission Expires Feb. 16, 1983

Notary Public, RAMSEY County, Minnesota.

My Commission expires: 2/16/83

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION
OF RULES OF THE HOUSING FINANCE AGENCY
GOVERNING AMERICAN INDIAN HOUSING

CERTIFICATE

I hereby certify that the attached 502 labels/8 one sheets constitute the complete list of persons, associations, and other interested groups who as of 11:00 o'clock A.M., this 1st day of December, 1976, have requested pursuant to M. S. 1974, Section 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

By: Ceil Dion

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EXAMINERS

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION
OF RULES OF THE HOUSING FINANCE AGENCY
GOVERNING AMERICAN INDIAN HOUSING

AFFIDAVIT OF MAILING

Linda M. Kluwe, being first duly sworn, deposes and says:

That on the 2nd day of December, 1976, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Linda M. Kluwe

Subscribed and sworn to before me this

2nd day of December, 1976.

Notary Public

MARILYN E. RODRIGUEZ
Notary Public, Ramsey Co., Minn.
MY COMMISSION EXPIRES
Feb. 19, 1983

RECEIVED
DEC 10 1976
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE HOUSING FINANCE AGENCY)
GOVERNING AMERICAN INDIAN HOUSING)

STATEMENT OF NEED

The above-captioned rules are not amendments to existing rules of the Minnesota Housing Finance Agency but are entirely new rules. The above-captioned rules are for the use of the Minnesota Housing Finance Agency and the affected American Minnesota Chippewa Tribe, Red Lake Band and Sioux Communities given responsibility for developing an American Indian housing program pursuant to Laws 1976, Chapter 254, Section 9.

The need to adopt these rules arises because of legislative mandate. Laws 1976, Chapter 254, Section 16 appropriates five million dollars to be expended by the Minnesota Chippewa Tribe, Red Lake Band and Sioux Communities for American Indian housing both on and off reservations within the state. The funds, however, are placed within the Housing Development Fund under the jurisdiction of the Minnesota Housing Finance Agency. Laws 1976, Chapter 254, Section 9, with respect to the particular appropriation in question directs the Minnesota Housing Finance Agency to promulgate rules concerning the plans for American Indian housing to be adopted by the Chippewa Tribe, the Red Lake Band of Chippewas and the Sioux Communities. More particularly, the Act in Section 9 provides in relevant part as follows:

> All such programs must conform to rules promulgated by the Agency concerning program administration, including but not limited to rules concerning costs of administration, the quality of housing, interest rates, fees and charges in connection with making eligible loans, and other matters determined by the agency to be necessary in order to effectuate the purposes of this subdivision and sections 10 and 11 of this act.

It is the considered judgment of the Agency that the Rules as proposed are necessary to delineate program administration and required to discharge the legislative mandate noted.

MINNESOTA HOUSING FINANCE AGENCY

DATED: December 10, 1976

James F. DTugosch
Executive Director

MHFA Hearing Exhibit 7

RECEIVED
DEC 10 1976
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF)
RULES OF THE MINNESOTA HOUSING FINANCE)
AGENCY GOVERNING AMERICAN INDIAN HOUSING)

STATEMENT OF EVIDENCE

In addition to the "Statement of Need" which is available for inspection or purchase at the Office of Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota, and in support thereof the Minnesota Housing Finance Agency will introduce the following evidence to prove the need for and the reasonableness of the proposed rules:

(a) Rule 90. The fact that housing programs are to be developed either separately or in combination by the Minnesota Chippewa Tribe, the Red Lake Band of Chippewa Indians and the Sioux Communities subject to a Loan Agreement with the Minnesota Housing Finance Agency (hereinafter MHFA) and the Rules promulgated by MHFA is legislatively mandated. Laws 1976, Chapter 254, Section 9, in relevant part, provides:

> It may engage in housing programs for low and moderate income native Americans, as that term is defined in section 254A.02, subdivision 11, developed and administered separately or in combination by the Minnesota Chippewa Tribe, the Red Lake Band of Chippewa Indians, and the Sioux Communities as determined by such tribe, band, or communities. In developing such housing programs the tribe, band, or communities shall take into account the housing needs of all native Americans residing both on and off reservations within the state.

The programs include the denomination of American Indian housing corporations because legally the Tribe, Band and Communities possess the attributes of sovereignty and may not be directly subjected to state regulation. See Bryan v. Itasca County, ___U. S. ___, 96 S CT. 2102 (1976). Hence, the Tribe, Band or Communities could not be held responsible for the state funds received absent the direct intervention of a controllable intermediary. Indian housing corporations have been held to be such an acceptable intermediary between the state and the Tribe, Band, or Communities and subject to state regulation. See, Namekagon Development Company v. Bois Forte Reservation Housing Authority, 395 F. Supp. 23 (D. Minn. 1974).

(b) Rule 91. This Rule concerning the development of a housing plan or plans by the Tribe, Band, or Communities is legislatively mandated. Laws 1976, Chapter 254, Section 9, in relevant part, provides:

> In developing such housing programs the tribe, band, or communities shall take into account the housing needs of all native Americans

residing both on and off reservations within the state. A plan for each such program, which specifically describes the program (a) content, (b) utilization of funds, (c) administration, (d) operation, (e) implementation and other matters, as determined by the agency, must be submitted to the agency for its review and approval prior to the making of eligible loans pursuant to section 462A.21.

In developing each housing program, the Tribe, Band, and Communities must take into account the housing needs of all American Indians residing both on and off the reservations within the state; such data shall then be used to determine the percentage of funds to be used to finance properties on the reservation and the percentage of funds to be used to finance property off the reservation. Each plan, one for off reservation and one for on reservation delivery of funds shall specifically describe the program and shall be submitted to MHFA for its review and approval. The Agency in supplying technical assistance in the development of the Program, disbursing of funds and the monitoring of the program must also have the authority to review and approve each program which includes:

(a) content which includes the purpose of the program, requirements of housing loans, interest rate, type and term of loans, maximum amount of loan, down payments, fees and charges, loan payments, occupancy, quality of housing, insurance, security for loans, eligible borrowers, delivery system, loan approval and loan servicing.

(b) utilization of funds which includes distribution formula for appropriated funds, on and off reservations, and within the Tribe, Band or Community, interest earned on investment of funds, the method of which funds will be used through the revolving loan fund.

(c) administration which includes the organizational structure and the establishment of a Housing Corporation which provides the necessary language allowing the state (MHFA) to enter into a Loan Agreement with the Tribe, Band or Community.

(d) operation and implementation which includes the detailed delivery system, application and loan procedure and approval, reports, property appraisals, property inspections, and loan servicing.

(c) Rule 92. The initial exception to the general requirement of this Rule is the incorporation of Minn. Reg. MHFA 4. Minn. Reg. MHFA 4 provides that under certain circumstances and with the approval of the Executive Director of MHFA up to 25% of the units in an apartment development may be occupied by persons and families who are not of low and moderate income. This exception by existing Rule applies only to apartment developments and would not affect the statutory requirement that the recipients of the housing units be American Indians as defined by statute. Economic integration of developments is the goal and the alleviation of the social ills occasioned by concentrating persons and families of low and moderate into housing developments is the objective. Minn. Stat. 1974, Section 462A.02,

Subdivision 6 declares it to be a valid public purpose to be attained by MHFA to provide for economic integration in multifamily housing developments. Minn. Stat. 1974, Section 462A.02, Subdivision 6 provides:

> It is further declared that it is a valid public purpose to construct housing for low and moderate income families who would otherwise be unable to obtain adequate housing at prices or rentals they could afford, to encourage such construction in the areas of need and demand with a reasonable balance between non-metropolitan and metropolitan areas of the state, and to assist in the elimination of substandard housing conditions and to prevent the recurrence of such conditions by housing persons of varied economic means and a wide range of incomes in the same developments and neighborhoods properly planned and related to public facilities and sources of employment and services and to provide the necessary powers to accomplish these public purposes. (Emphasis added).

The statutory definition of an American Indian as an individual of at least one-quarter Indian blood as contained in Minn. Stat. 1974, Section 254A.02, Subdivision 11 is dictated by Laws 1976, Chapter 254, Section 9 which in relevant part provides:

> It may engage in housing programs for low and moderate income native Americans as that term is defined in section 254A.02, subdivision 11 . . .

A further requirement is that the American Indian be of low and moderate income. MHFA has been given authority in its enabling act, Minn. Stat. 1974, Chapter 462A to define by Rule the term persons and families of "low and moderate income". See Minn. Stat. 1974, Section 462A.03, Subdivision 10. In Minn. Reg. MHFA 2 (o) the term is defined for non-multifamily developments as persons and families having an adjusted gross income of $16,000 per year or less and for multifamily units persons and families having an adjusted gross income which does not exceed 550 percent of the gross rental for the dwelling unit to be occupied. MHFA now merely applies the same criteria of income to the Indian housing program.

The Rule next provides that developers of multifamily housing developments need not be American Indians of low and moderate income. The reason for this permission exception, entirely within the control of the Tribe, Band and Communities, is to supplement appropriated dollars with equity capital that developers have. The purpose is to expand the dwelling units that can be provided with the dollars available and the ultimate occupants of the rental housing would still have to be American Indians of low and moderate income.

Finally, the Rule provides that under certain circumstances the Tribe, Band or Communities may itself qualify as an eligible borrower. The reason for this provision is to expedite the production of housing units through the utilization of a HUD program whereby the Tribe, Band or Communities provides the construction financing for dwelling units which are then sold to HUD for resale to eligible recipients who could finance the purchase of the housing either conventionally or through an American Indian loan. The safeguard provided is that the initial funds must be returned to the revolving fund when permanent financing is obtained by the eligible American Indian.

(d) Rule 93. The adjusted income calculation for the American Indian Housing Program is an expansion of the adjusted gross income formula used by MHFA in its other housing programs to determine qualification for the program. Minn. Reg. MHFA 2(n) provides:

> "Adjusted income" means the gross annual income, from all sources and before taxes or withholding, of all members of the family living in a housing unit, after deducting the following: (1) the income of any family member (other than the head of the household or his spouse) who is under eighteen years of age or is a full time student; (2) the first $300 of the income of a secondary wage earner who is the spouse of the head of the household; (3) an amount equal to 5 per centum of the income of the head of the household and his spouse (or, in the case of an elderly family, 10 per centum of such income); (4) an amount equal to $300 for each member of the family residing in the household (other than the head of the household or his spouse) who is under eighteen years of age or who is eighteen years of age or older but has no income included in family income for the purposes of this section; (5) nonrecurring income, as determined by the Executive Director; (6) extraordinary medical or other expenses as the Executive Director approves for exclusion; and (7) an amount equal to the sums received by the head of the household or his spouse from, or under the direction of, any public or private non-profit child placing agency for the care and maintenance of one or more persons who are under eighteen years of age and were placed in the household by such agency.

The expansion includes the averaging of income over a three year period to better reflect instances of high unemployment and the instability of employment which results from sporadic funding of government programs or organizations which are designed to employ American Indians.

(e) Rule 94. The purpose of financing housing programs for low and moderate income people is to stimulate new construction and assist people in obtaining homeownership rather than assisting a family by refinancing an existing mortgage on property which they already occupy. Under its other programs, MHFA financing may not be given solely for the purpose of refinancing existing debt.

(f) Rule 95. Maximum limitation on the sale price or appraised value guards against the use of the funds for financing properties on which a large down payment could be made and a high mortgage could be obtained which would indicate that the applicant(s) would have the financial means to make use of the existing

market for financing the property. Loans on property purchased by low to moderate income buyers also relates to the buyers ability to repay the loan. Structures designed primarily for residential use is in accordance with the State laws directing us to implement programs that produce homeownership. MHFA programs in the non-multifamily area impose a maximum sale or appraised price. One is not stipulated in the rule but is left to the discretion of the plan because of the wide range of variance of price between reservations in various areas of the state and variations in off reservation prices. Since the American Indians will administer the program they should have the final judgment as to how much of their funds will be placed into a single family dwelling unit. But the requirement that a maximum be presented in the plan is mandated to make sure the issue is addressed and considered and to provide some protection for the fund. No limit is placed on the cost of multifamily developments because, the cost will vary with the location, design and size of the building which will have to be approved by the American Indian housing entity and its oversight committee making the loan. In the area of multifamily developments no limitation on cost is feasible. Each development must be judged individually. A rehabilitation loan added to all other existing indebtedness secured by the property should not exceed its market value to protect the interest of the mortgagee. In the event the mortgagor sold the property there would be sufficient funds from sale of property to pay off the rehabilitation loan. Also the intent is to discourage the rehabilitation of properties when the rehabilitation loan and other indebtedness will exceed its market value because under such circumstances there is no reason for rehabilitation; it would be economically unfeasible. Finally, Minn. Stat. 1974, Section 462A.05, Subdivision 14 in relevant part applies the same standard to all other housing rehabilitation undertaken by the state:

> No loan for rehabilitation of any property shall be made in an amount which, with all other existing indebtedness secured by the property, would exceed its market value as determined by the agency.

(g) Rule 96. Thirty year term is the generally accepted maximum term in the industry today for non-multifamily mortgages. Regulatory entities govern the term allowed through financial institutions. Other residential structures referring to multi-family developments have generally accepted terms of 40 years in today's industry. The term on loans is also significant in selling loans to the secondary market. A twelve year term for rehabilitation is the maximum allowed by the federal government under its Title I Program, and the generally accepted term in the industry is something less than 12 years depending upon the belief and will of the individual financial institution.

(h) Rule 97. A loan suggests the repayment thereof and that the holder of the loan must have some way of securing its interest in the property on which there is a type of loan for the purchase or improvement of the property. The normal security is with a lien on the property placed by a mortgage. Tribal property leased by the Tribe, Band or Community to an individual(s) are to have leases running longer than the term of the mortgage to secure the interest of the mortgagor as well as the mortgagee. A single form of security device, such as a first mortgage, is not dictated because of the legal "impediments" on doing so for Indian land and the dictates of the statutes under which the land was originally transferred to the Tribe, Band or Communities. Generally, the Plan should call for the best type of security device available given the nature of the property in question.

(i) Rule 98. The interest rate shall not be less than 2% because the loans are loans and must be repaid; the statutory appropriation made by Laws 1976, Chapter 254, Section 16 is to cover the administration of the program as well as the ongoing servicing of the loans once they are placed on the books. The interest rate cannot legally exceed existing applicable usury and lending laws; to do so would be a violation of law and make the borrower not liable for the principal amount of the loan. The purpose of charging an interest rate is to make the program financed by the revolving loan fund self-supporting and insure perpetuity of benefits of the fund.

(j) Rule 99. Administration of the program by MHFA entails the service of staff in administration, programs, legal, and finances in providing the Tribe, Band, or Communities with professional assistance, disbursement of funds, and monitoring of the program. Since the amount of supporting staff services provided will vary with the Tribe, Band or Communities involved the circumstances and amount of remuneration should be a bargained for term in the Loan Agreement which is a contract between the parties rather than the subject of a rule. Leaving specific amounts and circumstances to the Loan Agreement - a negotiated contract - also provides a needed degree of flexibility in the program.

(k) Rule 100. Laws 1976, Chapter 254, Section 9, in relevant part provides:

> As a condition to the making of such eligible loans, the Minnesota Chippewa Tribe, the Red Lake Band of Chippewa Indians and the Sioux Communities shall:
>
> (a) enter into a loan agreement and other contractual arrangements with the agency for the purpose of transferring the allocated portion of loan funds as set forth in section 16 of this act and to insure compliance with the provisions of this section and chapter 462A . . . (Emphasis added).

Hence, pursuant to the Loan Agreement funds are to be serially transferred to the jurisdiction of the Tribe, Band and Communities for eligible loans to eligible recipients. Repayment to MHFA is made in accordance with the Loan Agreement as provided in the contractual provision. The one Loan Agreement contracted with the Minnesota Chippewa Tribe provides for repayment only in the event of material breach of the contract during the term thereof. It is contemplated that future Loan Agreements with the Band and Communities will also be so limited.

(l) Rule 101. Lenders need proper criteria for determining the credit risk of the borrower. The specific criteria should be contained in the Housing Plan, since it will be moneys under the jurisdiction of the Tribe, Band and Communities that will be risked. MHFA should not dictate specific criteria by Rule because the criteria will differ from reservation to reservation and from Tribe to Band to Communities. One American Indian group may be willing to risk funds on an individual with no established credit rating, but with a good general reputation in the community while another may not. It is the function of MHFA in reviewing Housing Plans to determine whether the Tribe, Band or Communities have provided adequate means of determining whether an applicant is an acceptable credit risk.

(m) Rule 102. The requirement of the Rule that the books and records of the Tribe, Band and Communities be open to audit by the Legislative Auditor is mandated by statute. Laws 1976, Chapter 254, Section 9 in relevant part provides:

> As a condition to the making of such eligible loans, the Minnesota Chippewa Tribe, the Red Lake Band of Chippewa Indians and the Sioux Communities shall:
>
> (b) shall agree that all of their official books and records related to such housing program shall be subjected to audit by the legislative auditor in the manner prescribed for agencies of state government.

(n) Rule 103. A representative body of the Tribe, Band, or Communities to make the final decision on loan applications provides for additional information to be included in the decision and that the probability of the right decision is greater with more than one or two staff people providing input. Moreover, having the final decision made by a representative group with a constituency makes for more openness in the process.

(o) Rule 104. Duties of the originator of loans must be included in the respective plans in order for staff to project the magnitude of the program including marketing, finances, administration and staffing as well as to have benchmarks to evaluate the program during and subsequent to origination of loans. The Tribe, Band or Communities may be relieved of their responsibilities under this Rule if they enter into housing programs with HUD and HUD agrees to discharge the duties or they are otherwise discharged in a manner acceptable to MHFA. This provision was included because if the Tribe, Band or Communities construct housing units and sell them to HUD for resale to eligible recipients of loans the Tribe, Band, or Communities will not be in a position to discharge the obligations of this Rule with respect to such housing units; it would have to be done by HUD or a substitute.

(p) Rule 105. Compliance with the state uniform building code and all applicable federal regulations will further insure the mortgagor of a quality built home with standard materials. State and/or federal codes shall be applied in lieu of a tribal or reservation building code for those properties located on a reservation; it is the understanding of MHFA that few Reservations have building codes.

(q) Rule 106. On and off reservation. It is necessary for a rule to call for each plan to provide a reasonable balance in the distribution of funds between American Indians residing on and off the reservations within the state in order that a criteria based on need, availability and eligibility for other housing programs will be considered when a distribution balance is decided upon. Laws 1976, Chapter 254, Section 9, in relevant part provides:

> All such programs must provide for a reasonable balance in the distribution of funds appropriated for the purpose of this section between native Americans residing on and off reservations within the state.

An important part of any housing loan program is that of servicing the loans once the loan is made. A repayment schedule based on the interest rate and mortgage term must be applied and monitored. There must be accountability in the overseeing of mortgagor payments as well as skilled staff to handle loans in stages of delinquency, default and foreclosure. The tribe should have the option of performing the servicing of loans with qualified staff or to contract with a local lending institution for this service.

(r) Rule 107. There are state laws governing maximum fees and charges to be paid by a borrower under conventionally insured or uninsured financing. The same rule should apply to eligible applicants off the reservation as to eligible applicants on the reservations. Fees and charges, if any, paid by the borrower increase the cost to borrower on the front end which makes it difficult to assist financially low-to-moderate income applicant(s) to obtain homeownership.

MHFA concludes that the fees and charges to be made should be left up to the individual Tribe, Band and Communities in its Plan since the needs of the Tribe, Band and Communities will vary. MHFA should however be allowed to set fees and charges on any loans to eligible borrowers MHFA originates and services or causes to be serviced off the reservations.

(s) Rule 108. MHFA should have an inspection right since the funds appropriated for the program were appropriated to the Housing Development fund under the jurisdiction of MHFA and MHFA has statutory responsibility for providing some oversight over the Indian housing programs. Oversight without the possibility of inspection is impossible. Three day's notice is considered a reasonable time for the Indian housing staff to assemble the materials needed.

We may call one or more of the following expert witnesses to testify:

1. May Hutchinson - She may testify to the normal practice in the lending industry including the normal length of private and government loans.

2. Bruce Campbell - He may testify as to the need for establishing American Indian housing corporations to carry out the programs as a matter of law.

We intend to introduce the following manuals, books, scientific treatises, and other documentary evidence: the existing rules and regulations of the Minnesota Housing Finance Agency (1976 Edition).

We will be citing the following statutes and case law: Minn. Stat. 1974, Chapter 462A; Laws 1976, Chapter 254; Bryan v. Itasca County, _____ U. S. _____, 96 S. Ct. 2102 (1976); Namekagon Development Company v. Bois Forte Reservation Housing Authority, 395 F. Supp. 23 (D. Minn. 1974).

Dated: December 10, 1976

Bruce D Campbell

Bruce D. Campbell
Special Assistant Attorney General

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STATEMENT OF WITNESSES APPEARING ON BEHALF OF THE AGENCY

AT PUBLIC HEARING ON INDIAN HOUSING RULES:

1. James F. Dlugosch, Executive Director
2. May Hutchinson, Mortgage Loan Officer
3. Bruce D. Campbell, Special Assistant Attorney General

HHFA Ex 9

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PROJECTED ATTENDANCE AND TIME OF HEARING

I expect between 25-50 people for the hearing and one day will be sufficient for the hearing.

Bruce D Campbell
Special Assistant Attorney General

Back 1

HFA-77.001

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
Room 300
1745 University Avenue
St. Paul, Minnesota 55104

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KIMBALL D. MATTSON
PETER W. CANNON

OF COUNSEL:
ARTHUR T. PETERSON
BERNARD P. BECKER

January 4, 1977

Mr. George A. Beck
Office of Examiners
1745 University Avenue
St. Paul, MN 55104

Re: Minnesota Housing Finance
Agency Proposed Rules

Dear Mr. Beck:

Please be advised that our office represents the Minnesota Chippewa Tribal Housing Loan Program. We are in receipt of your proposed rule changes. Rule 92 would appear to be somewhat ambiguous. I particularly refer to the proposal that ". . . each person or family occupying a dwelling unit financed pursuant thereto shall be an American Indian as defined by Minn. Stat. Sec. 254A.02 (11) . . ." Indian--White marriages are not uncommon. It may be that either husband or wife are White and the other is Indian. This could make children of the spouse not Indian under the Statute. The language of the Statute would seem to indicate that the non-Indians could not occupy the home. You could also have a situation where the Indian spouse has married a non-Indian who has children from a prior marriage, either adopted or not adopted by the Indian. It would appear the language would ineligibilize otherwise eligible persons simply because of whom they may have married.

It would be our assumption that the change in rules will not affect the program currently in existence under which loans are being made. If this is an error, please advise.

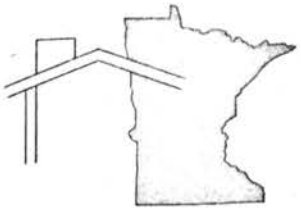
Yours very truly,

TUPPER, SMITH & SECK, LTD.

Harlan E. Smith

HES/dms
cc: Donald F. Bibeau

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EXAMINERS



minnesota housing finance agency

January 10, 1977

Mr. George A. Beck
Office of Hearing Examiner
1745 University Avenue
St. Paul, Minnesota

RE: MHFA PROPOSED RULES RELATING TO AMERICAN INDIAN HOUSING

Dear Mr. Beck:

In my opinion, with reference to the comments of Mr. Harlan E. Smith dated January 4, 1977, Rule 92 is not ambiguous.

As long as one of the spouses qualified as an American Indian under Minn. Stat. Sec. 254A.02 (11) the family unit would qualify as an American Indian family under the language of the proposed rule and the family would be eligible for the program loan.

Very truly yours,

Bruce D Campbell
Bruce D. Campbell
Special Assistant Attorney General

/lmk

480 cedar street · saint paul, minnesota 55101 · (612) 296-7608

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STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

February 1, 1977

Mr. Bruce D. Campbell
Special Assistant
Attorney General
Minnesota Housing Finance Agency
480 Cedar Street
Saint Paul, Minnesota 55101

In re: In the Matter of the Proposed Adoption of Rules of the Housing Finance Agency Governing American Indian Housing.
Our File No.: HFA-77-001-GB

Dear Mr. Campbell:

Enclosed please find the original of my Report in the above matter together with the original of the transcript, the two written comments received, and the hearing register.

Sincerely,

GEORGE A. BECK
Hearing Examiner

GAB:sw
Enclosures

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

HFA-77-001-GB

AFFIDAVIT OF SERVICE

SUSAN WOJCIK, being first duly sworn, deposes and says that on the 1st day of February 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of Hearing Examiner, original of transcript, two written comments and hearing register unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Susan Wojcik

Subscribed and sworn to before me
this 1st day of February, 1977.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

Mr. Bruce D. Campbell
Special Assistant
Attorney General
Minnesota Housing Finance Agency
480 Cedar Street
Saint Paul, Minnesota 55101

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE HOUSING FINANCE AGENCY GOVERNING AMERICAN INDIAN HOUSING	FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION

The above-entitled matter came on for hearing before George A. Beck, duly appointed as Hearing Examiner in this matter, on January 4, 1977 at 9:30 a.m. at Conference Room D of the Veterans Service Building, Capitol Approach, in the City of St. Paul, County of Ramsey, State of Minnesota.

This proceeding is a rules hearing held pursuant to Minn. Stat. Chapter 15 to determine whether nineteen proposed rules should be adopted. Copies of this Report are available for review from the Minnesota Housing Finance Agency.

Members of the agency panel included: James F. Dlugosch, Executive Director, Minnesota Housing Finance Agency; May Hutchinson, Mortgage Loan Officer, Minnesota Housing Finance Agency; and Bruce D. Campbell, Special Assistant Attorney General.

Witnesses at the hearing included: Donald F. Bebeau, Executive Director, State Indian Affairs Intertribal Board; Karl Aho, consultant to the Sioux Communities; and Elizabeth Arredondo, a St. Paul resident.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. That on December 2, 1976, the Minnesota Housing Finance Agency (MHFA) mailed the Notice of Hearing in this matter to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notices. The Notice of Hearing and the Rules as Proposed were published in the State Register on November 30, 1976.

2. That on November 4, 1976, MHFA filed the following documents with the Chief Hearing Examiner:

a. A proposed Notice of Hearing;
b. A proposed Order for Hearing (Ex. 1);
c. The proposed rules; and
d. Statement of Expected Attendance (Ex. 9).

3. That on December 10, 1976, MHFA filed the following documents with the Office of Hearing Examiners:

a. The Order for Hearing and the Authorizing Resolution (Ex. 1);
b. The Notice of Hearing and the Proposed Rules (Ex. 2);
c. Affidavit of Receipt of the Secretary of State's List (Ex. 3);
d. Affidavit of Mailing (Ex. 4);
e. Secretary of State's Certificate and Mailing List (Ex. 5);
f. The Statement of Need (Ex. 6);
g. The Statement of Evidence (Ex. 7); and
h. List of Agency Witnesses (Ex. 8).

4. That the record was left open for 20 days following the hearing for receipt of written comments or materials concerning the proposed rules. Two timely written comments were received.

5. That MHFA cited as statutory authority for the promulgation of the proposed rules Minn. Laws 1976, Chapter 254, Section 9, which directs the MHFA to promulgate rules concerning the program administration of a five million dollar appropriation to be expended by the Minnesota Chippewa Tribe, the Red Lake Band of Chippewa Indians, and the Sioux Communities for American Indian housing with the state.

6. Proposed rule MHFA 90 is needed to set out the scope and purpose of the entire set of rules. Reference is also made in the rule to corporations to carry out the housing program since MHFA believes that recent court decisions may have established the principle that the tribe, band, and communities possess the attributes of sovereignty and may not be directly subjected to state regulation. Indian housing corporations would act as an intermediary between the state and tribe, band, or communities.

7. Proposed rule MHFA 91 is needed to indicate the type of information which must be submitted as a plan to the agency prior to the making of eligible loans. The rule restates

the statutory requirement that the housing programs take into account the housing needs of all American Indians residing both on and off reservations within the state. One comment at the hearing urged that urban American Indians not be neglected. The rule appears to require that American Indians not residing on reservations receive fair consideration.

8. Proposed rule MHFA 92 is needed to set out the qualification for receiving financing under the statutory scheme. The definition of American Indian contained in the rule is mandated in the enabling legislation. The statute specifically incorporates the definition of Native American contained in Minn. Stat. § 254A.02, subd. 11. This provision was the object of some comment at the hearing. It was stated that since some of the requirements for tribal membership are more liberal than the statute, a number of people are recognized as tribal members, but they would not be able to meet the one-fourth blood requirement set out in Minnesota Statutes. The speaker agreed, however, that the agency is mandated by the enabling legislation to use the statutory definition. A written comment received after the hearing suggested that the portion of the rule stating that "...each person or family occupying a dwelling unit financed pursuant thereto shall be an American Indian..."may be ambiguous in that it could be interpreted to make ineligible an American Indian who married a non-Indian. The agency stated that its interpretation of the rule is that as long as one of the spouses qualify as an American Indian, the family unit would qualify as an American Indian family and would therefore be eligible. Although the rule is not unreasonable as proposed, given the rules of construction that an agency is bound by its rules and that the rules may be strictly construed against the agency, the agency may well want to consider making it clear within the rule that an American Indian Family Unit may include a non-Indian spouse or children. The rule also reasonably provides that up to 25% of the units in an apartment development may be occupied by the persons and families who are not low and

moderate income so as to promote economic integration of housing facilities. The rule adopts the definition of a low and moderate income contained in Minn. Rule MHFA 2(o). The rule also provides a reasonable exception for developers and authorizes direct loans to the tribe, band or communities in order to allow utilization of a federal program.

9. Proposed rule MHFA 93 is needed to provide a method to determine a person's adjusted income for the purposes of the housing program. The proposed rule builds upon Minn. Rule MHFA 2(n) and further provides for the averaging of income over a three year period in order to better reflect instances of high unemployment and the instability of employment which results from sporadic funding of government programs or organizations which are designed to employ American Indians.

10. Proposed rule MHFA 94 is needed to make it clear that loans are not to be used for the purpose of refinancing existing loans. This is reasonable since the purpose of financing existing loans for low and moderate income people is to stimulate new construction and assist people in obtaining home ownership rather than assisting a family by refinancing an existing mortgage on property which they already occupy.

11. Proposed rule MHFA 95 requires that each plan submitted provide for a maximum limitation on the sale price or appraised value of a structure. This is needed since the maximum limitation guards against the use of the funds for financing property on which a large down payment could be made and a high mortgage could be obtained which would indicate that the applicant would have the financial means to make use of the existing market for financing the property. No limit is placed on the cost of multi-family development because the cost will vary with the location, design and size of the building. The rule reasonably provides that a rehabilitiation loan added to all other existing indebtedness secured by the property should not exceed its market value so that the interest of the mortgagee is protected.

12. Proposed rule MHFA 96 adopts the length or term

of the loan which is generally accepted in today's housing industry since regulatory entities govern the term allowed and the term is also significant in selling loans to the secondary market.

13. Proposed rule MHFA 97 provides that the plan submitted must specify the means by which the loans are to be secured and does not specifically require a first mortgage because of various legal impediments in regard to mortgages on Indian land. Often tribal property is leased rather than owned and, therefore, a different form of security device is called for.

14. Proposed rule MHFA 98 is necessary to set a minimum and maximum rate of interest to be charged for the loan. The minimum rate is necessary since the housing program is to be financed by the revolving loan fund which is to be self-supporting in perpetuity.

15. Proposed rule MHFA 99 is necessary to make it clear that the loan agreement shall set the terms of involvement by MHFA and compensation therefor. Flexibility is required since the amount of supporting staff services provided will vary with the tribe, band, or communities involved.

16. Proposed rule MHFA 100 is needed to indicate that the loan agreement will control the repayment of the funds to the MHFA.

17. Proposed rule MHFA 101 requires that plans submitted contain a means for judging the credit-worthiness of a borrower since this is an important criteria in lending. Specific criteria are not set out in the rules since they will differ from reservation to reservation and from tribe to band to communities.

18. Proposed rule MHFA 102 provides for an audit by the Legislative Auditor and is mandated by the enabling statute.

19. Proposed rule MHFA 103 provides for the final loan decision to be made by a representative body of the tribe, band or communities since a proper decision is more likely to be made by a representative body than one or two staff people. This

of the loan which is generally accepted in today's housing industry since regulatory entities govern the term allowed and the term is also significant in selling loans to the secondary market.

13. Proposed rule MHFA 97 provides that the plan submitted must specify the means by which the loans are to be secured and does not specifically require a first mortgage because of various legal impediments in regard to mortgages on Indian land. Often tribal property is leased rather than owned and, therefore, a different form of security device is called for.

14. Proposed rule MHFA 98 is necessary to set a minimum and maximum rate of interest to be charged for the loan. The minimum rate is necessary since the housing program is to be financed by the revolving loan fund which is to be self-supporting in perpetuity.

15. Proposed rule MHFA 99 is necessary to make it clear that the loan agreement shall set the terms of involvement by MHFA and compensation therefor. Flexibility is required since the amount of supporting staff services provided will vary with the tribe, band, or communities involved.

16. Proposed rule MHFA 100 is needed to indicate that the loan agreement will control the repayment of the funds to the MHFA.

17. Proposed rule MHFA 101 requires that plans submitted contain a means for judging the credit-worthiness of a borrower since this is an important criteria in lending. Specific criteria are not set out in the rules since they will differ from reservation to reservation and from tribe to band to communities.

18. Proposed rule MHFA 102 provides for an audit by the Legislative Auditor and is mandated by the enabling statute.

19. Proposed rule MHFA 103 provides for the final loan decision to be made by a representative body of the tribe, band or communities since a proper decision is more likely to be made by a representative body than one or two staff people. This

rule was the subject of some comment at the hearing since a question was raised as to whether some of the communities could delegate their authority to a housing corporation. It appears, however, that the purposes of rule 103 could be satisfied by a tribal housing council, for instance, which, it was agreed, would be permissible for the communities to do.

20. Proposed rule MHFA 104 is necessary to set out the duties of the originator of the loans. This allows the staff to project the magnitude of the program, including marketing, finances, administration and staffing, as well as to have benchmarks to evaluate the program during and subsequent to origination of loans.

21. Proposed rule MHFA 105 mandates compliance with the state building code and applicable federal regulations in order to insure the mortgagor of a quality-built home with standard materials.

22. Proposed rule MHFA 106 which requires that the plan show evidence of a reasonable balance in the distribution of funds between American Indians residing on and off reservations within the state. This requirement is mandated by the enabling legislation.

23. Proposed rule MHFA 107 provides that the tribe, band, and communities must specify the fees and charges in the plan to be submitted to the agency which they will charge in connection with the making of the loan. The agency has concluded that the fees and charges to be made should be left up to the individual tribe, band or communities since the needs will vary.

24. Proposed rule MHFA 108 provides the agency with the right of inspection in connection with the loan program and is reasonable since the funding for the program was appropriated to the housing development fund under the jurisdiction of the MHFA and the MHFA has statutory responsibility for providing some oversight over Indian housing programs. The agency offered an amendment at the hearing which would change the three days notice to ten days notice since the agency has concluded that

the greater length of time may be necessary to assemble relevant documents. The amendment is reasonable and does not constitute a substantial change.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Minnesota Housing Finance Agency gave proper notice of the promulgation of the proposed rules.

2. That the Minnesota Housing Finance Agency has statutory authority to take the action proposed, to wit, the promulgation of the proposed rules.

3. That the Minnesota Housing Finance Agency fulfilled all relevant substantive and procedural requirements of law or rule.

4. That the Minnesota Housing Finance Agency has demonstrated the need for and reasonableness of its proposed action, to wit, the promulgation of the proposed rules, with an affirmative presentation of facts.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the proposed rules be adopted by the Minnesota Housing Finance Agency with consideration given to the Findings of Fact contained herein.

Dated: February / , 1977.

GEORGE A. BECK
Hearing Examiner

PLEASE TAKE NOTICE that pursuant to Minn. Stat. § 15.0412, subd. 4 and Minn. Stat. § 15.052, subd. 4 (Supp. 1975), the Minnesota Housing Finance Agency shall make this Report available to all affected individuals upon request for at least ten (10) days before the Agency takes any final action on the proposed rules.

The Agency shall, if it decides to adopt the rules as originally proposed or amended, submit the complete hearing record to the Chief Hearing Examiner no earlier than ten (10) days subsequent to the receipt of this Report. The Agency must submit the rules as originally proposed and the rules as proposed for adoption in final form.

The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his Report to the Agency on the issue of substantial changes in the rules within ten (10) calendar days. The Agency is then responsible for filing the rules with the Attorney General.

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE HOUSING FINANCE AGENCY) FINDINGS OF FACT
GOVERNING AMERICAN INDIAN HOUSING)

The above entitled matter came on for hearing before the regularly appointed state hearing examiner on the 4th day of January, 1977 at 9:30 a.m. in Conference Room D of the Veterans Service Building, Capitol Approach, after proper notice required by M. S. 1974, Section 15.0412 was secured upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

By the authority vested in me by Resolution MHFA 77-6 of the Board of the Minnesota Housing Finance Agency, and after affording interested persons an opportunity to present written and oral data, statements and arguments, having all of the testimony, having considered all of the evidence addressed and upon the records, files and proceedings herein, I hereby adopt as Findings of Fact, for purposes of the promulgation of the above-captioned rules, the Findings of Fact contained in the Report of the hearing examiner, which Report is attached hereto and by this reference made a part hereof as fully as if set forth herein.

MINNESOTA HOUSING FINANCE AGENCY

James F. Dlugosch
Executive Director

Dated: FEB 24 1977

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE HOUSING FINANCE AGENCY GOVERNING AMERICAN INDIAN HOUSING	FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION

The above-entitled matter came on for hearing before George A. Beck, duly appointed as Hearing Examiner in this matter, on January 4, 1977 at 9:30 a.m. at Conference Room D of the Veterans Service Building, Capitol Approach, in the City of St. Paul, County of Ramsey, State of Minnesota.

This proceeding is a rules hearing held pursuant to Minn. Stat. Chapter 15 to determine whether nineteen proposed rules should be adopted. Copies of this Report are available for review from the Minnesota Housing Finance Agency.

Members of the agency panel included: James F. Dlugosch, Executive Director, Minnesota Housing Finance Agency; May Hutchinson, Mortgage Loan Officer, Minnesota Housing Finance Agency; and Bruce D. Campbell, Special Assistant Attorney General.

Witnesses at the hearing included: Donald F. Bebeau, Executive Director, State Indian Affairs Intertribal Board; Karl Aho, consultant to the Sioux Communities; and Elizabeth Arredondo, a St. Paul resident.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. That on December 2, 1976, the Minnesota Housing Finance Agency (MHFA) mailed the Notice of Hearing in this matter to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notices. The Notice of Hearing and the Rules as Proposed were published in the State Register on November 30, 1976.

2. That on November 4, 1976, MHFA filed the following documents with the Chief Hearing Examiner:

a. A proposed Notice of Hearing;
b. A proposed Order for Hearing (Ex. 1);
c. The proposed rules; and
d. Statement of Expected Attendance (Ex. 9).

3. That on December 10, 1976, MHFA filed the following documents with the Office of Hearing Examiners:

a. The Order for Hearing and the Authorizing Resolution (Ex. 1);
b. The Notice of Hearing and the Proposed Rules (Ex. 2);
c. Affidavit of Receipt of the Secretary of State's List (Ex. 3);
d. Affidavit of Mailing (Ex. 4);
e. Secretary of State's Certificate and Mailing List (Ex. 5);
f. The Statement of Need (Ex. 6);
g. The Statement of Evidence (Ex. 7); and
h. List of Agency Witnesses (Ex. 8).

4. That the record was left open for 20 days following the hearing for receipt of written comments or materials concerning the proposed rules. Two timely written comments were received.

5. That MHFA cited as statutory authority for the promulgation of the proposed rules Minn. Laws 1976, Chapter 254, Section 9, which directs the MHFA to promulgate rules concerning the program administration of a five million dollar appropriation to be expended by the Minnesota Chippewa Tribe, the Red Lake Band of Chippewa Indians, and the Sioux Communities for American Indian housing with the state.

6. Proposed rule MHFA 90 is needed to set out the scope and purpose of the entire set of rules. Reference is also made in the rule to corporations to carry out the housing program since MHFA believes that recent court decisions may have established the principle that the tribe, band, and communities possess the attributes of sovereignty and may not be directly subjected to state regulation. Indian housing corporations would act as an intermediary between the state and tribe, band, or communities.

7. Proposed rule MHFA 91 is needed to indicate the type of information which must be submitted as a plan to the agency prior to the making of eligible loans. The rule restates

the statutory requirement that the housing programs take into account the housing needs of all American Indians residing both on and off reservations within the state. One comment at the hearing urged that urban American Indians not be neglected. The rule appears to require that American Indians not residing on reservations receive fair consideration.

8. Proposed rule MHFA 92 is needed to set out the qualification for receiving financing under the statutory scheme. The definition of American Indian contained in the rule is mandated in the enabling legislation. The statute specifically incorporates the definition of Native American contained in Minn. Stat. § 254A.02, subd. 11. This provision was the object of some comment at the hearing. It was stated that since some of the requirements for tribal membership are more liberal than the statute, a number of people are recognized as tribal members, but they would not be able to meet the one-fourth blood requirement set out in Minnesota Statutes. The speaker agreed, however, that the agency is mandated by the enabling legislation to use the statutory definition. A written comment received after the hearing suggested that the portion of the rule stating that "...each person or family occupying a dwelling unit financed pursuant thereto shall be an American Indian..."may be ambiguous in that it could be interpreted to make ineligible an American Indian who married a non-Indian. The agency stated that its interpretation of the rule is that as long as one of the spouses qualify as an American Indian, the family unit would qualify as an American Indian family and would therefore be eligible. Although the rule is not unreasonable as proposed, given the rules of construction that an agency is bound by its rules and that the rules may be strictly construed against the agency, the agency may well want to consider making it clear within the rule that an American Indian Family Unit may include a non-Indian spouse or children. The rule also reasonably provides that up to 25% of the units in an apartment development may be occupied by the persons and families who are not low and

moderate income so as to promote economic integration of housing facilities. The rule adopts the definition of a low and moderate income contained in Minn. Rule MHFA 2(o). The rule also provides a reasonable exception for developers and authorizes direct loans to the tribe, band or communities in order to allow utilization of a federal program.

9. Proposed rule MHFA 93 is needed to provide a method to determine a person's adjusted income for the purposes of the housing program. The proposed rule builds upon Minn. Rule MHFA 2(n) and further provides for the averaging of income over a three year period in order to better reflect instances of high unemployment and the instability of employment which results from sporadic funding of government programs or organizations which are designed to employ American Indians.

10. Proposed rule MHFA 94 is needed to make it clear that loans are not to be used for the purpose of refinancing existing loans. This is reasonable since the purpose of financing existing loans for low and moderate income people is to stimulate new construction and assist people in obtaining home ownership rather than assisting a family by refinancing an existing mortgage on property which they already occupy.

11. Proposed rule MHFA 95 requires that each plan submitted provide for a maximum limitation on the sale price or appraised value of a structure. This is needed since the maximum limitation guards against the use of the funds for financing property on which a large down payment could be made and a high mortgage could be obtained which would indicate that the applicant would have the financial means to make use of the existing market for financing the property. No limit is placed on the cost of multi-family development because the cost will vary with the location, design and size of the building. The rule reasonably provides that a rehabilitiation loan added to all other existing indebtedness secured by the property should not exceed its market value so that the interest of the mortgagee is protected.

12. Proposed rule MHFA 96 adopts the length or term

of the loan which is generally accepted in today's housing industry since regulatory entities govern the term allowed and the term is also significant in selling loans to the secondary market.

13. Proposed rule MHFA 97 provides that the plan submitted must specify the means by which the loans are to be secured and does not specifically require a first mortgage because of various legal impediments in regard to mortgages on Indian land. Often tribal property is leased rather than owned and, therefore, a different form of security device is called for.

14. Proposed rule MHFA 98 is necessary to set a minimum and maximum rate of interest to be charged for the loan. The minimum rate is necessary since the housing program is to be financed by the revolving loan fund which is to be self-supporting in perpetuity.

15. Proposed rule MHFA 99 is necessary to make it clear that the loan agreement shall set the terms of involvement by MHFA and compensation therefor. Flexibility is required since the amount of supporting staff services provided will vary with the tribe, band, or communities involved.

16. Proposed rule MHFA 100 is needed to indicate that the loan agreement will control the repayment of the funds to the MHFA.

17. Proposed rule MHFA 101 requires that plans submitted contain a means for judging the credit-worthiness of a borrower since this is an important criteria in lending. Specific criteria are not set out in the rules since they will differ from reservation to reservation and from tribe to band to communities.

18. Proposed rule MHFA 102 provides for an audit by the Legislative Auditor and is mandated by the enabling statute.

19. Proposed rule MHFA 103 provides for the final loan decision to be made by a representative body of the tribe, band or communities since a proper decision is more likely to be made by a representative body than one or two staff people. This

rule was the subject of some comment at the hearing since a question was raised as to whether some of the communities could delegate their authority to a housing corporation. It appears, however, that the purposes of rule 103 could be satisfied by a tribal housing council, for instance, which, it was agreed, would be permissible for the communities to do.

20. Proposed rule MHFA 104 is necessary to set out the duties of the originator of the loans. This allows the staff to project the magnitude of the program, including marketing, finances, administration and staffing, as well as to have benchmarks to evaluate the program during and subsequent to origination of loans.

21. Proposed rule MHFA 105 mandates compliance with the state building code and applicable federal regulations in order to insure the mortgagor of a quality-built home with standard materials.

22. Proposed rule MHFA 106 which requires that the plan show evidence of a reasonable balance in the distribution of funds between American Indians residing on and off reservations within the state. This requirement is mandated by the enabling legislation.

23. Proposed rule MHFA 107 provides that the tribe, band, and communities must specify the fees and charges in the plan to be submitted to the agency which they will charge in connection with the making of the loan. The agency has concluded that the fees and charges to be made should be left up to the individual tribe, band or communities since the needs will vary.

24. Proposed rule MHFA 108 provides the agency with the right of inspection in connection with the loan program and is reasonable since the funding for the program was appropriated to the housing development fund under the jurisdiction of the MHFA and the MHFA has statutory responsibility for providing some oversight over Indian housing programs. The agency offered an amendment at the hearing which would change the three days notice to ten days notice since the agency has concluded that

the greater length of time may be necessary to assemble relevant documents. The amendment is reasonable and does not constitute a substantial change.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Minnesota Housing Finance Agency gave proper notice of the promulgation of the proposed rules.

2. That the Minnesota Housing Finance Agency has statutory authority to take the action proposed, to wit, the promulgation of the proposed rules.

3. That the Minnesota Housing Finance Agency fulfilled all relevant substantive and procedural requirements of law or rule.

4. That the Minnesota Housing Finance Agency has demonstrated the need for and reasonableness of its proposed action, to wit, the promulgation of the proposed rules, with an affirmative presentation of facts.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the proposed rules be adopted by the Minnesota Housing Finance Agency with consideration given to the Findings of Fact contained herein.

Dated: February / , 1977.

GEORGE A. BECK
Hearing Examiner

PLEASE TAKE NOTICE that pursuant to Minn. Stat. § 15.0412, subd. 4 and Minn. Stat. § 15.052, subd. 4 (Supp. 1975), the Minnesota Housing Finance Agency shall make this Report available to all affected individuals upon request for at least ten (10) days before the Agency takes any final action on the proposed rules.

The Agency shall, if it decides to adopt the rules as originally proposed or amended, submit the complete hearing record to the Chief Hearing Examiner no earlier than ten (10) days subsequent to the receipt of this Report. The Agency must submit the rules as originally proposed and the rules as proposed for adoption in final form.

The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his Report to the Agency on the issue of substantial changes in the rules within ten (10) calendar days. The Agency is then responsible for filing the rules with the Attorney General.

MINNESOTA HOUSING FINANCE AGENCY
First Floor - Hanover Building
480 Cedar Street
Saint Paul, Minnesota 55101

RESOLUTION NO. MHFA 77-6

RESOLUTION ADOPTING RULES PERTAINING TO AMERICAN INDIAN HOUSING

RESOLVED THAT the rules attached hereto relating to American Indian Housing be and they hereby are approved and adopted pursuant to authority vested in this Agency by Laws 1976, Chapter 254, Section 9 and that James F. Dlugosch, Executive Director of the Agency, be and he hereby is authorized to sign the requisite document pertaining to Findings of Fact and to sign an Order adopting those rules.

ADOPTED this 17th day of February, 1977.

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE ADOPTION OF)
RULES OF THE HOUSING FINANCE AGENCY) RULES AS ADOPTED
GOVERNING AMERICAN INDIAN HOUSING)

1. Minn. Reg. MHFA Chapter 8 is hereby adopted to read as follows:

MHFA 90. SCOPE

Rules 90 to 108 hereof, together with the Loan Agreement (hereinafter the "Agreement"), govern the housing programs for American Indians of low and moderate income as authorized by Laws 1976, ch. 254 (hereinafter the "Act"), and the disposition of the appropriation made pursuant to Section 16 of said Act, which housing programs are to be developed and administered separately or in combination by the Minnesota Chippewa Tribe, which for purposes of these Rules shall include any corporation established by the Minnesota Chippewa Tribe to carry out the housing program provided for herein and by the Act, (hereinafter collectively the "Tribe"), the Red Lake Band of Chippewa Indians, which for purposes of these Rules shall include any corporation established by the Red Lake Band of Chippewa Indians to carry out the housing program provided for herein and by the Act, (hereinafter collectively the "Band") and the Sioux Communities, which for purposes of these Rules shall include any corporation established by the Sioux Communities to carry out the housing program provided for herein and by the Act, (hereinafter collectively the "Communities").

MHFA 91. DEVELOPMENT OF PLAN

In developing each such housing program, the Tribe, Band, and Communities shall take into account the housing needs of all American Indians residing both on and off reservations within the state. A plan (hereinafter the "Plan") for each such program, which is in accordance with these Rules and which specifically describes the program (a) content, (b) utilization of funds, (c) administration, and (d) operation and implementation, shall be submitted to the Minnesota Housing Finance Agency (hereinafter "MHFA") for its review and approval prior to the making of eligible loans.

MHFA 92. QUALIFICATIONS FOR HOUSING

Except as otherwise provided herein and by MHFA 4, each recipient of a loan pursuant to the Act, Plan and these Rules and each person or family initially occupying a dwelling unit financed pursuant thereto shall be an American Indian as defined by Minn. Stat., Sec. 254A.02, subd. 11, or an American Indian family as hereinafter defined, and of low and moderate

income as defined by MHFA 2(o), provided that developers of multifamily housing developments need not be American Indians or of low and moderate income, and further provided that the Tribe, Band and Communities may qualify as eligible borrowers, if the funds advanced are used to construct eligible housing for resale or rental to eligible recipients and the funds advanced are returned to the revolving loan fund under the jurisdiction of the Tribe, Band or Communities when permanent financing is obtained. An American Indian family for purposes of these Rules is a family which at the time the loan is granted has at least one resident mortgagor who is an American Indian as defined by Minn. Stat., Sec. 254A.02, subd. 11.

MHFA 93. ADJUSTED INCOME

Adjusted income shall be computed in accordance with MHFA 2(n). To calculate adjusted income for purposes of this Rule, the applicant's gross annual income for the two years immediately prior to the date of application for the loan, adjusted in accordance with MHFA 2(n), shall be added to the applicant's projected gross annual income for the year next following the date of application, also adjusted in accordance with MHFA 2(n), and the total thus obtained shall be divided by three.

MHFA 94. REFINANCING EXISTING LOANS

No loan shall be approved or disbursed for the purpose of refinancing an existing loan. The Plan may set funding priorities for the types of housing loans to be made based upon housing need considerations.

MHFA 95. LIMIT ON SALE PRICE OR APPRAISAL VALUE

Each plan submitted to MHFA for approval shall provide for a maximum limitation on the sale price or appraised value, whichever is greater, of a structure or structures designed primarily for residential use by not more than four families, or a dwelling in a planned unit development or a condominium. No loan for rehabilitation of any property shall be made in an amount which, when added to all other existing indebtedness secured by the property, would exceed its market value as determined by a qualified appraiser.

MHFA 96. DURATION OF LOAN

No loan shall be made for a term in excess of thirty (30) years on a structure or structures designed for occupancy by not more than four families, or a dwelling unit in a planned unit development or a condominium. The maximum term of a rehabilitation loan for an existing structure or structures designed for occupancy by not more than four families or a dwelling unit in a planned unit development or a condominium shall not exceed twelve (12) years. For all other residential structures, the maximum term of any loan including a rehabilitation loan, granted pursuant to the Act, Plan and these Rules shall not exceed forty (40) years.

MHFA 97. SECURITY FOR LOANS

Each plan submitted to MHFA for approval shall specify the means by which loans made pursuant to the Plan and these Rules are to be secured.

MHFA 98. RATE OF INTEREST

The rate of interest charged by the Tribe, Band or Communities on housing loans made pursuant to the Act, the Plan and these Rules, shall be not less than 2% and not more than the highest rate of interest authorized by applicable usury and lending laws. The prime consideration in establishing rates of interest for eligible loans shall be to make the Plan self-supporting by generating sufficient interest income to offset the expenses incurred in the development and operation of the Plan, with the exception of the first year's expenses which shall be funded from the appropriation provided in the Act upon MHFA's approval of a detailed budget for that first year.

MHFA 99. REMUNERATING MHFA

The Agreement shall provide the circumstances under which MHFA shall provide assistance to the Tribe, Band or Communities and the amount of remuneration to be received by MHFA from the Tribe, Band and Communities for its assistance and monitoring.

MHFA 100. REVOLVING HOUSING FUND

The Tribe, Band and Communities shall repay to MHFA, without interest, all funds advanced to it pursuant to the Agreement to the extent and in the manner provided in the Agreement.

MHFA 101. CREDIT RATING

Each Plan submitted to MHFA for approval shall contain adequate means for determining that the eligible borrower is an acceptable credit risk.

MHFA 102. AUDIT BY LEGISLATIVE AUDITOR

All of the official books and records of the Tribe, Band, and Communities relating to the housing program shall be subject to audit by the Legislative Auditor in the manner prescribed for agencies of state government as required by the Act.

MHFA 103. FINAL DECISION ON LOANS

Each final decision on applications for loans to eligible borrowers made by the Tribe, Band or Communities from the moneys appropriated by Section 16 of the Act, or from the revolving loan fund under the jurisdiction of the Tribe, Band, or Communities, shall be made by a representative body of the Tribe, Band, or Communities.

MHFA 104. DUTIES OF ORIGINATOR

The Tribe, Band and Communities shall each provide information on their respective Plans to eligible borrowers, receive and process loan applications, provide MHFA with a summary of the applications to be funded on a form provided by MHFA and establish lending procedures which comply,

to the extent applicable, to the Real Estate Settlement Procedures Act, Truth-in-Lending legislation, and applicable usury and other lending laws. The Tribe, Band and Communities shall service or cause to be serviced all loans made by them to eligible borrowers. The provisions regarding servicing shall be detailed in the respective Plans and shall outline all servicing responsibilities including, but not limited to, composition and retention of loan files, escrow accounts, reporting systems, handling of delinquencies, and default and foreclosure policies and procedures. To the extent that the Tribe, Band or Communities enter into housing programs with the Department of Housing and Urban Development (hereinafter "HUD") the Tribe, Band or Communities shall be relieved of the applicable obligations imposed by this Rule if such obligations are assumed by HUD or otherwise discharged in a manner acceptable to MHFA.

MHFA 105. BUILDING CODE

All authorized construction funded by an eligible loan and accomplished pursuant to an approved Plan shall conform to the uniform building code of the State of Minnesota and all applicable federal regulations, rules or codes. Each plan submitted to MHFA for approval shall contain a means of inspection to insure that any such authorized construction conforms to the applicable building code.

MHFA 106. ON AND OFF RESERVATION

Each Plan shall provide for a reasonable balance in the distribution of funds between American Indians residing on and off reservations within the state, as shown by evidence contained in the Plan concerning on and off reservation population, percentage of low and moderate income American Indians, delivery capabilities and similar circumstances. The Plan may provide that at the option of the Tribe, Band or Communities, the origination and servicing of loans to eligible recipients residing off the reservation may, by separate agreement, be performed by a party or parties selected by the Tribe, Band or Communities.

MHFA 107. FEES AND CHARGES

The fees and charges to be paid by an eligible borrower in connection with the making of an eligible loan shall be determined by the Tribe, Band and Communities and specified in the Plan; provided, that if MHFA or its agent originate and service or cause to be serviced eligible loans for qualified borrowers residing off reservations pursuant to Rule 106, above, MHFA shall determine as to those loans, the reasonable fees and charges to be paid to MHFA and/or its agent, in an amount not to exceed the amount authorized by law.

MHFA 108. RIGHTS OF MHFA

MHFA shall have the right to inspect, copy or abstract, at reasonable times and upon ten days notice, all books, records, papers, or any other documents relating to the Plan, or loans made pursuant thereto, or any funds held in a revolving loan fund under the jurisdiction of the Tribe, Band or Communities for the purpose of making eligible loans.

CERTIFICATE OF BOARD'S ADOPTION OF RULES RESOLUTION

I, Richard R. Miller, do hereby certify that I am chairman of the Board of the Minnesota Housing Finance Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Board of the Housing Finance Agency duly and properly called and held on the 17th day of February, 1977; that a quorum was present at said meeting; (that a majority of those present voted for the resolution); that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, That the rules attached hereto relating to American Indian Housing be and they hereby are approved and adopted pursuant to authority vested in this Agency by Laws 1976, Chapter 254, Section 9 and that James F. Dlugosch, Executive Director of the Agency, be and he hereby is authorized to sign the requisite document pertaining to Findings of Fact and to sign an Order adopting those rules."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 24th day of February, 1977.

Richard R Miller
Chairman

Peter L Vandenpoel
Attest by one other Member

STATE OF MINNESOTA

MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE HOUSING)
FINANCE AGENCY GOVERNING AMERICAN) ORDER ADOPTING RULES
INDIAN HOUSING)

The above-entitled matter came on for hearing before a regularly appointed state hearing examiner on the 4th day of January, 1977 at 9:30 a.m. in Conference Room D of the Veterans Service Building, Capitol Approach, after proper notice required by M. S. 1974, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules of the Housing Finance Agency governing American Indian Housing are adopted this 24th day of February, 1977, pursuant to authority vested in me by Resolution Number MHFA 77-6.

MINNESOTA HOUSING FINANCE AGENCY

James F. Dlugosch
Executive Director

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Bruce D. Campbell, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Bruce D Campbell

Special Assistant Attorney General

Dated: February 24, 1977

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA HOUSING FINANCE AGENCY

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE HOUSING)
FINANCE AGENCY GOVERNING AMERICAN) REPORT OF THE
INDIAN HOUSING.) CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on January 4, 1977, before George A. Beck, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Findings of Fact, Conclusions and Recommendation made pursuant to Minn. Stat. §15.052, Subd. 3, were issued to the Housing Finance Agency on February 1, 1977; and

WHEREAS, the Housing Finance Agency has now determined to adopt rules pursuant to Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Housing Finance Agency has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Housing Finance Agency has met all requirements of Minn. Stat. §15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Housing Finance Agency has the responsibility of submitting the complete hearing record and the rules as adopted by the Agency to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. §15.0412, Subd. 4.

Dated this 7th day
of March, 1977.

Duane R. Harves
DUANE R. HARVES
Chief Hearing Examiner

Bruce D. Campbell
Special Assistant
Attorney General

April 4, 1977

- MHFA Chapter 8 MHFA 90-MHFA 108 - Rules
of the Housing Finance Agency Governing American Indian Housing