Implementing NAHASDA: Brave New Word?

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> The oral tradition of the American Indian is a highly developed realization of language. In certain ways it is superior to the written tradition. In the oral tradition words are sacred; they are intrinsically powerful and beautiful. By means of words, by the exertion of language upon the unknown, the best of the possible—and indeed the seemingly impossible—is accomplished. Nothing exists beyond the influence of words. Words are the names of Creation. To give one's word is to give oneself wholly—to place a name, one's most sacred possession, in the balance. One stands for one's word. Oral tradition demands the greatest clarity of speech and hearing, the whole strength of memory, and an absolute faith in the efficacy of language. Every word spoken, every word heard, is the utterance of prayer.
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> Thus, in the oral tradition, language bears the burden of the sacred, the burden of belief. In a written tradition, the place of language is not so certain.[1]

The recurring challenge for Native American constituencies and the U.S. government—to fit words to mutual desires and objectives—was tested recently in regulatory development and implementation of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).[2]

The new law contains a provision for the issuance of regulations,[3] but its resolution was cast against a backdrop of an unconventional rulemaking process, institutional inhibitions against overdetailed regulations, and a scarcity of legislative history. The result was to subject NAHASDA's implementation to a more amorphous, less comprehensive regulatory architecture than is customary in other assistance programs administered by the U.S. Department of Housing and Urban Development (HUD).

NAHASDA follows the pattern of the late twentieth century in converting discretionary categorical grant assistance programs to formula grants. The 1996 law substituted new entitlement grants to American Indian tribes, in place of previous discretionary grants for programs like public housing,[4] Youthbuild,[5] and homeless assistance.[6]

Eligibility for American Indian tribes to participate in another housing block grant program was removed[7] when NAHASDA became the exclusive formula grant for housing in lieu of the HOME program formula grant.[8]

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Modeling HUD Block Grants

There have been precursors to such a change within HUD. In 1974 an array of categorical programs for community development was consolidated into the community development block grant program (CDBG).[9] Then, in 1990, the enactment of the HOME program afforded a similar approach that was limited to housing assistance. Even within the original categorical grant focus of the public housing program, authorized under the U.S. Housing Act of 1937, the amount of most Native American housing assistance for upgrading was allocated annually on the basis of a formula.[10]

The model that has characterized CDBG and HOME block grant funding for almost thirty years is replicated in NAHASDA. The model consists of four basic components:

(1) The block grant consolidates prior programs into a single "block" of federal aid. One of the putative benefits of this approach is to afford grantees the discretion to expend assistance where they believe it is needed.

(2) Formula allocation benefits are twofold. First, grantees do not have to apply to NAHASDA for any program; the formula arrives at a calculation based on relatively objective factors geared to the need for housing. A reasonable formula thus promotes equity in the allocation of assistance. Second, the annualized nature of funding (always subject to the appropriations process) permits grantees to plan housing activities and projects and to project anticipated grant receipts.

(3) The third component generally marks a shift from special purpose government to general purpose government. For example, prior to the establishment of the CDBG program, special purpose governments that consisted of urban renewal agencies, water and sewer districts, park authorities, and nonprofit entities applied individually to programs for which they qualified. The 1974 legislation reposed all eligibility in general local government. This same shift informs NAHASDA. Whereas most HUD housing assistance had previously been granted to American Indian housing authorities under the U.S. Housing Act of 1937, the tribe is now the formula grantee under NAHASDA.[11]

(4) Block grants frequently are enacted in an environment where federal control is downplayed. NAHASDA's simplified application requirements are drawn with statutory emphasis on compliance, and sanctions are tied to a performance-based perspective.

Implementing the Block Grant Model in NAHASDA

These broad outlines of block grant programs take grantor and grantee just so far; interstitial flesh is sometimes needed to make sense of the statutory skeleton. In this case, legal and political inhibitions shaped and sometimes constrained the implementation process.

First, in drafting NAHASDA regulations, HUD followed "streamlining" guidelines it had developed earlier to encourage deregulation. Cutting back the length and detail of regulations was seen as responsive

to President Clinton's directive to implement regulatory reform.[12] Such streamlining seeks not only to achieve plain meaning through plain English but also to reduce regulatory text to an absolute legal minimum. Further, some HUD regulations—including those for NAHASDA—purposefully avoid recitation of statutory provisions. The effect, providing only statutory citations and regulatory gloss, is a product that requires readers to have both the written statute and complete regulation at hand.[13] A result of simplification is to furnish less guidance than might otherwise be developed if statutory and regulatory provisions were included in the rule.

A second influence on implementation of NAHASDA lies within the statute itself. Section 106(b)(2)(A) requires that final regulations implementing the program "be issued according to a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5, United States Code."[14] The provision elaborates the process for negotiated rulemaking by calling for establishment of a negotiated rulemaking committee by the secretary of HUD, under procedures adapted "to the unique government-to-government relationship between the Indian tribes and the United States."[15] In addition, the secretary is to "ensure that the membership of the committee include only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes."[16]

The rulemaking committee consisted of forty-eight tribal members, some representing Indian housing authorities, and ten HUD officials. In addition, three individuals from the Federal Mediation and Conciliation Service served as facilitators. The preamble to the final rule noted that "[w]hile the Committee was much larger than usually chartered under the Negotiated Rulemaking Act, its larger size was justified due to the diversity of tribal interests, as well as, the number and complexity of the issues involved."[17] The committee met four times during February, March, and April 1997 and delivered a proposed rule that the department published with changes as a result of HUD's internal clearance process. The proposed rule was published on July 2, 1997.[18]

The very fact that HUD made changes from the committee's proferred rule proved to be a sore point when the committee met in August, September, and October 1997 to develop a final rule. The issue was generally placated by the preamble to the final rule, that:

> After the Negotiated Rulemaking Committee delivered a proposed rule, the Department placed the rule in clearance in accordance with its customary procedures for the finalization of proposed rules. As a result, numerous changes were suggested by offices within HUD which had not been part of the negotiated rulemaking process. The Department did not send up a "red flag" or adjust its customary process, notwithstanding the fact that the proposed rule was the product of a negotiated rulemaking process. As a result, changes were made to the negotiated rule and were not communicated to the Negotiated Rulemaking Committee for comment prior to publication.
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> After discussing conflicting views of the propriety of the Department's actions, the Committee determined (with HUD agreement) that the Department's changes would be given consideration in a manner similar to public comments. As with public comments, the Department's changes were accepted by the

> Committee where they contributed to the clarity or legal accuracy of the rule, or where they more effectively implemented NAHASDA. The Department regrets any misunderstanding its actions may have caused.[19]

The actual practice of rulemaking, at both proposed and final rule stages, was time-consuming yet authentic and fully participatory. All committee decisions were made by "consensus." Under the Negotiated Rulemaking Act, the committee "[attempted] to reach a consensus" on matters proposed by the agency for consideration.[20] The term "consensus" was defined to mean "unanimous concurrence among the interests represented on a negotiated rulemaking committee," unless the committee agreed to "define such term to mean a general but not unanimous concurrence" or developed another specified definition.[21] The NAHASDA committee, consistent with traditional Native American methods of negotiation, elected unanimity or at least the absence of any single member's express disagreement. This approach was not always the fastest route to action. Its clarity and comprehensiveness, however, made for harmony in ultimate decision making.

Substantively, if not ironically, the procedural format used for the rule presents potential, perhaps predictable, problems of interpretation. Pursuant to recent practice in the promulgation of federal agency rules affecting Native American entities, this regulation is set out in a question-and-answer format. This approach is gaining popularity among federal agencies and an increasingly receptive audience.[22] Previously, HUD had only limited experience with the technique. For example, implementation of an Executive Order regarding intergovernmental review of federal programs[23] successfully used the question-and-answer approach.[24] But the complexity of NAHASDA presented a greater challenge to the need to ensure that all bases were covered.

Another element in the backdrop against which NAHASDA was implemented is that there is relatively little legislative history on NAHASDA[25] to supplement gaps in the regulation. There were no committee reports, and the nature of floor debate colloquy is inevitably selective.[26] There is, of course, sharp debate on the utility of seeking out and relying on legislative history, including opposition "on principle"[27] and careful concern even by those who endorse its use in ascertaining statutory meaning.[28] The focus on overreliance is hardly new. Justice Frankfurter cautioned more than fifty years ago not to swallow legislation so that "only when legislative history is doubtful do you go to the statute."[29] But for Justice Scalia, "that is no longer funny. Reality has overtaken parody."[30] None of this debate is to suggest fatal statutory construction under NAHASDA. HUD attorneys, tribal counsel, and, ultimately, judges, can read statutory meaning from statutes. It is true, however, that interpretational light on NAHASDA may dim beyond its lack of legislative history, given the nature of the overall implementation.

Finally, one last important principle will continue to guide the implementation of NAHASDA. There is a long-standing canon of statutory

construction[31] that federal statutes are to be construed liberally in favor of Native Americans, with ambiguous provisions interpreted to their benefit. Adherence to the canon informed the negotiated rulemaking and will continue to have play as the statute's workings evolve.

The sparse legislative history, regulatory streamlining, and selective question-and-answer format adopted in the rulemaking surround a regulation that is concise and responsive to the committee's user-friendly goals. Specific case examples of substantive provisions in these regulatory trappings follow.

Sanctions

Provisions in NAHASDA covering sanctions for poorly performing grantees are similar to those in the CDBG program.[32] The predecessor legislation was not without ambiguity. Two different provisions in the 1974 Act deal with annual performance of grantees and sanctions available thereunder[33] and with substantial noncompliance by grantees.[34] The former provisions do not require an administrative hearing while the latter do. In many instances, the same set of facts could serve as grounds for either remedy. As it turned out, after fourteen years of never electing the latter, fuller due-process sanction, HUD was criticized in *Kansas City v. HUD*,[35] at least for cases in which the violation amounted to past substantial noncompliance. Cognizant of this history, the committee sought to implement two comparable provisions in NAHASDA in unambiguous terms. The result affords the option of administrative hearings for substantial noncompliance.[36] But where the severity of the performance problem under the performance review and annual adjustment provision[37] rises to the level of a funding sanction, HUD will provide notice and an informal meeting to resolve program deficiencies prior to taking the funding action. It will also provide the recipient with a hearing identical to that afforded under the substantial noncompliance provisions,[38] the difference being that the hearing will occur after the funding action. However, "funds adjusted, reduced, or withdrawn cannot be reallocated until fifteen days after the hearing has been held and a final decision rendered."[39]

Eligible Activities

Perhaps the most demonstrable indication in the regulation of minimal guidance to users deals with eligible activities for which grants may be expended under NAHASDA. A core listing of eligible activities is contained in section 202 of the Act.[40] In response to the question, "What are eligible affordable housing activities?" the regulation[41] states tersely that "eligible affordable housing are those described in section 202 of NAHASDA." Program users are driven to the bare statute for explication. The need for consistent, comprehensive interpretation has already required several individual analyses by HUD's Office of General Counsel that, under other circumstances, could have been covered in the regulations.

It remains to be seen whether such case decisional advice will find its way into the regulations.[42] Notwithstanding the termination of the negotiated rulemaking requirements with the publication of the NAHASDA regulation, the process for all subsequent revisions to the rule will be subject to new federal policy. Executive Order 13084, issued after the NAHASDA rule, requires each federal agency to "have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."[43]

Allocation Formula

A more substantial illustration of the committee's addressing statutory gaps involves the formula for allocating the block grant. NAHASDA requires the secretary to allocate amounts pursuant to a formula.[44] The basic determinants of that formula are set out in the statute,[45] but weights are not assigned for formula factors, and no delineation is made for minimum amounts for very small tribes. Here the committee evaluated existing programs, the extent of housing need, and poverty and economic distress to come to a mutually agreeable result. In the process, it addressed many specific public questions relating to annual income, formula areas, and appropriate data forms; the nature and use of formula data; funding of existing housing not owned by the tribe; and a panoply of difficult issues evincing not only tribal self-interest but equity and clarity in developing the formula.[46]

Availability and Use of Grants for Investments

Undoubtedly, the single most controversial aspect of the rulemaking exercise revolves around Native American interest in securing early drawdown of grants for investment purposes. Characterized at different junctures as lump sum drawdowns or investment objectives, the normal give-and-take of tribal members and HUD officials was complicated by institutional inhibitions inside and outside HUD. Conventional federal grant policy precludes the drawdown of program funds except on an as-immediately-needed basis.[47] Although drawing down funds in advance of immediate need affords the grantee a flow of funds on which interest can be earned, the corresponding effect is to remove interest-earning amounts from the federal Treasury. Like the sanctions provisions discussed previously, the method of payment under NAHASDA was identified as a "nonconsensus" issue in the proposed rule.[48]

After exhaustive and full deliberation, HUD and the tribal members of the committee agreed to a regulation that builds on section 204(b) of NAHASDA, authorizing recipients to "invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by the Secretary."[49] Tribal members had earlier sought to base investment flexibility on Public Law No. 93-638,[50] which provides broad tribal discretion in drawdown policy. A reference

to that Act in the congressional findings section of NAHASDA uses normative language that federal assistance "*should* be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in Pub. L. 93-638."[51] Against this text, the committee ultimately determined that the express authority in section 204(b) served as a stronger predicate for the agreement that followed.

Under the regulation, tribes phase in the pertinent portion of the grant by 50 percent in fiscal years 1998 and 1999, 75 percent in fiscal year 2000, and 100 percent in fiscal year 2001 and thereafter.[52] Such investments may not be held for longer than two years,[53] which coincides with the period tribal members on the committee imposed—beyond statutory requirements—as a performance measure for testing effective utilization of funds.[54] The regulation also prescribes eligible investments[55] and establishes levels of qualification to participate in investments.[56] Although consensus was difficult to achieve in this area, investment policy probably demonstrates most visibly the success of the negotiated rulemaking. All parties negotiated in good faith and validated other perspectives and rationales.

Experience with this single issue, and with the rule generally, does more than merely show positive cooperation between tribes and HUD. In addition, the rule is a template for performance under a program regulated contemporaneously with outside assault on the HUD's management of previous public housing programs for Native Americans. During 1996, a series of newspaper articles[57] identified abuses in the administration of deregulated HUD-assisted public housing by Indian housing authorities. The shadow of these articles, which were cited on Capitol Hill,[58] effectively cooled the more welcoming, flexible environment in which NAHASDA was to be implemented. Accordingly, during the rulemaking, tribal members were well aware of the risks to which a more self-determined housing assistance program would be put. This was a major factor in imposing rigorous performance standards on and qualifying tribal participation for the investment policy.

Conclusion

In the rulemaking process, the positive partnership between Native American governmental housing providers and HUD was forged in a climate suggesting Shakespeare's Miranda, wondering at a "brave new world, /that has such people in 't."[59] Here we have a brave new *word*,[60] building on Indian oral tradition, federal legislative and regulatory policy, and the spirit of self-determination that underscores both federal Indian policy and the philosophy of block grants. As tribes, tribally designated housing entities, and HUD collaborate on NAHASDA, careful attention will be paid to the appropriate balance in maximizing the block grant nature of the program while ensuring adherence to statute, regulation, and Momaday's "place of language."[61]

1. N. SCOTT MOMADAY, THE MAN MADE OF WORDS 104 (1997).

2. Pub. L. No. 104-330, 25 U.S.C. §§ 4101-4195 (Supp. 1996) [hereinafter NAHASDA].

3. 25 U.S.C. § 4116 (Supp. 1996).

4. U.S. Housing Act of 1937, 42 U.S.C. §§ 1437-1437aaa-8 (1994 & Supp. 1996).

5. Subtitle D of title VI of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. §§ 12899-12899i (1994 & Supp. 1996).

6. Title IV of the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. §§ 11361-11412 (1994 & Supp. 1996); section 2(b) of the HUD Demonstration Act of 1993, 42 U.S.C. § 11301 note (1994 & Supp. 1996).

7. Section 505 of NAHASDA, 42 U.S.C. §§ 12747, 12838, 12747 note (Supp. 1996).

8. Title II of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. §§ 12721-12840 (1994 & Supp. 1996).

9. Title I of the Housing and Community Development Act of 1974, 42 U.S.C. §§ 5301-5321 (1994 & Supp. 1996).

10. 42 U.S.C. § 14371 (1994 & Supp. 1996).

11. Tribes have the option of using "tribally designated housing entities" (TDHEs) to stand in their role as NAHASDA grantees. A TDHE may be an Indian housing authority. 25 U.S.C. § 4103(21) (Supp. 1996).

12. President's Memorandum for Heads of Departments and Agencies (March 4, 1995). *See* Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (1993) (entitled "Regulatory Planning and Review").

13. "Additionally, the rule as much as practicable did not repeat statutory language. A reader was thus required to have the statute available while reading the rule." 63 Fed. Reg. 12,334 (Mar. 12, 1998). The similar need for dual resources in the rules for the Department of Labor Family and Medical Leave Act of 1993 makes application complicated.

> Although the regulations are organized in an easy-to-use question-and-answer format, they provide a myriad of detail. An employer must carefully review both the Act and the regulations as well as applicable state and federal laws before implementing or changing a leave policy. Similarly, an employee must carefully study the same provisions if she is to understand her rights under the Act.

Nancy R. Daspit, *The Family and Medical Leave Act of 1993: A Great Idea but a "Rube Goldberg" Solution?*, 43 EMORY L.J. 1351, 1421 (1994).

14. 25 U.S.C. § 4116(b)(2)(A) (Supp. 1996).

15. 25 U.S.C. § 4116(b)(2)(B)(ii)(I) (Supp. 1996).

16. *Id.*

17. Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule, 63 Fed. Reg. 12,334 (1998) (to be codified at 24 C.F.R. pts. 950, 953, 1000, 1003 and 1005).

18. Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Proposed Rule, 62 Fed. Reg. 35,718 (1997) (to be codified at 24 C.F.R. pts. 950, 953, 1000, 1003, and 1005).

19. Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule, 63 Fed. Reg. 12,334 12,335 (1998) (to be codified at 24 C.F.R. pts. 950, 953, 1000, 1003, and 1005).

20. 5 U.S.C. § 566(a) (1994).

21. 5 U.S.C. § 562(2) (1994).

22. George H. Hathaway, *The 1997 Clarity Awards*, 76 MICH. BUS. L.J. 448, 450 (1997) ("Rules in this style are wonderfully easy to read"); Donna Lenhoff and Claudia Withers, *Implementation of the Family and Medical Leave Act: Toward the Family-Friendly Workplace*, 3 AM. U. J. GENDER & L. REV. 39, 43 ("The regulations are thorough and relatively easy to read [footnote omitted]. In particular, the question and answer format greatly enhances their readability").

23. Exec. Order No. 12,372, 47 Fed. Reg. 30,959 (1982, amended 1983) (discussing Intergovernmental Review of Federal Programs).

24. 24 C.F.R. pt. 52.

25. The bill was considered and passed in the House on September 28, 1996, and then considered and passed in the Senate five days later. 142 CONG. REC. H11,603-H11,622 (Sept. 25, 1996); 142 CONG. REC. S12,405-S12,407 (Oct. 3, 1996). Congressional hearings held earlier in the year were followed by inclusion of a similar bill into H.R. 2406, 104th Cong. title VII (1996). *The Native American Housing Assistance and Self-Determination Act of 1996: Hearings Before the Subcomm. on Housing and Community Opportunity of the House Comm. on Banking and Financial Services*, 104th Cong. (1996); *Native American Housing Assistance: Joint Hearing Before the Senate Comm. on Indian Affairs and the Senate Comm. on Banking, Housing, and Urban Affairs*, 104th Cong. (1996). The House bill was passed in 1996 but was included within a massive public housing reform bill that was not enacted that year. NAHASDA was broken out of that bill and made a separate proposal. The omnibus public housing legislation was not enacted until recently. Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, 112 Stat. 2461.

26. Representative Vento of the House authorization subcommittee voiced "concerns about certainly the rush to act on this amendment. It makes sweeping changes to the native American housing policy. There has only been one hearing on this and five witnesses. In fact, the administration, who favors this amendment, did not testify on it, nor have they submitted testimony." 142 CONG. REC. H4721 (1996). Aside from the character of the hearing, he also pointed to the absence of a committee or subcommittee markup:

> We did not have a markup on this bill. It does not have some of the needed policy changes that I think are necessary, such as the issue of State Housing Finance Agency role in terms of native American housing. Well crafted proposals and recommendations exist in that vein. Also this measure could include urban Indian housing as one of the outcomes, which is not in this amendment. Most native Americans in fact live in urban settings today.

Id.

27. ANTONIN SCALIA, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws*, *in* A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 29 (Amy Gutmann, ed., 1997).

28. Stephen Breyer, *On the Uses of Legislative History in Interpreting Statutes*, 65 S. CAL. L. REV. 845, 874 (1992) ("Present practice has proved useful; the alternatives are not promising; radical change is too problematic. The 'problem' of legislative history is its 'abuse,' not its 'use.' Care, not drastic change is all that is warranted.")

29. Felix Frankfurter, *Some Reflections on the Readings of Statutes*, 47 COLUM. L. REV. 527, 543 (1947). Justice Jackson shared similar misgivings during the same epoch, observing that "legislative history here as usual is more vague than the statute we are called upon to interpret." United States v. Public Utils. Comm'n of Cal., 345 U.S. 295, 320 (1953) (Jackson, J. concurring).

30. SCALIA, *supra* note 28, at 30.

31. The principle was articulated recently in *Ramah Navajo Chapter v. Lujan*, 112 F.3d 1455, 1461 (10th Cir. 1997).

32. *See* Title I of the Housing and Community Development Act of 1974, 42 U.S.C. §§ 5301-5321 (1994 & Supp. 1996).

33. 42 U.S.C. § 5304(e) (1994).

34. 42 U.S.C. § 5311 (1994).

35. 861 F.2d 739 (D.C. Cir. 1988).

36. 25 U.S.C. § 4161 (Supp. 1996); 24 C.F.R. § 1000.538 (1998).

37. 25 U.S.C. § 4165 (Supp. 1996).

38. 24 C.F.R. § 1000.532 (1998).

39. Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule, 63 Fed. Reg. 12,347 (1998) (to be codified at 24 C.F.R. § 1000.532).

40. 25 U.S.C. § 4132 (Supp. 1996).

41. 24 C.F.R. § 1000.102 (1998).

42. The negotiated rulemaking requirement terminated with the publication of the final rule. Subsequent regulatory enhancements or changes will be subject to HUD's ordinary rulemaking procedures providing for public participation in rulemaking with respect to, among other functions, "grants, benefits, or contracts even though such matters would not otherwise be subject to rulemaking by law or executive policy." 24 C.F.R. § 10.1 (1998).

43. Exec. Order No. 13,084, 63 Fed. Reg. 27,655 (1998) (discussing consultation and coordination with Indian Tribal Governments).

44. 25 U.S.C. § 4151 (Supp. 1996).

45. 25 U.S.C. § 4152 (Supp. 1996).

46. *See* 63 Fed. Reg. 12,341-12,345 (1998).

47. The department standards for all HUD grant programs provide that "methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 C.F.R. part 205." 24 C.F.R. § 85.21(b) (1998).

48. 62 Fed. Reg. 35,718, 35,724 (1997).

49. 25 U.S.C. § 4134(b) (Supp. 1996).

50. Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n (1994 & Supp. 1996).

51. 25 U.S.C. § 4101(7) (Supp. 1996).

52. 24 C.F.R. § 1000.58(f) (1998).

53. 24 C.F.R. § 1000.58(g) (1998).

54. 24 C.F.R. § 1000.524(a) (1998).

55. 24 C.F.R. § 1000.58(c) (1998).

56. 24 C.F.R. § 1000.58(b) (1998).

57. Eric Nalder, et al., *A National Disgrace: HUD's Indian Housing Program*, SEATTLE TIMES, Dec. 1, 1996, at A16; *Tribal Housing*, SEATTLE TIMES, Dec. 1, 1996, at A1; *Key to HUD's Cashbox*, SEATTLE TIMES, Dec. 2, 1996, at A1; *Playing Favorites*, SEATTLE TIMES, Dec. 3, 1996, at A10; *Sending Good Money After Bad*,

SEATTLE TIMES, Dec, 4, 1996, at A11; and *Quinault Tribe: Minding the Rules, Making Them Work*, SEATTLE TIMES, Dec. 5, 1996, at A1.

58. 143 CONG. REC. S7,844 (daily ed. July 22, 1997) (statement of Sen. Gorton); 143 CONG. REC. S10,736 (daily ed. Oct. 9, 1997) (statement of Sen. Gorton).

59. WILLIAM SHAKESPEARE, THE TEMPEST, act V, sc. 1, line 183 (Alfred Harbage, ed., Penguin Books 1959).

60. The streamlined, question-and-answer format used in the regulation may be seen to comport with the observation of BRAVE NEW WORLD'S creator, a quarter-century after his dystopian "fable" was published, that:

> Abbreviation is a necessary evil and the abbreviator's business is to make the best of a job which, though intrinsically bad, is still better than nothing. He must learn to simplify, but not to the point of falsification. He must learn to concentrate upon the essentials of a situation, but without ignoring too many of reality's qualifying side issues. In this way he may be able to tell, not indeed the whole truth (for the whole truth about almost any important subject is incompatible with brevity), but considerably more than the dangerous quarter-truths and half-truths which have always been the current coin of thought.

ALDOUS HUXLEY, BRAVE NEW WORLD REVISITED ix-x (1958).

61. *See* MOMADAY, *supra* note 1, at 104 (1997).