

**ONE-STOP MORTGAGE  
CENTER INITIATIVE  
IN INDIAN COUNTRY  
A REPORT TO THE PRESIDENT**

**October 2000**

**U.S. Department of Housing and Urban Development**

**U.S. Department of the Treasury**



# Table of Contents

|   |            |
|---|------------|
| <b>EXECUTIVE SUMMARY .....</b>  | <b>v</b>   |
| <b>SECTION A: INTRODUCTION .....</b>  | <b>1</b>   |
| Chapter 1. Background .....   | 3          |
| Chapter 2. One-Stop Mortgage Center Initiative Process.....                                   | 13         |
| Chapter 3. A New Approach for Federal and Tribal Governments and the<br>Private Sector.....   | 17         |
| <b>SECTION B: BUILDING NATIONAL AND LOCAL CAPACITY TO<br/>    PROMOTE HOMEOWNERSHIP .....</b> | <b>21</b>  |
| Chapter 4. National Indian Homeownership Intermediary Proposal.....                           | 23         |
| Chapter 5. Capacity Building in Local Communities.....  | 27         |
| Chapter 6. Developing an Individual Development Account Program.....                          | 34         |
| Chapter 7. Land Use Planning and Infrastructure Development.....                              | 36         |
| Chapter 8. Legal Infrastructure.....  | 44         |
| <b>SECTION C: PROMOTING EDUCATION.....</b>  | <b>52</b>  |
| Chapter 9. Homebuyer Counseling in Tribal Communities .....                                   | 54         |
| Chapter 10. Financial Skills Curriculum.....  | 60         |
| <b>SECTION D: STREAMLINING THE MORTGAGE LENDING PROCESS.....</b>                              | <b>62</b>  |
| Chapter 11. The Mortgage Process.....   | 64         |
| Chapter 12. BIA Review Process .....  | 68         |
| Chapter 13. Environmental Issues.....   | 72         |
| Chapter 14. Land Issues.....  | 78         |
| Chapter 15. HUD Loan Products.....  | 82         |
| <b>SECTION E: FACILITATING PRIVATE SECTOR INVOLVEMENT IN<br/>    INDIAN COUNTRY.....</b>      | <b>88</b>  |
| Chapter 16. Outreach to Lenders and Tribes.....   | 90         |
| Chapter 17. Federal Government, National Nonprofit, and Other Resources..                     | 94         |
| Chapter 18. Title Insurance and Appraisals on Indian Land .....                               | 96         |
| <b>SECTION F: CONCLUSION .....</b>  | <b>102</b> |



## EXECUTIVE SUMMARY

This Report presents the recommendations of the task force partners of the One-Stop Mortgage Center Initiative. It responds to President Clinton's Executive Memorandum of August 6, 1998, directing the Secretaries of the U. S. Departments of Housing and Urban Development (HUD) and the Treasury to develop recommendations to help streamline mortgage lending in Indian Country.

To comply with the President's directive, Secretary Cuomo and then-Secretary Rubin, in consultation with Interior Secretary Babbitt, created an interagency task force with several working groups. The task force examined the need for home purchase capital and lending services in Indian country. This Report presents the work groups' recommendations on how to overcome the barriers that limit homeownership opportunities in Indian Country, and how to make the mortgage-lending process more user friendly and thus more attractive to private lenders.

To accomplish these objectives, the task force assessed current market conditions, consulted with Indian tribes and other Native American organizations, met with public- and private-sector partners, and together reached the conclusions that constitute the proposed solutions.

Through pilot programs at the Navajo Nation in New Mexico, Arizona and Utah and on the Oglala Sioux (Pine Ridge) Reservation in South Dakota, the One-Stop Mortgage Center Initiative was able to work with Indian communities to begin implementing those solutions.

The partners determined that the specific objectives of this Initiative are to simplify and shorten the mortgage lending process, build capacity of tribal communities, institutionalize programs and increase access to mortgage loans in Indian Country.

The One-Stop recommendations fall into four categories:

1. *Building national and local capacity to promote homeownership*
2. *Improving homebuyer education and financial skills programs*
3. *Streamlining the mortgage process*
4. *Increasing private sector involvement*

### ***Build National and Local Capacity to Promote Homeownership***

- Initiate a dialogue between tribes, tribal organizations and national and local intermediaries about how to create a new national homeownership intermediary with an exclusive focus on Indian Country.
- Develop and distribute *Shared Visions: Guide to Creating a Nonprofit Homeownership Entity*, and share the experiences and results of the One-Stop pilot sites at Navajo and Pine Ridge as models to be replicated in other Indian communities.
- Promote the expansion of Individual Development Accounts (IDAs) in Indian communities to foster savings to prepare for homeownership.
- Build tribal and tribal members' capacities to understand the mortgage process.
- Create an Interagency Infrastructure Roundtable to improve the Federal oversight of infrastructure development and to identify funding resources.
- Identify technical assistance and resources for tribal governments that wish to enhance their legal infrastructure and tribal court systems to support the private mortgage lending environment.
- Work with tribes to improve land use planning, zoning, housing needs assessments and related matters to create the governmental tools necessary to accelerate the lending process.

### ***Improve Homebuyer Education and Financial Skills Programs***

- Develop a curriculum for homebuyer education through a partnership with the Neighborhood Reinvestment Corporation, HUD's Office of Native American Programs and other national and local partners.
- Design a financial skills curriculum targeted to young Native Americans in tribal and community colleges and other venues.
- Initiate a financial literacy campaign in Indian Country.

### ***Streamline the Mortgage Process***

- Draft an interagency model lease for tribal trust land and model mortgage code to provide the necessary legal infrastructure to support mortgage financing in tribal communities.
- Develop an interagency process for determining tribal eligibility for Federal loan programs.
- Standardize flow charts that summarize the mortgage processes for loan programs on fee simple, tribal trust and allotted lands.
- Clarify and update the Bureau of Indian Affairs' review process for trust and leasehold mortgages.
- Coordinate environmental reviews for homeownership projects involving

- multiple agencies and identify resources for environmental compliance.
- Streamline the trust acquisition process for land used for residential purposes, clarify the protection of the trust status of individual trust land used as collateral for mortgage loans, and develop a clear partition process for allottees to obtain mortgage financing.
- Identify inconsistent definitions of terms in Federal loan programs for Native Americans.
- Launch a One-Stop Mortgage Center Initiative web site on the Internet to serve as a central source of information.
- Identify enhancements to HUD's Native American homeownership programs.

### *Increase Private Sector Involvement*

- Improve interagency training and outreach to lenders and tribes on Federal and conventional loan programs.
- Publicize success stories.
- Identify and disseminate information on the resources available to spur the mortgage market.
- Increase the availability of title insurance and homeowners insurance on Indian land.
- Provide guidance on the appraisal of Indian lands.

### **Current Conditions**

Over 67 percent of American households own their own homes. The minority homeownership rate has reached a record high of 48 percent. Homeownership for Native Americans, however, remains elusive: at just under 33 percent, it is one of the lowest rates in the country, according to the National American Indian Housing Council (NAIHC). HUD estimates that over 230,000 housing units are needed for American Indian and Alaska Native families. Of those families that are housed, many live in overcrowded or substandard conditions.<sup>1</sup>

One example of the depth of need: Using the funds appropriated under HUD's Indian Housing Block Grant (IHBG) Program, authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), tribes planned to build, acquire or rehabilitate approximately 10,000 rental and homeownership units in Fiscal Year 1999. At current funding levels this solves only five percent of Indian Country's existing housing problems. The remaining unmet need: 220,000 units.

The First Nations Development Institute estimates that 38,250 families in Indian Country have incomes sufficient to afford traditional home mortgages. By

improving homeownership opportunities in Indian Country, and by offering innovative solutions, the One-Stop Mortgage Center Initiative will bridge the housing gap and help close it for Native Americans. Although there is little research available to quantify the demand for mortgage financing in Indian Country, this data suggests that a substantial number of families have incomes, creditworthiness and the down payment ability to sustain home mortgage financing. Comparing this estimate to the low volume of mortgage loans in Indian Country provides a good indicator of the unmet needs.

These homeownership barriers have existed for many years. American Indians and Alaska Natives seeking mortgage loans not only deal with traditional off-reservations reviewers such as credit bureaus, lenders and appraisers; they must also obtain approvals from Federal, tribal, and often local agencies as well. Those entities have been operating with little coordination, making it difficult, if not impossible, to secure the necessary approvals within a time frame that approximates what a lender expects.

Private lenders have had to learn to work with new issues. They have had to learn about tribal governments and tribal laws. After becoming familiar with trust land status, they are faced with decisions such as whether they can lend using a leasehold interest as collateral for a mortgage. Other challenges lenders and borrowers face include:

- higher lender transaction costs on trust land;
- higher pre-development costs on such land, such as surveys and environmental assessments;
- higher infrastructure costs in remote, rural or underdeveloped areas;
- lack of information about available loan programs;
- poor or no homebuyer credit history;
- lack of culturally relevant homebuyer and financial skills education; and
- lack of savings and assets in tribal communities.

<sup>1</sup>This figure comes from data, provided by NAHASDA recipients, used to compute the FY 2000 IHBG allocations. It includes households that are overcrowded or substandard with annual incomes less than 80 percent of the area median income minus current assisted housing stock.

## Looking Ahead

Many of the actions and activities discussed above are already underway, and some have been completed. A few require changes to existing law. To implement those changes, the One-Stop task force offers proposed legislative language, where appropriate, to accomplish its objectives.

Institutional change often occurs slowly. To spur such change, Federal, tribal and private sector resources must be directed at this problem. Funds must be allocated to build capacity at both the local and national levels to support mortgage lending markets. A network of local intermediaries or “one-stop mortgage centers” can begin to build this capacity on a grass roots level. A dialogue has begun about the creation of a national homeownership intermediary for Indian Country. It will be up to tribal leaders and regional and national Indian organizations to continue this effort, with support from the Federal government and the private sector.

Affordable, attainable homeownership opportunities do exist in Indian Country, but they are currently hard to find. Implementing these recommendations will assist Indian families in turning their dreams of homeownership into reality.



## SECTION A: INTRODUCTION

During National Homeownership Week in June 2000, President Clinton announced that record levels of Americans owned their own homes and that the minority homeownership rate had reached a record high of 48 percent. The homeownership rate for Native Americans, however, remains under 33 percent according to the National American Indian Housing Council (NAIHC). A recent Urban Institute study found that American Indian and Alaska Native homeownership rates are well below those of non-Indian households. While homeownership opportunities continue to increase, a large disparity still exists in Indian Country.

The First Nations Development Institute estimates that 38,250 families in Indian Country have the income to qualify for a home loan. Accordingly, the One-Stop Mortgage Center Initiative is designed to help to fill the housing needs for these Native American families by significantly increasing the production of new homes in Indian Country through private and governmental mortgage financing.



## CHAPTER 1. BACKGROUND

### PRESIDENT CLINTON'S EXECUTIVE MEMORANDUM

For many years, American Indian and Alaska Native communities have encountered barriers to financing of homeownership in Indian Country. Residents of Indian reservations seeking to acquire home loans are required to obtain numerous approvals and deal with distant providers.<sup>1</sup> Those entities have been operating with little coordination. Lenders have had to learn to work with changing land status issues and different tribal government structures. In addition, serious challenges to private lending are posed by:

- Higher transaction costs.
- Higher pre-development land costs for infrastructure development.
- Lack of mortgage information.
- Lack of existing housing.
- Lack of homebuyer and financial-skills education.
- Lack of savings.

To begin to address these problems, President Clinton issued an Executive Memorandum on August 6, 1998, directing the Secretaries of HUD and Treasury to work together with local tribal governments and other Federal agencies to help to streamline the mortgage lending process on Indian reservations. In response to the President's Executive Memorandum, HUD and Treasury, in consultation with the Department of Interior, created the One-Stop Mortgage Center Initiative interagency task force.<sup>2</sup>

The goal of the interagency task force was to make the mortgage process more user-friendly to consumers and lenders. The specific objectives are to:

- Simplify the loan process.
- Develop the capacity of tribal communities to support a private mortgage market.

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<sup>1</sup> "Private providers" could include lenders, contractors, appraisers, inspectors, insurance agents, surveyors, architects, archeologists, etc.

<sup>2</sup> Jacqueline L. Johnson, HUD Deputy Assistant Secretary for the ONAP, and Michael Barr, Treasury Deputy Assistant Secretary for Community Development Policy, co-chair the initiative.

- Structure programs to improve homebuyer readiness.
- Shorten the period to obtain home loans.
- Increase access to government guaranteed/insured and conventional mortgages.

This report identifies barriers that limit opportunities, makes recommendations to address the barriers, and presents an action plan to implement the recommendations. In addition, through a pilot program on the Navajo Nation and another on the Oglala Sioux Reservation, the One-Stop Mortgage Center Initiative will begin to help bolster the local capacity of Indian communities across the country to promote a mortgage lending market. The initiative also recommends identifying sources of funding for one or more Native American national and regional homeownership intermediaries that would serve as a national resource to support a network of Indian community-based organizations.

#### HISTORICAL BACKGROUND ON INDIAN LAND STATUS

In the 1998 Executive Order on “Consultation and Coordination with Indian Tribal Governments” (#13084, 63 FR 27655, May 19,1998), President Clinton explained:

“Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation has guaranteed the right of Indian tribes to self-government.... Indian tribes exercise inherent sovereign powers over their members and territory....”

*Executive Order 13084 (1998).* In 1790, Congress enacted the Indian Non-Intercourse Act prohibiting anyone from acquiring land from Indian tribes without Federal Government approval. In the early years of the Republic, the President appointed commissioners to negotiate with tribes to acquire land through treaties, which were ratified by the Senate. The treaties also demarcated Indian reservation boundaries, and under Federal law, the United States typically held legal title to reservation lands in trust for the benefit of the tribe. These lands are referred to as “*tribal trust lands*” and even today, they may not be alienated without congressional consent.

In the 1880’s, Congress enacted the General Allotment Act of 1887, which divided some reservation lands among individual tribal members in 160- or 320-acre

parcels, with other lands sold as surplus. The resulting individual allotments that were made to tribal members are now commonly referred to as “*individual Indian trust lands*” or “*individual allotted lands*.” These lands may only be sold with the approval of the Secretary of the Interior.

Many Indian reservations were dramatically reduced through “sales” of surplus lands over Indian objections, fraudulent transactions involving individual allotments, or forced transfer of the trust land into fee simple status, with subsequent loss through State tax sales. During the Allotment period from 1887 to 1934, American Indian landholdings in the lower 48 States dropped from 138 million acres to 48 million acres, leaving many reservation Indians in poverty. In 1934, the Indian Reorganization Act halted further allotment of tribal lands.

Today, under that Act, the Indian Land Consolidation Act, and other legislation, tribal governments are working to consolidate or rebuild the tribal land base to preserve reservations as “permanent homes,” in accordance with treaty pledges. As the President explained at the White House “Building Economic Self-Determination in Indian Communities” Conference on August 6, 1998, the treaties are “solemn” pacts. While our Nation “did not live up to its side of the bargain in the past, we can and we must honor [those pacts] today and into that new millennium.”

Outside of Indian Country, private landholders throughout the United States hold title to their land in fee simple status,<sup>3</sup> which simply means that the landowner holds both the legal and equitable title to the land. Accordingly, private landowners may mortgage or sell their land on their own initiative. The real estate market has grown up around such transactions, and is thriving in today's climate of low-interest mortgage financing.

The establishment of the allotment system began long before the modern real estate system was established. As modern real estate transactions became more dependent on the use of land as collateral and the free transfer of title between parties, the legal restrictions associated with tribal and individual trust land became an impediment to potential homebuyers in Indian Country securing private mortgage financing.

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<sup>3</sup> In the State of Hawaii, however, Native Hawaiian lands are also often held in trust, with long-term leases executed for development or other purposes.

To accommodate the policy of preserving Indian lands while also promoting homeownership, in 1956 Congress authorized the Secretary of the Interior to approve mortgages of individual Indian trust lands. “For the purposes of any foreclosure or sale proceeding” under such a mortgage, the land is treated as unrestricted fee simple land and may be foreclosed under applicable State or tribal law. These mortgages on individual Indian trust land or allotted land are called “*trust mortgages*.”

Congress recently authorized Indian tribes, with the approval of the BIA, to lease tribal trust lands for housing purposes for 50-year periods. Tribes have the authority to lease tribal trust land to tribal members to use as collateral for mortgage loans, called “*leasehold mortgages*.” Some tribes are now planning master leases for residential subdivisions in Indian reservation towns to reduce transaction costs for individual Indian homebuyers.

Yet, even with this authority few Indians living on reservations have been able to obtain mortgage loans on the private market. Even where the authority was clear to lenders and borrowers, there was sometimes a reluctance to enter the market because of the intricacies of obtaining governmental approvals for mortgages of individual Indian lands and leases of tribal trust lands. Because of these continued problems accessing mortgage financing, Congress enacted legislation to create government direct, insured, and guaranteed loan programs to spur the lending market in Indian Country. For example:

- Section 184 of the Housing and Community Development Act of 1992 authorizes HUD to guarantee loans made by private lenders to Native Americans on trust and fee land in Indian areas.
- The Department of Veterans Affairs was authorized to create the Native American Veteran Direct Loan Program to assist Native American veterans residing on trust land and to purchase or rehabilitate homes.
- HUD’s Section 248 insurance program allows the Federal Housing Administration to insure mortgages on Indian lands held in trust.
- The U.S. Department of Agriculture (USDA) began offering its Rural Housing Services programs on trust land, including the Section 502 Direct and Guaranteed Single Family Housing Loan Programs, Mutual Self-Help Housing Program and Section 504 Loans and Grants for home improvements and repairs.

Federal agencies and lenders are working to make the most of these government mortgage programs on Indian lands; however, they still face significant challenges.

#### HISTORICAL BACKGROUND ON HOUSING IN INDIAN COUNTRY

Another factor contributing to the difficulties of accessing mortgage financing in Indian Country has been the difficulty encountered by tribal governments and their members in transitioning from the Federal Government's historical provision of public housing through Indian Housing Authorities (IHAs) to privately financed home loans.

Although the Public Housing program was established in 1937, IHAs were not eligible for funding until 1961 to develop and operate low-income housing projects on reservations and other areas subject to tribal jurisdiction. From 1961 to 1996 tribally- and State-created IHAs provided housing assistance for tens of thousands of Native American families through the Mutual Help Homeownership and the Low Rent programs.

***Mutual Help.*** The primary homeownership program for Native Americans, the Mutual Help Homeownership program was developed in the early 1960's to offer homeownership opportunities at an affordable cost. Although it is technically a rent-to-own program, it is not market-based and bears little resemblance to homeownership through mortgage financing. While HUD reports these units as homeownership units, these data are somewhat misleading because they do not reflect homeownership as it is generally understood off Indian reservations.

Most families selected for mutual help units must have incomes at or below the low-income limit which is defined as 80 percent of median income. Applicants selected must make an upfront initial contribution valued at least \$1,500. The contribution may be made in cash, or in the form of the value of the land, labor, materials or equipment.

***NAHASDA.*** The enactment of the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) transformed the way in which HUD provides housing assistance to Indian tribes and Native American families. Unlike the U.S. Housing Act programs which were competitive grants going to IHAs, NAHASDA is an annual formula-based grant that goes directly to the

tribes or their Tribally Designated Housing Entities (TDHEs) for a wide range of affordable housing activities.

***The Demand.*** First Nations Development Institute estimated in 1999 that 38,250 tribal families had the resources available to purchase homes if loans were available. Moreover, if families were provided with downpayment assistance, the number of families that could meet monthly mortgage payments would be substantially higher.

Anecdotal evidence suggests that the demand for homeownership through private financing is growing. Indian families that have consistent, gainful employment are exploring homeownership opportunities because they can afford a better quality home or they have exceeded eligibility requirements for any assistance.

These potential homebuyers recognize the other benefits of homeownership: appreciation, stabilization of housing costs, and tax deductions not available to rental or mutual help participants. Homeownership is an important asset to pass on to their children and to future generations.

Until recently, middle-income households chose to move off the reservation to take advantage of these benefits. This movement has created the same problems on reservations as those caused by middle-class flight from inner cities.

Homeownership is becoming an alternative for some tribal families as credit becomes more readily available. Tribal leaders hope that a private lending market will develop and help fuel economic growth on Indian reservations.

## **The Research**

A recent report, *Assessment of American Indian Housing Needs and Programs: Final Report* (Urban Institute Center for Public Financing and Housing, May 1996), partly attributed the housing need in tribal areas to “past Federal practices, low incomes associated with limited education and few job opportunities, and remote locations,” and indicated that “some of the problem is due to lack of private financing in Indian Country.” According to their findings, many Native Americans living on trust land experienced problems with overcrowding and

lack of plumbing and said that if other ownership and financing opportunities were available, higher income families would pursue that option.

*A 38-State Study of Financial Services, Banking and Lending Needs in Native Communities*, a study conducted by First Nations Development Institute published in 1998, identified several banking and credit needs—most notably a need for housing finance, including construction, rehabilitation and home improvement credit.

**The Low Loan Volume.** In FY 1999, there were only 471 mortgage loans made in Indian areas through Federal direct, insured or guaranteed programs, and conventional programs under Fannie Mae and Freddie Mac.<sup>4</sup> Conventional loans held in lenders' loan portfolios cannot be determined. In any event, loan volume in Indian Country is extremely low. A 1998 Government Accounting Office study used data provided by the BIA to estimate that only 91 conventional home loans were made to Native Americans on trust land from 1992 to 1996.

**HMDA Data.** The most common source of information on mortgage lending is provided in accordance with the Home Mortgage Disclosure Act (HMDA). Through HMDA data, it is possible to determine the number of mortgage loans extended to American Indians or Alaska Natives, but this source does not distinguish whether those individuals live on or off trust land or Indian areas.

The 1999 HMDA data show a 44.4 percent increase in the number of home purchase loans made to Native Americans—the highest increase among minority groups. It is impossible to determine, however, how much of that increase occurred on Indian reservations or in Indian areas. In fact, given the low volume of loans in 1999 to Native Americans in Indian areas (471), it is likely that most of mortgage loans to Native Americans reported in the 1999 HMDA date (20,965) were extended to Native Americans living in urban areas or off reservations. It is also important to note that the loan denial rate to Native Americans in 1999 remained high—over 42 percent, second only to denials to black applicants at 49 percent.

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<sup>4</sup> For a breakdown of the types of loans the 471 figure includes, see Chapter 2 of this report.

## ECONOMIC DEVELOPMENT EFFORTS

The One-Stop task force attributes low homeownership statistics to complex tribal and Federal approval processes that are targeted for reform by this effort. However, without job growth and income-producing business activities on reservations, homeownership will remain out of reach for low-income families—regardless of the success of the One-Stop Mortgage Center Initiative to streamline the mortgage process and improve educational programs.

To help address this need for economic opportunities on Indian reservations, in April 2000 ONAP implemented a \$2 million White House initiative by creating a Native American Economic Development Access Center called “**Native eDGE.**” The Access Center will, for the first time, link more than 12 governmental agencies through a single point of contact. Entrepreneurs, Native Americans, tribal governments, lending institutions, nonprofits, foundations and private businesses can collaborate to achieve sustainable economic development in Indian Country. Experienced economic development specialists will provide personalized research, initiate dialogue, coordinate Federal agencies and resources, and share their knowledge and experience to ensure that relationships are developed and that information and guidance are provided to promote economic growth for tribal enterprise development, Indian-owned businesses, and tribal partnerships.

Native eDGE is comprised of three primary components:

1. A toll free technical assistance call center.
2. An interactive Web site at <http://nativeedge.hud.gov> with a publications clearinghouse to distribute printed materials on demand.
3. Direct prompt technical assistance by economic development specialists.

In addition, the Department of Treasury’s Community Development Financial Institutions Fund (the Fund) is conducting a Native American Lending Study that was included in the Fund’s enabling legislation, P. L. 103-325, the Riegle Community Development and Regulatory Improvement Act of 1994. The Native American Lending Study will identify barriers and the impact of such barriers on access to capital and credit lending on Indian reservations and other land held in trust by the United States. Although this study will address mortgage financing, its scope is much broader, including small business lending, equity financing for

tribal enterprises and Indian-owned firms, consumer borrowing and infrastructure development.

Specifically, the study will identify barriers to financing and investment, identify and assess the impacts of such barriers to credit and capital, and submit a final report of findings and recommendations to the President and the Congress. It is anticipated that the study will be completed by the end of 2000. The report may include recommendations for: (1) any necessary statutory and/or regulatory changes needing to be made to existing Federal programs, and (2) policy recommendations for community development financial institutions, insured depository institutions, secondary market institutions, and other private sector capital institutions that would assist in better serving Native Americans, Alaska Native and Native Hawaiian communities. As an integral part of the study the Fund has conducted 13 regional lending and investment workshops. Participants in these workshops included financial institutions, tribal leaders, Federal and State agencies, non-profit organizations and secondary market organizations.

To help further these economic development efforts, the Clinton Administration proposed additional funding for FY 2001. The President's budget proposes new funding to create Small Business Development Centers in Indian Country to provide business and technical assistance to Native American entrepreneurs. Another new initiative is a \$5 million grant program through HUD to provide financial support for tribal colleges and universities to address the neighborhood revitalization, housing and community development needs within their community.

In addition, the Administration requested an increase over last year's funding for the Community Development Financial Institution Fund to continue building a national network of community development banks, thrifts, credit unions, and other financial institutions focused on rejuvenating low-income communities. In order to increase access to capital in Indian Country, the budget proposes a \$5 million set-aside within the Fund to establish training and technical assistance focused on eliminating barriers to capital access.

Finally, the budget proposes \$1.25 million to expand the Department of the Treasury's BusinessLINC program to Indian Country. BusinessLINC establishes mentor-protégé relationships between large and small businesses.

These efforts to stimulate economic development in Indian Country will help to sustain a strong mortgage market.

## CHAPTER 2. ONE-STOP MORTGAGE CENTER INITIATIVE PROCESS

### OVERVIEW

The One-Stop Mortgage Center Initiative process began with the issuance of President Clinton's Executive Memorandum on August 6, 1998 at the White House conference on "Building Economic Self-Determination in Indian Communities." The Memorandum directed HUD Secretary Andrew Cuomo and then-Treasury Secretary Robert E. Rubin to develop partnerships with tribal governments, other Federal agencies, and the private sector to initiate a project to help streamline the mortgage lending process in Indian Country.

### TASK FORCE PARTNERS

The Federal partners include the BIA, USDA, HUD, Department of Interior, Department of Justice, Department of the Treasury, Department of Veterans Affairs, Federal Deposit Insurance Corporation, Federal Housing Finance Board, Federal Reserve Board of Governors, Federal Reserve System, Ginnie Mae, and Indian Health Service (IHS). National partners include American Homeowner Education Counseling Institute, The Enterprise Foundation, Fannie Mae, Federal Home Loan Bank System, First Nations Development Institute, Freddie Mac, Housing Assistance Council, National American Indian Housing Council (NAIHC), Neighborhood Reinvestment Corporation and a variety of lenders, insurers and local housing providers. Tribal partners included various tribal departments of the Navajo Nation and the Oglala Sioux Nation, Navajo Partnership for Housing, Inc., Oglala Sioux Tribe Partnership for Housing, Inc. as well as representatives from many other tribes and Tribally Designated Housing Entities (TDHEs). A complete list of task force members appears in Appendix A.

The Federal agencies began meeting about the One-Stop Mortgage Center Initiative in September, 1998. The first meeting of nearly 100 initiative partners took place in November 1998 in Window Rock, Arizona on the Navajo Nation. Task force work groups were established at this meeting to address both national and local issues.

### TASK FORCE WORK GROUPS

The task force divided into four national work groups in order to identify specific barriers and propose recommendation:

- *Work Group I—Federal Agency Cooperation and Coordination* addressed how to eliminate inconsistencies between Federal mortgage programs.
- *Work Group II—Land Issues* explored how to remove barriers associated with using trust land as collateral for mortgage loans.
- *Work Group III—Creditworthiness Issues* researched and made recommendations on the need for education to promote mortgage lending in Indian Country.
- *Work Group IV—Need for Private Partners* explored how to help develop a private mortgage industry on Indian reservations.

### TRIBAL CONSULTATIONS

In accordance with President Clinton’s April 29, 1994 Presidential Memorandum on “Government-to-Government Relations with Native American Tribal Governments,” HUD and Treasury hosted a series of consultation meetings with tribal leaders to solicit feedback. These meetings occurred in 1999 in Arlington, Virginia; Washington, DC; Portland, Oregon; Minneapolis, Minnesota; Phoenix, Arizona and Denver, Colorado. At these meetings, tribal officials emphasized the need for Federal agencies to coordinate their roles in the mortgage loan process. They also encouraged flexibility in Federal programs to allow for the development of innovative demonstration projects on the local level. While tribal officials appreciated Federal efforts to identify additional resources and technical assistance programs, they stressed the need for decision-making to remain at the tribal government level.

HUD and Treasury also distributed these recommendations to all participants at HUD’s Shared Visions Summit I in Chicago, Illinois in April 1999, encouraging tribal representatives to provide comments and feedback to the task force. In addition, the task force hosted a pre-conference meeting at the summit presenting the recommendations in detail and soliciting volunteers to join implementation teams for the initiative. Finally, HUD mailed copies of these recommendations to all Indian tribes, housing authorities and tribal designated housing entities soliciting comments and feedback. Through this outreach and consultation, over 150 members have joined the One-Stop task force.

## LOCAL PILOTS

In addition to the work groups at the Federal level, local work groups at the Navajo Nation and Oglala Sioux reservations contributed to the report's recommendations. These pilot programs are seeking to integrate reforms in the Federal processes with private markets on the local level. They served as the basis for determining the practicality of recommendations. This report includes the results of the pilots in Appendixes C and D so that other tribal governments can benefit from their efforts and potentially replicate their successes.

## IMPLEMENTATION TEAMS

Once the national One-Stop task force and the local pilots compiled the recommendations, HUD and Treasury organized implementation teams for further research and to pursue the recommended tasks. Any tribal representative, Federal Agency staff, or private sector partner is encouraged to join this initiative to offer further input on recommendations and/or to assist in the implementation of the initiative.

## A BASELINE FOR MEASURING SUCCESS

It is often difficult to measure the success of a long term initiative that involves diverse multiple partners. A key indicator of success of the One-Stop Mortgage Center Initiative will be the number of future mortgage loans in Indian Country.

***Mortgage Loan Volume.*** The chart shows that the number of Government-Sponsored Enterprise, federally funded direct, insured or guaranteed mortgage loans in Indian areas<sup>5</sup> in FY 1999. These figures can serve as the baseline for measuring future mortgage volume. Increases in the volume of these loan programs will also depend on continued appropriations from Congress to fund the Federal programs.

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<sup>5</sup> Indian areas are defined by tribes or TDHEs as part of their Indian Housing Plans required by NAHASDA.

| Type of Mortgage Loan  | Number of Mortgage Loans in FY 1999 |
|--|-------------------------------------|
| HUD Section 184 Indian Loan Guarantee Program                                  | 165                                 |
| HUD Section 248 Mortgage Insurance Program                                     | 11                                  |
| USDA—RHS Section 502 Direct Home Loan Program                                  | 40                                  |
| USDA—RHS Section 504 Housing Repair Assistance Program                         | 108                                 |
| U.S. Department of Veterans Affairs (VA) Direct Home Loan for Native Americans | 31                                  |
| Conventional loans under the Fannie Mae Program on trust land                  | 16                                  |
| Conventional loans under the Freddie Mac Program on fee simple land            | 100                                 |
| <b>Total Loans</b>   | <b>471</b>                          |

Tracking the total number of conventional mortgage loans in Indian Country is more of a challenge than measuring Federal direct, insured or guaranteed loans since lenders do not report conventional mortgage loans by Indian area. As a result, it is difficult at this point to establish a baseline for the number of conventional loans in Indian areas. However, Fannie Mae estimates that it has provided over \$30 million in Native American housing investments in 1999, serving over 265 households, including 16 conventional loans; and Freddie Mac estimates that it has invested \$11.3 million in approximately 100 conventional loans in Indian Country. These numbers do not capture the number of conventional loans made in Indian Country that are held in the lenders' portfolios rather than being sold in the secondary market.

***Other Measures of Success.*** Another measure of the success of the One-Stop Mortgage Center Initiative will be the number of one-stop mortgage centers that are created by tribal communities. The Navajo Nation and the Oglala Lakota Nation have created the first two centers. Other smaller tribal communities may have entities that are beginning to function as one-stop mortgage centers.

Other measures of success may include the increase in the number of home-buyer education programs targeted to Native communities and financial skills classes in tribal colleges. In addition, the initiative will monitor the level of commitment from its national partners to serve the mortgage lending needs of Indian Country.

## CHAPTER 3. A NEW APPROACH FOR FEDERAL AND TRIBAL GOVERNMENTS AND THE PRIVATE SECTOR

### OVERVIEW

The One-Stop Mortgage Center Initiative task force has reviewed Federal and tribal processes and programs in order to compile the following recommendations that reinvent government consistent with the principles of Vice President Al Gore's National Performance Review initiative. These recommendations fall into four areas:

1. They recommend institutional development through the creation of one or more national intermediaries that could support a network of local capacity building entities—or one-stop mortgage centers.
2. The recommendations address the need for the education of potential homebuyers.
3. They suggest ways to streamline the mortgage lending process in Indian Country.
4. They present ideas about how to catalyze the private real estate market at national and local levels.

### FEDERAL GOVERNMENT INITIATIVES

To create a Federal government that works better and costs less, this initiative seeks to streamline the Federal approval processes of mortgage loans in Indian Country by eliminating duplicate steps and unnecessary requirements. Federal agencies that offer guarantee or insurance programs for mortgage loans or direct loan programs are identifying incentives and improving outreach efforts. These include assisting tribal communities to develop homebuyer education and financial skills programs; providing information to tribal governments about how to design projects that leverage Federal resources with private sector financing; and identifying sources of funds and technical assistance to support a private mortgage market.

## TRIBAL GOVERNMENTS' ROLES

Tribal governments must also take steps to better the process:

- Identify a lead agency responsible for overseeing homeownership initiatives on the reservation. This could be a new or existing entity that would serve as a one-stop mortgage center.
- Assess the housing and homeownership needs of the community.
- Educate members about both the benefits of homeownership and the responsibilities of being a loan customer.
- Strategize land use planning to ensure that communities have adequate physical infrastructure to support housing development, including roads, power, water, and sewer systems.
- Educate tribal leaders about how mortgage lending works and familiarize them with the players in the process—including lenders, brokers, secondary market investors, insurers, BIA realty officers, and other Federal and tribal government staff.
- Develop and enhance their legal infrastructure and tribal court systems to ensure that the appropriate laws and ordinances are in place to support the market. In addition, they should ensure the enforcement of those laws, including mortgage-related laws such as collections, evictions and foreclosure ordinances.
- Consider the impact of mortgage lending on their sovereignty and culture:
  - Whether having access to a broader range of private sector conventional financing is worth agreeing to a limited waiver of sovereign immunity or whether it makes more sense to explore government direct, insured or guaranteed mortgage programs that do not require sovereign immunity to be waived.
  - What role the tribal government should have with the disposition of a home in the event of foreclosure, e.g., exercising its right of first refusal.
  - How mortgage lending can be incorporated into traditional practices such as land assignments, traditional housing developments or grazing rights.
  - Whether tribal members prefer to reside in scattered sites, subdivisions or village developments.

Each of these initiatives must originate from within tribal governments. While the task force seeks to provide assistance and information about resources available to tribal governments in developing systems to support a mortgage market, as sovereign nations, tribes must determine what would best serve their members and communities.

#### PRIVATE SECTOR INVOLVEMENT

Private sector lenders have a role to play in the development of private mortgage financing. They can assist tribes in the development and distribution of homeownership counseling materials and can reach out to tribes and tribal members with whom they do business to educate themselves about the tribal market. This relationship-building process can help to create a cooperative environment which can lead to successful lending strategies.

Private lenders have a responsibility to clearly articulate their legal requirements. They should be flexible in negotiations to determine if existing tribal legal infrastructures meet those requirements without mandating sovereign immunity waivers. For example, the mortgage document adopted by the Navajo Nation includes an extra step for lenders and borrowers in the event of a delinquency. At the loan closing, the borrower has the right to request that delinquency notices be delivered in person by a Navajo speaker from a designated nonprofit. By agreeing to this procedure, lenders and borrowers have the added protection of early intervention counseling to avoid foreclosure.



## **SECTION B: BUILDING NATIONAL AND LOCAL CAPACITY TO PROMOTE HOMEOWNERSHIP**

One of the most important findings of the One-Stop Mortgage Center Initiative task force is that tribal communities are seeking assistance to build their capacity to support mortgage lending assistance on both the national and local levels.

Nationally, Indian Country could benefit from a national institution focused exclusively on promoting homeownership in Indian Country.

Locally, tribal governments are looking for technical assistance to develop administrative capacity, asset building strategies, land use plans, physical infrastructure, and legal frame work to support their homeownership programs.

Section B presents information in these areas:

Chapter 4. National Indian Homeownership Intermediary Proposal

Chapter 5. Capacity Building in Local Communities

Chapter 6. Developing an Individual Development Account Program

Chapter 7. Land Use Planning and Infrastructure Development

Chapter 8. Legal Infrastructure



## CHAPTER 4. NATIONAL INDIAN HOMEOWNERSHIP INTERMEDIARY PROPOSAL

### OVERVIEW

In recent times, there has been a significant expansion of homeownership in the inner cities and rural communities. In substantial part, this has been the result of several decades of investment by the Federal Government and the private sector in an array of national and local intermediaries that have helped to make these communities attractive for private sector housing investment and to prepare households for the responsibilities of homeownership. Indian Country is in need of a similar investment in intermediary capacity.

A national Indian homeownership intermediary with an exclusive focus on developing legal and administrative frameworks would be more effective than existing nonnative organizations that have little or no experience with tribal sovereignty issues and doing business on Indian reservations.

A national Indian homeownership intermediary could also provide the institutional support necessary to help tribal communities establish local intermediaries—or one-stop mortgage centers—to improve the homebuyer readiness of tribal members. Successful efforts to expand homeownership opportunities for low- and moderate-income households off reservation have depended on these types of community-based organizations to help homebuyers navigate through the mortgage lending process and to provide homeownership and credit counseling. In tribal communities, the role of local intermediaries is even more critical because:

- Most tribal members are first-time and often first-generation homebuyers.
- The process of obtaining mortgages on Indian reservations is more complicated than off reservations.
- Indian communities present unique legal and cultural intricacies to lenders, developers, and builders.
- Indian communities lack the traditional industry players who usually assist first-time homebuyers, such as real estate agents.

Some tribal communities have accessed financial resources and technical assistance through existing national intermediaries such as the Neighborhood

Reinvestment Corporation, The Enterprise Foundation, Housing Assistance Council, or Local Initiatives Support Corporation. In addition, national Indian organizations such as the National American Indian Housing Council (NAIHC) and First Nations Development Institute have provided services in the area of mortgage lending and homeownership. However, none of these organizations focus exclusively on promoting homeownership opportunities in Indian Country.

#### PROMOTING NATIONAL HOMEOWNERSHIP INTERMEDIARY DEVELOPMENT

##### **Barrier**

Institutions focused on serving Indian Country by providing homebuyer education and promoting mortgage financing are limited. Significant growth will depend on substantial, long-term investments in local and national homeownership intermediaries.

##### **Solution**

The One-Stop Mortgage Center Initiative task force will encourage development of a national homeownership intermediary for Indian Country. The NAIHC and The Enterprise Foundation have convened the first in a series of roundtable discussions.

Many participants stressed the need for the development of a national intermediary to be initiated by forces from within Indian Country including tribal governments, housing entities and regional organizations. Accordingly, President Clinton's FY 2001 Budget Proposal included a \$5 million request for funding to be targeted to local homeownership intermediaries in Indian Country. This proposed funding source is meant to help tribal communities implement the one-stop mortgage center model presented in this report in Chapter 5. Congress is considering the proposal as part of HUD's FY 2001 appropriations.

By investing this capital and technical assistance to build capacity on the local level, a grass roots, Indian community-based movement can help drive the national process. The success of this long-term strategy, however, will depend on the ability of the local communities to work together so that national leadership will emerge from within. Regional tribal organizations may be the best situated to help facilitate this process. In the meantime, the One-Stop task force is organizing roundtable discussions with national and regional organizations representing Indian Country to launch the organizational process. Participants in

the national intermediary roundtable include: The Enterprise Foundation, Federal Housing Finance Board, Federal Reserve Board of Governors, First Nations Development Institute, Housing Assistance Council, ONAP, NAIHC, National Congress of American Indians, National Native American Development Bank, Neighborhood Reinvestment Corporation, Rural LISC, Rural Community Assistance Program, and the Treasury Department's Community Development Financial Institution Fund.



## CHAPTER 5. CAPACITY BUILDING IN LOCAL COMMUNITIES

### OVERVIEW

Expanding homeownership opportunities begins with local organizations that can serve as resources for potential buyers. Locally-based and familiar with the unique cultural and economic characteristics of their communities, these organizations offer critical services. Local intermediaries prepare families for homeownership, serve as liaisons with lenders, insurers, tribal governments, builders, and advocate for reforms at the tribal level. In addition, some act as local housing developers, assembling financing and developing housing in circumstances that at present cannot attract sufficient private developers to meet local housing needs.

Lenders may be more willing to participate with an intermediary that is familiar with a tribe's codes, ordinances, language and customs. The intermediary could provide homeownership and home loan counseling.

One of the most common types of local housing intermediaries is a nonprofit. According to a January 1999 study published by the National American Indian Housing Council (NAIHC), *An Examination of the Role of Nonprofits in Tribal Communities*, "Nonprofit organizations have become an important part of the production and provision of affordable housing and housing-related services for low-income populations."

The study, which was funded by HUD, indicated that the staff and budget levels were small. For many of the nonprofits housing services were secondary. The study concluded there is a need to help these tribally based nonprofits expand their services, perhaps, through the flexibility provided by Native American Housing Assistance and Self-Determination Act (NAHASDA).

The Progress achieved with homeownership on the Navajo Nation and Pine Ridge communities can be attributed to the targeted efforts of nonprofits in those communities. For example, before the Oglala Sioux Tribe Partnership for Housing was created, there had only been one Section 184 mortgage loan made on the reservation. After only 1 year, 17 mortgage loans have been closed and over 260 families have inquired about using this program to become homeowners.

## ONE-STOP MORTGAGE CENTER MODEL

### **Barrier**

The number of local intermediaries focused on serving Indian Country by providing homebuyer education, assisting in securing mortgages, and developing and financing housing is limited and is a major impediment to expanding homeownership in Indian Country.

### **Solution**

Tribal communities that wish to promote homeownership opportunities for their members should explore the creation of a one-stop mortgage center to serve as a local intermediary.

The One-Stop Mortgage Center Initiative Model Team developed guidance to serve as a resource for tribes establishing their own local intermediaries or one-stop mortgage centers. The Team included representatives from The Enterprise Foundation, ONAP, Navajo Housing Authority, Navajo Nation, Navajo Partnership for Housing, Inc., Neighborhood Reinvestment Corporation, Oglala Sioux Lakota Housing Authority, Oglala Sioux Tribe, Oglala Sioux Tribe Partnership for Housing, Inc., and Price Waterhouse Coopers, LLP. This guidance includes Appendix B— *Shared Visions: Guide to Creating a Nonprofit Homeownership Entity*, and Appendixes C and D— Summaries of the Navajo Nation and Pine Ridge One-Stop Mortgage Center Pilot Sites.

The Team recognizes that each tribe will have a unique situation in its community and will need to develop its own strategy to improve homeownership opportunities for its members. The *Guide* and summaries of the pilot sites are offered as resources for tribes in developing those strategies. When it comes to developing local organizations to promote mortgage lending on Indian reservations, one size does not fit all. The needs will depend on the existing housing situation on the reservation, the demographics of the tribal membership, the existing relationships with lenders, nearby nonprofits, and the local BIA offices, and the commitment of the tribal government to streamline its review process. What is consistent in every community, however, is the need for a targeted effort— which is why a one-stop mortgage center is important. By dedicating resources to serving as a focal point for homeownership, tribal communities can implement the changes necessary to create an environment within which mortgage lending can happen.

## WHAT IS A ONE-STOP MORTGAGE CENTER?

A one-stop mortgage center may look different in every Indian community. In general, it is an organization that serves as an intermediary between a tribe, lenders, Federal, State and tribal government agencies, nonprofits, and tribal members. In many cases, it is the focal point for homeownership on the reservation. As a result, it can be a strong, focused advocate for promoting mortgage lending in the community.

## GETTING STARTED

The first step in creating a one-stop mortgage center should be to conduct a needs assessment of the tribal community. If there is a significant demand for homeownership on the reservation, it makes sense to build an entity to focus on a mortgage lending. This foundation might include changes to tribal law, education efforts, and relationship building with private providers. It is important that before this undertaking begins, the organizers have a clear sense of the needs and capacity of the community.

Sources of support and funding for creating a one-stop mortgage center include all entities both government and housing-related that stand to gain from increased housing development and mortgage lending. Wherever possible multi-year commitments should be secured because of the elongated timeframes between startup and production in Indian Country.

## CHOOSING A STRUCTURE

Once a tribe, housing authority or Tribally Designated Housing Entity (TDHE) decides to create a one-stop mortgage center, there are several organizational structures from which to choose. The structural options may include:

- Nonprofit organization, either under tribal or State laws.
- Unincorporated instrumentality of the tribe.
- Corporation chartered under Section 17 of the Indian Reorganization Act.
- Homeownership initiative under the existing Housing Authority/TDHE.

Each offers key advantages or disadvantages. In some circumstances, one organizational option may be more desirable than another due to the local conditions and needs of the tribal community. Factors to consider might include:

- **Available time and resources.** It takes less time and resources to use an existing organization than to create a new one.
- **Waiver of sovereign immunity.** A tribe's sovereign immunity extends to a division of the tribe or an entity under the tribe's control. A nonprofit organization does not enjoy the same immunity from suit. Therefore, a tribe would not have to consider a waiver of sovereign immunity for a nonprofit. This may eliminate a sometimes controversial issue.
- **Ability to fundraise.** 501(c) (3) nonprofits are eligible for some funding sources not available to tribes or housing authorities.
- **Capacity of existing organizations.** In some cases, housing authorities or housing divisions may be stretched thin with the responsibilities of managing mutual help and public housing. They may not have the staff or expertise to offer new homeownership services. On the other hand, they may be in the best position to take on new or expand existing roles to support a private mortgage market in the community.
- **Prevalence of dependency upon subsidized housing.** Some tribal members may be accustomed to the subsidized housing aspects of the mutual help homeownership programs. For this reason, tribal communities may chose to separate the functions of a one-stop mortgage center from mutual help and rental housing programs to underscore program differences.

#### WHAT DOES A ONE-STOP MORTGAGE CENTER DO?

A one-stop mortgage center may perform a variety of functions depending on the needs of the tribal community. As a local intermediary, the center can bridge the gap between lenders, customers, and tribal governments because it is familiar with tribal laws and processes as well as cultural practices. It can also help its clients navigate through the Federal, tribal and lender sector processes required for obtaining a mortgage loan. Probable activities include:

**Homebuyer Counseling.** One of the most important roles a one-stop can play is providing homebuyer counseling. For most Native American families, financing homeownership is a new concept. They may be the first generation in their family to use mortgage money to build or buy their home. Their questions will be:

- Who gets the appraisal done?
- What is closing?
- How do the lender's guidelines for "debt-to-income" ratios affect how much house I can afford?

Homebuyers need to learn the answers to these and many other questions to be successful homeowners.

First-time homebuyers courses are available, however, very few are targeted to Native communities. The mortgage center can provide counseling better than just offering an 8-hour course. The center will likely be required to provide long-term counseling for debt reduction or credit repair.

The Homebuyer Counseling Team of the One-Stop Mortgage Center Initiative addressed these issues in Chapter 9 of this report.

***Relationship Building with Lenders.*** Another important role a one-stop mortgage center plays is establishing relationships with lenders. Before a lender enters any new area of business, they need to learn the market. A mortgage center is in a perfect position to provide that information. It can educate lenders about applicable tribal law, tribal and BIA approval processes for mortgage loans, relevant cultural issues and introduce important tribal contacts.

Depending on the community, the one-stop mortgage center may have to visit lenders in the surrounding community to initiate the relationship. It makes sense to contact first lenders who may already have an established relationship with the tribal government or another entity of the tribe. Also, a new mortgage center may want to contact lenders who have already expressed an interest in participating in Federal loan programs for Indian Country. A list of these lenders participating in the HUD Section 184 loan guarantee program is posted on the Internet at <http://www.codetalk.fed.us/loan184.html>.

One-stop mortgage center staff may also serve as a liaison between tribal members and a lender, particularly if the lender is not located in close proximity to the tribe. This could be useful both in the origination and the servicing process.

***Construction and Development Services.*** A common hurdle to obtaining homeownership on an Indian reservation is the lack of available housing stock. As a result, many families must finance the new construction of their homes. A mortgage center may choose to provide assistance to these families to help them through the construction process. This service may involve help with identifying and selecting a general contractor, obtaining environmental and archeological

clearances, selecting a design and floor plan, establishing utilities hook-ups and/or ensuring the necessary inspections are completed.

In some communities, a mortgage center may serve as a developer to build subdivisions or scattered sites for homeownership. Once a client is homebuyer-ready, he or she may choose to buy a home developed by the mortgage center. Organizations should carefully consider the intricacies of housing development before embarking in this area.

***Financial Assistance to Homebuyers.*** In order for some families to qualify for a mortgage, they may need financial assistance. A one-stop mortgage center may be able to help in the following areas.

***Downpayment or Closing Cost Assistance.*** While mortgage financing for homeownership provides a substantial portion of the cost of the home, there is still the need for cash from the homebuyer in the form of a downpayment and closing costs. For many tribal members, this is a significant amount that must come from savings and checking accounts, gifts, etc. This may be more difficult for lower-income tribal members. A one-stop mortgage center may design a grant or loan forgiveness program funded by NAHASDA or others.

Another common source of downpayment and closing cost assistance available to affordable housing providers is the Affordable Housing Program (AHP) through the Federal Home Loan Bank System. This funding is applied for by a member institution of the Federal Home Loan Bank. Typically the affordable housing provider would design a program and approach the member financial institution to submit a request for funding. The AHP Program is targeted at households below 80 percent of area median income.

***“Write-Down” Grants and Soft-Second Mortgages.*** Depending upon the loan program being utilized, the borrower may have additional options for the source of their downpayment and/or closing costs. In some circumstances, the borrower may be able to qualify for a second mortgage or a “soft second” mortgage. These are loans or grants which can be made from different sources such as a tribe, Tribally Designated Housing Entity, charitable organization or a non-profit organization. One of the most common sources of funding for these types of programs is NAHASDA. Depending upon the terms of the loan, the borrower may or may not be required to repay that loan. In the case of some “soft second” mortgage loans, the loan may be “forgiven” if the borrower retains

the property as their principal residence and keeps the first lien mortgage payments current for a length of time (typically 5 or 10 years). One-stop mortgage center staff should discuss these resources with their financial institution to verify if this type of funding (and the source) is available when considering the requirements under the first lien mortgage. Some nonprofits use AHP funds to provide zero percent interest, forgivable soft second mortgages.

**Individual Development Account Program.** If helping tribal members save for downpayment and closing costs is a priority, staff may want to consider in an Individual Development Account (IDA) program, as discussed in the next chapter.

**Interest Rate Reduction.** Financial assistance is typically used for downpayment assistance and closing cost assistance, but interest rate reduction can also have tremendous impact on monthly payments.

Often a lender will reduce the loan's interest rate if the borrower or others are willing to pay additional "points" at the loan settlement. (One point represents one percent of the loan amount.)

**Loan Product Development.** One stop mortgage centers are well situated to suggest loan products that meet the needs of their customers. Approaches might include:

- **Negotiating.** Staff could negotiate with lenders and/or secondary market investors to encourage them to offer products with reduced interest rates or fees and temporary buydowns.
- **Blended rate.** This approach blends the first mortgage with a repayable second mortgage at a lower rate and usually a shorter term— thus, buying down the effective interest rate.
- **Reducing risk to the lender.** Another tool to entice concessions from the lender is to reduce their risk through a guarantee or risk-sharing program where the tribe or the one-stop mortgage center sets aside a pool of funds to off-set or share in losses by the lender.

**Sweat Equity or Self-Help Programs.** Another type of mortgage assistance program is a self-help program that provides an opportunity for homebuyers who can qualify for a mortgage loan but lack a downpayment to contribute "sweat equity" or their own labor to build or renovate the home.

## CHAPTER 6. DEVELOPING AN INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAM

### OVERVIEW

The One-Stop task force determined that one of the most cited barriers to homeownership in Indian Country is a lack of a downpayment and closing costs. A common approach to overcoming this hurdle is developing programs to lower interest rates and up-front costs. Another approach is to develop programs that help tribal members save money to meet these costs.

### AN INTRODUCTION TO INDIVIDUAL DEVELOPMENT ACCOUNT (IDA) PROGRAMS IN INDIAN COUNTRY

#### **Barrier**

Many borrowers qualify for home loans, however, they may have insufficient assets to cover downpayment or closing costs.

#### **Solution**

Tribal communities should consider developing IDA programs to promote savings to make homeownership more achievable.

IDAs are a means to expand the opportunities for saving and investment by low-income individuals. Similar in structure to Individual Retirement Accounts (IRAs), they typically are used for purchasing a first home, paying education or job training expenses, or capitalizing a small business. The IDA Team of the One-Stop Mortgage Center Initiative focused on how IDAs could help tribal members achieve their goals of homeownership.

The creation of IDA programs assist individuals to save money for downpayment and closing costs. The Corporation for Enterprise Development and First Nations Development Institute have established national demonstration projects. During 2000, to expand asset building opportunities in tribal communities, in particular in the areas of public policy, demonstration support, and technical assistance.

Representatives from the Corporation for Enterprise Development, Federal Home Loan Bank of San Francisco, First Nations Development Institute and HUD's Alaska Office of Native American Programs developed an *Introduction to Individual Development Account Programs*. It is included in Appendix E. This document demonstrates how IDAs can assist in facilitating homeownership for

residents of Indian reservations and includes information about additional resources for developing IDA programs.

## CHAPTER 7. LAND USE PLANNING AND INFRASTRUCTURE DEVELOPMENT

### OVERVIEW

Land use planning and physical infrastructure development are critical components in the development of new homeownership units on Indian lands. Several factors have contributed recently to the way in which physical infrastructure to support Native American housing is being funded and developed. This is having an adverse impact on the timing and availability of adequate housing. Among the factors impacting this development are:

- Changes to HUD's funding distribution under the Native American Housing Assistance and Self-Determination Act (NAHASDA), including the shift in the practice of identifying funding dedicated to infrastructure development from the Federal Government to tribal governments or Tribally Designated Housing Entities (TDHEs).
- Increased numbers of tribes which are developing housing programs.
- Increased need for technical assistance among new, inexperienced housing entities.
- General increase in construction of new homes.

For these reasons and others, the construction of new homes in Indian Country will soon be outpacing the ability to maintain and develop adequate supporting infrastructures and is increasing the need for wise land-use planning.

While most of the Initiative concerns streamlining the process of homeownership, the task is not complete unless the homes are correctly placed in the context of the community and corresponding improvements to its supporting infrastructure. This lack of land use planning and infrastructure are limiting the availability and development of new housing.

This chapter first discusses the major issues that affect land use planning and infrastructure development. Next, the barriers and solutions are summarized in three areas:

1. Coordination among Federal agencies;
2. Land use and infrastructure planning; and

### 3. Funding for infrastructure development.

The Team responsible for this work included representatives from BIA, Bureau of Reclamation, Citizen Potawatomi Nation, ONAP, Indian Health Service (IHS), Indigenous Planners, National American Indian Housing Council (NAIHC), Quinault Indian Nation, Tulalip Tribe, USDA Rural Utilities Service, and the White Mountain Apache Tribe.

#### CHANGES UNDER NAHASDA

HUD's Native American housing programs have changed dramatically with the passage of NAHASDA. This act was designed to separate HUD's Indian Housing Plans (IHPs) from the public housing image that had shaped and regulated the program for the past 3 decades. In so doing, it combined several separate programs that had previously been made available to tribes and Indian Housing Authorities (IHAs).

- Traditional Indian Housing Development, which included construction of dwelling units and infrastructure.
- Subsidy funding for the rental and homeownership programs funded under the 1937 Housing Act.
- Modernization for 1937 Housing Act units under the Comprehensive Improvement Assistance Program and Comprehensive Grant Program.
- Independent programs such as HOME and HOPE, Public Housing Youth Sports, and Housing Assistance for the Homeless.

NAHASDA directed the Secretary of HUD to award the sum total of allocations from these programs by formula to federally recognized tribes or TDHEs.

Subsequently, through the negotiated rule making process, HUD published regulations at 24 CFR Part 1000. In the first 3 years of NAHASDA, Congress funded the Indian Housing Block Grant (IHBG) program at \$600 million, \$612 million, and \$620 million dollars. Under NAHASDA, tribes and TDHEs have the authority to use their IHBG funds for new construction and related infrastructure development, as well as for a wide range of other housing-related activities. They decide at the local level where they wish to target their funds.

In FY 1998, there were 368 participants in the NAHASDA program representing 552 tribes or TDHEs. Prior to NAHASDA, only 200 IHAs participated. Because NAHASDA is funded on a formula basis, it provides an opportunity for many tribes to fund housing activities for the first time. Because the need for new housing and

rehabilitation continues to grow, HUD estimates that current IHBG funding levels will only meet 5 percent of the need for housing. For these reasons, IHBG funds alone may not be adequate for some tribes and TDHEs to cover infrastructure costs.

#### **IHS SANITATION FACILITIES CONSTRUCTION PROGRAM**

IHS, under its Sanitation Facilities Construction Program, provides funding for essential water, sewer, and solid waste facilities to serve Indian homes. Appropriations in fiscal years from 1993 to 2000 ranged from \$72 to \$92 million. These funds were combined with approximately \$35 to \$40 million per year from other agencies and tribes. IHS serves existing and newly constructed homes, including those renovated and built under the BIA Home Improvement Program and those purchased through various tribal and private financing programs. IHS also serves dwelling units funded with NAHASDA's IHBG program by providing engineering services for off-site infrastructure and, in certain instances, directly managing construction funds contributed by the tribes or TDHEs. However, IHS is precluded by Congress from providing funds to construct facilities to serve new homes funded under HUD housing programs. IHS has been a supportive partner in the HUD housing programs by providing engineering, technical assistance and site reviews to HUD and NAHASDA grant recipients (tribes and TDHEs).

HUD and IHS have an arrangement for HUD to provide funding for the off-site sanitation facilities for HUD-funded Indian housing units. In most cases, the IHAs chose to transfer the funds to IHS through a Memorandum of Agreement. To date, over \$219 million have been transferred. With NAHASDA, tribes and TDHEs must decide how much of their NAHASDA grant they want to set aside for off-site sanitation facilities funding for HUD-sponsored homes. Some tribes may be exercising their option under NAHASDA to look for planners and contractors outside of the Federal Government to design and build project infrastructure.

Due to these changes since NAHASDA, the amount transferred to IHS for off-site sanitation facilities has decreased by 75 percent from about \$16 million per year to less than \$4 million in 1998. Likewise, the number of homes served annually by IHS through this process has been reduced from approximately 1,600 to less than 500 over the same period.

Increasingly, housing developments in Indian Country involve many sources of financing in addition to HUD funds. IHS may provide construction funding for these projects on a pro-rata basis, to the extent that non-HUD funds are used.

#### **BIA PROGRAMS**

BIA provides real estate and transportation assistance to tribes pursuant to 25 CFR parts 162, 169, and 170. These services are described in the Interdepartmental Agreement on IHP (Tri-Party Agreement), dated September 10, 1996 to include assistance in (1) preparing appropriate lease documents for housing sites and required easements, (2) review, approval and recordation of lease and easement documents, (3) development of access roads to housing sites, providing maintenance services to those tribally constructed roads accepted into the BIA road systems, and (4) other support necessary for the timely development of housing.

#### **COORDINATION AMONG FEDERAL AGENCIES**

##### **Barrier**

Though efforts have been made toward improved coordination, Federal agencies including HUD, IHS, BIA, and USDA have often worked independently of each other.

##### **Solution**

These agencies, along with tribal consultation, will update the Tri-Party Agreement and develop a National interagency infrastructure roundtable to improve coordination.

##### ***Tri-Party Agreement***

The Tri-Party Agreement among HUD, IHS, and BIA was first established in 1979 and amended in 1996. The Tri-Party Agreement was the blueprint for inter-agency coordination of the Native American housing programs prior to NAHASDA. It is currently not used due to a common assumption that it no longer is applicable. In recent years the number of agencies with significant involvement in Native American housing and infrastructure has increased beyond the original three parties to the agreement, to include the Rural Utilities Service under the USDA, the Environmental Protection Agency (EPA) and others.

### ***Site Review and Technical Assistance***

According to the Tri-Party Agreement, the BIA and IHS, at the request of a tribe, provide technical reviews and recommendations on project planning, design and construction involving infrastructure at appropriate project review points.

Under this system, IHAs would meet regularly with IHS, BIA and local utility providers throughout the planning and construction process. IHAs would be informed of, and often request, other technical services from IHS and BIA. The absence of the required review step under NAHASDA has caused a reduction in communication and coordination. Services are still available, but tribes and TDHEs may not be aware of this or may skip this assessment of infrastructure.

### ***Interagency Infrastructure Roundtable***

Pursuant to President Clinton's 1994 Executive Memorandum directing Federal agencies to develop government-to-government relationships with federally recognized tribal governments and directing each Federal Agency to work cooperatively with one another, HUD, IHS, BIA and USDA are developing an Interagency Infrastructure Roundtable Committee to facilitate improved working arrangements on a National level between Federal agencies. An outcome of this effort will be a "Physical Infrastructure Resources Document" which will describe the resources available to assist tribes. Another will be an update of the former Tri-Party Agreement.

In addition, the Roundtable will promote regional and local coordination. Models include:

- Meeting sponsored by USDA's Nevada Rural Development office and the Rural Community Assistance Cooperative in Sacramento, California, February 2000.
- Regional tribal planning conference in August 2000 in Mille Lacs, Minnesota, "Creating partnerships to Build Tribal Sustainability" organized by the BIA.
- Multi-agency agreement, "MOU 2000," led by the EPA Region 8.

This improved coordination will benefit tribes and TDHEs by utilizing a more seamless delivery mechanism and will also lead to a more effective use of Federal funds by making it easier to layer multiple sources for different components of the same development project.

## LAND USE AND INFRASTRUCTURE PLANNING

### **Barrier**

To facilitate affordability, shorten the processing time, and ensure the effective placement and support of homes within the tribal community, some tribes may need to expand their capacity to develop and implement comprehensive strategic planning, including land use and infrastructure planning.

### **Solution**

The Federal agencies involved with housing development in Indian Country should provide more training and technical assistance, and identify funding for comprehensive land use and infrastructure planning and coordination.

The NAHASDA statute addresses infrastructure by stating that one of its objectives is “to plan for and integrate infrastructure resources for Indian tribes with housing development for tribes.” Under NAHASDA, each tribe or TDHE must submit an IHP, and HUD must determine the IHP to be in compliance with the statute before funds can be provided. The IHP must include 5-year and 1-year components. Current IHP requirements do not include or reference the mandate to address infrastructure planning and/or costs as part of the planning process. ONAP should look for ways to address this issue through its consultative process. Possible solutions may include regulatory changes or policy guidance to encourage tribes to address the infrastructure process.

ONAP has convened an Interagency Infrastructure Roundtable to address these issues. The Roundtable will organize the 7th Native American Housing Summit on Comprehensive Planning, which will focus on comprehensive strategic and land use planning for development. The conference will offer tribes: consultation on the expansion and improvement of the Tri-Party Agreement; access to training and technical assistance through national experts; and solutions to common problems such as multi-agency funding coordination and overlapping and conflicting standards between agencies including environmental reviews.

ONAP is also exploring ways to enable and strengthen comprehensive strategic planning under NAHASDA’s IHBG program.

## FUNDING FOR INFRASTRUCTURE DEVELOPMENT

### **Barrier**

The amount of Federal funding and technical assistance available from Federal agencies is limited and may not be adequate to meet the needs of the tribal governments for infrastructure development.

### **Solution**

HUD and IHS should work together to identify infrastructure resources for HUD-funded homes, and IHS should clarify its policy on infrastructure funds and technical assistance.

Prior to the implementation of NAHASDA, HUD identified funds for off-site sanitation facilities. The identified funds were provided to the respective IHAs to support the proposed housing projects. Generally, HUD did not fund a housing project unless the funds were identified for the infrastructure. With NAHASDA, housing funds are no longer distributed on the basis of whole projects, but are distributed to all tribes based on a formula. Therefore, it is up to tribes and TDHEs to identify and dedicate funds for infrastructure development for a specific project.

Moreover, tribes and TDHEs may not be aware of the technical assistance that IHS can provide during the housing development process, since there is no longer a mandated IHS oversight role in the housing development process. Even if tribes or TDHEs are aware of this assistance, the need far outweighs the available resources.

IHS will also develop a catalog of available IHS technical services and distribute it to tribes and TDHEs. If IHS does not have the engineering staff resources to provide the full range of service requested by a tribe or TDHE, a negotiation of limited services is recommended. An increase in IHS technical staff is recommended to address the reported shortfall.

Appendix F includes a list of Federal agencies that will assist tribal governments in the development of infrastructure.



## CHAPTER 8. LEGAL INFRASTRUCTURE

### OVERVIEW

One of the barriers to private mortgage lending on Indian reservations is a perception by lenders that they have no ability to recover the outstanding loan balance on a home located on trust land if the borrower defaults and a foreclosure results. Other barriers include: the time it takes to foreclose and then dispose of the acquired property, tribal rights with respect to changes in zoning and other land-use requirements, condemnation proceedings and rights of the leasehold lessee to condemnation proceeds, collateral assessment/appraisals. Studies have emphasized the need for tribal governments to establish the necessary legal infrastructure to facilitate homeownership.

In May 1996, HUD's Office of Policy Development and Research issued a report entitled "Assessment of American Indian Housing Needs and Programs." The report provided in part that:

"The overarching legal obstacle perceived by mortgage lenders is usually the difficulty in recovering the outstanding loan amount in case of default. . . . The wide diversity in tribes' legal institutions and procedures frequently presents a significant source of uncertainty to conventional lenders in encumbrancing structures as well."

Another example is a February 1998 Government Accounting Office (GAO) report on Native American housing, entitled "Homeownership Opportunities on Trust Lands are Limited." Regarding tribal legal infrastructure, the report provides in part, "The most significant barriers are that lenders (1) are uncertain about whether they can foreclose on Native American trust lands to recover their loan funds; (2) have difficulty understanding the implications of the different types of land ownership because of the complex status of Native American trust lands; (3) are unfamiliar with the tribal courts in which litigation is conducted in the event of foreclosure; and (4) are concerned about the absence of housing ordinances governing foreclosures in tribal communities."

A Legal Infrastructure Team of representatives from HUD, U.S. Department of Justice, the National American Indian Tribal Court Judges Association, and the

National American Indian Housing Council (NAIHC), identified the following barriers and developed recommendations to make assistance available to tribal governments to enhance existing laws and procedures relating to private homeownership financing.

#### PROVIDING LEGAL RESOURCES

##### **Barrier**

Tribes may need to enhance their legal infrastructure to support a private lending market. They may need to update housing codes that address building, inspections, or foreclosure and eviction procedures; or they may need to expand tribal court systems.

##### **Solutions**

Resources developed by this Team include information on the Tribal Legal Code Project, Interagency Model Mortgage Code, Funding Sources for Code Development and Enforcement, Training for Tribal Court Judges, and Financial and Technical Assistance for Tribal Courts.

#### TRIBAL LEGAL CODE PROJECT

In order for Indian nations to develop and implement development programs, there is a need for comprehensive tribal housing codes that address development issues. The code development process is difficult, expensive, and time-consuming.

The tribal codes should address the following critical areas: land use, planning, zoning, building codes, eviction and foreclosure procedures.

Tribal governments may require technical assistance to develop a legal infrastructure. In 1995–1996, ONAP contracted for the design and development of a comprehensive model Tribal Housing Code (including eviction and foreclosure procedures). The model was intended to provide tribal governments with an outline and an illustrative guide for drafting specific tribal codes and to greatly reduce their legal costs.

Most of these codes are not easily adaptable to “model” codes since the land use, building, and zoning needs vary substantially from tribe to tribe. Instead, it was determined that it would be useful to provide tribes with representative

examples of different types of land use, building, and zoning codes along with explanatory resource materials.

This project is designed to allow tribal governments to easily access tribal specific resources in a cost-effective manner without having to “reinvent the wheel.” It is also designed to demystify the tribal code development process— making it easier to develop tribal code provisions that more effectively reflect their individual community needs.

This Tribal Legal Code Project was prepared for ONAP by the Tribal Law and Policy Institute under a contract with ICF Housing and Community Development Group.

HUD mailed a copy of the Tribal Legal Code Project on CD-ROM to all tribal governments and TDHEs. Copies of the CD-ROM can be obtained by contacting ONAP Headquarters office at 202-401-7914 or any ONAP area office. It is also available on-line at <http://www.codetalk.fed.us>.

The following is a listing of the tribal codes that are analyzed and annotated in this Tribal Legal Code Project:

|   |  |
|---|--|
| <p><b>Land Use and Planning Codes</b><br/>                 Navajo Nation (Arizona/New Mexico/Utah)<br/>                 Cabazon Band of Mission Indians (California)<br/>                 Gila River Indian Community (Arizona)</p> | <p><b>Zoning Codes</b><br/>                 Navajo Nation (Arizona/New Mexico/Utah)<br/>                 Colville (Washington)<br/>                 Muckleshoot (Washington)<br/>                 Menominee (Wisconsin)</p>        |
| <p><b>Building Codes</b><br/>                 Colorado River (Arizona)<br/>                 Standing Rock Sioux (North and South Dakota)<br/>                 Grand Traverse Band (Michigan)</p>                                    | <p><b>Commercial Codes</b><br/>                 Navajo Nation (Arizona/New Mexico/Utah)<br/>                 Model Tribal Code (University of Montana Indian Law Clinic)<br/>                 Lummi Indian Nation (Washington)</p> |
| <p><b>Commercial Codes</b><br/>                 Navajo Nation (Arizona/New Mexico/Utah)<br/>                 Model Tribal Code (University of Montana Indian Law Clinic)<br/>                 Lummi Indian Nation (Washington)</p>  | <p><b>Corporations Codes</b><br/>                 Navajo Nation (Arizona/New Mexico/Utah)<br/>                 Cherokee Nation (Oklahoma)<br/>                 Hoopa Tribe (California)</p>  |
| <p><b>Environmental Review Codes</b><br/>                 Model Tribal Environmental Review Code<br/>                 Probate Codes<br/>                 Chitimacha Tribe (Louisiana)</p>   |  |

The Legal Infrastructure Team will examine the feasibility of expanding the scope of the tribal code project and adding partners to assist with the development of tribal codes.

#### INTERAGENCY MODEL MORTGAGE CODE

Part III of the Tribal Legal Code Project includes a new model Tribal Housing Code to reflect the changes in law since the enactment of the Native American Housing Assistance and Self-Determination Act (NAHASDA). In addition, the Federal Loan Programs team of the One-Stop Mortgage Center Initiative developed another model code, which satisfies the requirements of HUD, USDA, and VA to participate in each of their Federal loan programs. See Chapter 11 for more information about this interagency model mortgage code.

#### FUNDING SOURCES FOR CODE DEVELOPMENT AND ENFORCEMENT

Code development is an eligible activity under the Indian Community Development Block Grant (ICDBG) program (see 24 CFR Section 1003.205). Other sources of funding for legal infrastructure are discussed below under Financial and Technical Assistance for Tribal Courts, in this chapter.

HUD is exploring ways to support the development of housing and community development-related codes and enforcement through existing programs.

#### TRAINING FOR TRIBAL COURT JUDGES

HUD has partnered with the National American Indian Court Judges Association and regional tribal court judge associations to provide regional training for tribal court judges and court personnel on Indian housing law.

In June 1999, ONAP, in conjunction with the Southwest Intertribal Court Association, sponsored a workshop in Albuquerque, New Mexico, to provide training on Indian housing law issues. In February 2000, ONAP partnered with the Eastern Tribal Court Judges Association to conduct a similar workshop for tribal judges in the Eastern United States.

The Roundtable's address selected legal issues such as HUD requirements dealing with mortgage insurance and loan guarantee programs, fair housing, labor standards, Indian Civil Rights Act, admission and occupancy, lease provisions, succession to ownership of homes, Indian preference, the Freedom of Information Act (FOIA), procurement, mortgage foreclosures, and Federal

program compliance remedies. It is anticipated that additional workshops will be held throughout the year in partnership with regional tribal court associations.

In March 1999, Jackie Johnson, Deputy Assistant Secretary for the Office of Native American Programs, participated in the National Tribal Judicial Conference held in Washington, DC.

### **Financial and Technical Assistance for Tribal Courts**

The unique relationship between the United States and Indian tribes imposes a responsibility upon the Federal government, which includes the obligation to promote economic development and strengthen tribal justice systems.

#### **U.S. DEPARTMENT OF THE INTERIOR, BIA**

The BIA within the Department of the Interior is the primary Federal agency charged with fulfilling this obligation. In FY 1999, the BIA had more than \$11 million in its appropriated budget for tribal courts through the Bureau's Tribal Priority Allocation (TPA) Program.

The BIA Office of Tribal Services supports the tribal court systems. The office's Web site is located at <http://www.doi.gov/bia/otshome.htm>.

#### **U.S. DEPARTMENT OF JUSTICE**

The U.S. Department of Justice's (DOJ's) policy on tribal sovereignty and government-to-government relations declares its commitment to strengthening and assisting tribal governments in their development and to promoting tribal self-governance.

The DOJ's support for tribal court systems was greatly expanded in 1997. The President directed the Departments of the Interior and Justice to review tribal justice systems, to identify the problems facing these justice systems, and to propose solutions. The resulting Indian Country Law Enforcement Improvement Initiative seeks to better justice systems in Indian Country.

Over the past three fiscal years, the DOJ has sought money for tribal governments. In FY 1999, the DOJ's budget included \$89 million for the DOJ side of the Law Enforcement Initiative. The Department received \$91.5 million for the Initiative for FY 2000. The Administration's request for FY 2001 is more than \$170 million. In order for law enforcement to be effective, there needs to be in place an

effective court system to handle the increased case load; so the Initiative includes funding for tribal courts.

The FY 1999 budget included \$5 million for tribal courts “to assist tribal governments in the development, enhancement, and continuing operations of tribal justice systems.” Demonstrating the high level of need for this program, 181 tribes submitted applications for funding. The Bureau of Justice Assistance (BJA) is awarding 15 large tribal court enhancement grants ranging up to \$100,000, 15 small tribal court enhancement grants ranging up to \$50,000, and a number of tribal court planning grants of up to \$30,000. In addition, the BJA will award technical assistance grants to tribal court technical assistance providers. For FY 2001, the DOJ has requested an additional \$10 million for the current Tribal Courts Initiative, in conjunction with the National Judicial Conference. DOJ is also developing an on-call resource center that features a database of tribal case law to provide assistance to tribal courts.

The DOJ provided a grant to the National Judicial College to develop a special curriculum for tribal court judges. Similarly, the Office of Juvenile Justice and Delinquency Prevention sponsored a workshop on traditional tribal justice at the Mississippi Band of Choctaw in November 1999.

The DOJ included a number of tribal courts in programs generally available to State, local, and tribal justice systems. For FY 1999, the Drug Courts Program made grants to tribal courts totaling \$506,448 out of its \$40 million national program.

Another DOJ program established in FY 1999 was the Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) Project, through which the Department provides significant financial and technical assistance to participating tribal governments. Under the project, tribes can apply for grant funds to enhance court systems.

Two offices within the DOJ are responsible for providing information on the Department’s Tribal Court’s Initiative: the Office of Tribal Justice (OTJ) and the Office of Justice Programs. The OTJ established in 1995, serves as a clearinghouse for all correspondence relating to Indian matters. Within the Department, OTJ coordinates the on-going work of those DOJ Divisions responsible for Indian issues to ensure consistency, maximize limited resources, and better leverage

expertise and experience. Phone: 202-514-8812; Fax: 202-514-9078. OTJ's Web site is found at <http://www.usdoj.gov/otj/index.html>.

Another point of contact within the DOJ is the American Indian and Alaska Native (AI/AN) Affairs Desk. It was established to provide information to Federally recognized American Indian and Alaska Native tribes regarding funding opportunities, training and technical assistance, and other relevant information. Additionally, the AI/AN desk coordinates with the OTJ on departmentwide AI/AN initiatives such as the Tribal Courts Initiative. The AI/AN Web site is found at <http://www.ojp.usdoj.gov/aian/>.

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR NATIVE AMERICANS**

The Administration for Native Americans (ANA) promotes the goal of social and economic self-sufficiency of American Indians, Alaska Natives, Native Hawaiians, and other Native American Pacific Islanders, including Native Samoans. The ANA provides technical assistance and funding in many areas, including for the enactment of new codes and management improvements to strengthen the governmental functions of tribes and Native American organizations and for the establishment of local court systems. For more information on these programs, contact the ANA at 370 L'Enfant Promenade, M/S 348F, Washington, DC 20447-0002, Phone: 202-690-7776, Fax: 202-690-7441, Web site: [ana@acf.dhhs.gov](mailto:ana@acf.dhhs.gov) or visit <http://www.acf.dhhs.gov/programs/ana/>.



## SECTION C: PROMOTING EDUCATION

Homebuyer education and personal finance skills are an essential part of any homeownership program. In Indian Country, the need is even greater because many Indian families are first-time or first-generation homebuyers.

One-Stop Mortgage Center Initiative implementation teams are developing two educational products. First, to promote homebuyer education, a team is drafting a *Guide to Establishing a Homebuyer Education Program*, to be released in fall 2000. Second, First Nations Development Institute is teaming up with the Fannie Mae Foundation to produce a financial skills curriculum called *Building Native Communities: Financial Skills for Families*.

Section C discusses each of these initiatives:

Chapter 9. Homebuyer Counseling in Tribal Communities

Chapter 10. Financial Skills Curriculum



## CHAPTER 9. HOMEBUYER COUNSELING IN TRIBAL COMMUNITIES

### OVERVIEW

Homebuyer counseling is a critical component of a tribal homeownership initiative. Because most Native families are first-time or first-generation homebuyers, they often need education about the process and awareness of the steps required to make a successful loan application in order to qualify for a mortgage. Tribal families often seek assistance to learn about homeownership, its benefits, and requirements. In some cases, they may have poor or no credit histories, or they may not be familiar with the mortgage lending process or required home-maintenance activities. Some need only attend an introductory class while others may need one-on-one counseling to repair credit or reduce existing debt before they are ready to submit an application. Education and counseling can be crucial in helping an individual or family become and remain a homeowner.

Members of the One-Stop Mortgage Center Initiative Homebuyer Counseling Team found that homebuyer education is essential to ensuring access to lending in Indian Country. This team included the American Homeowner Education and Counseling Institute, Fannie Mae, First National Bank of Santa Fe, the Fort Berthold Housing Authority, the Morongo Housing Authority, the National American Indian Housing Council, the Navajo Partnership for Housing, Inc., the Neighborhood Reinvestment Corporation, the Nez Perce Housing Authority, the Northern Cheyenne Tribe, Wells Fargo Home Mortgage, the Standing Rock Sioux tribe, the U.S. Department of Agriculture (Rural Development), the U.S. Department of Housing and Urban Development, Office of Native American Programs (ONAP), and Washington Mutual Bank.

### DESIGNING A GUIDE TO CREATING A HOMEBUYER COUNSELING PROGRAM

#### **Barrier**

Homebuyer counseling programs and trained personnel are not readily available in tribal communities. Other non-Native programs may be helpful, but they do not address traditional means of providing housing, and they are not sufficient to educate residents of Indian reservations about the intricacies of mortgage lending on Indian land.

## **Solution**

In order to help tribal governments meet this need, the Homebuyer Counseling Team will initiate the development of a guide and training curriculum on how to establish a homebuyer education program. This guide will include a model homebuyer counseling curriculum based on existing programs available in Native and non-Native communities.

In order to implement this solution, the Neighborhood Reinvestment Corporation, the National American Indian Housing Council, and HUD's Office of Native American Programs are exploring how to design national and regional sessions using the guide and curriculum to train local trainers and one-stop mortgage center staff on developing homebuyer counseling programs. An important component of this effort will be follow-up training and on-site technical assistance.

The Homebuyer Counseling Team compiled the following preliminary information to assist tribal organizations and one-stop mortgage centers in designing a homebuyer counseling program.

### **WHO SHOULD ADMINISTER THE HOMEBUYER EDUCATION CURRICULUM?**

A tribal government should carefully consider the entity it chooses to administer this program. Ideally, establishing and running a homebuyer counseling program would be a core function of a one-stop mortgage center. However, if none exists, the housing authority or Tribally Designated Housing Entity (TDHE) could take on this role. The function could be contracted out to a non-Native intermediary or a consultant, but since educating tribal families about homeownership is a long-term process, most tribes prefer to have permanent staff in the community provide this assistance.

### **WHAT DOES A COMPREHENSIVE HOMEBUYER EDUCATION PROGRAM INCLUDE?**

Key components of a comprehensive homebuyer education program include:

- **Client intake.** Staff must be able to assess the homebuyer's readiness. Clients could be ready to apply for a mortgage loan or they may need long-term counseling. Readiness is determined by the family's financial situation as well as by whether legal documents such as the homesite lease are in place.

- **Client tracking system.** The formality of this system will depend on the size of the reservation community. An Excel spreadsheet could very well serve the need to track the potential buyers and their progress.
- **Money management counseling.** Tribal families may need assistance learning about budgeting for mortgage payments or money management in general.
- **Credit counseling.** This service may include one-on-one counseling and assistance in improving credit-worthiness, credit repair, and/or debt consolidation. It may also include classes on money management and the importance of a good credit history.
- **Trained homebuyer counselors on staff.** A one-stop mortgage center should have staff trained to counsel clients on every aspect of homeownership. Staff should be able to instruct a homebuyer training course as well as administer one-on-one counseling.
- **Lender assistance.** The staff may also provide valuable liaison services to the servicing lender. In addition to default counseling, lenders may wish to consider local, trained staff for inspection and face-to-face interview activities.
- **Homebuyer course.** The one-stop mortgage center should design a course that addresses the unique circumstances of its tribal community. This course should be offered periodically during the year so that clients can prepare themselves for homeownership. This course may include topics such as: reading a credit report, the mortgage loan process, real estate and mortgage lending terms, appraisals and housing care, and maintenance.
- **Marketing strategy.** In order for potential homebuyers to participate in the homebuyer education program, the mortgage center should have a comprehensive marketing strategy to attract and retain participants. This may involve establishing partnerships with lenders and others to develop a referral system to the mortgage center.
- **Established relationships with Federal, tribal, and private partners.** Successful homebuyer education programs integrate all the players in the mortgage process into the training—including lenders, contractors, the BIA, tribal land departments, appraisers, title insurance companies (if applicable), and hazard insurance companies.
- **Methods to Avoid Predatory Lending.** To assist homebuyers in avoiding predatory lending, consultation should occur among HUD, the Department of Justice and other Federal partners, and a brochure or training course module should be developed for distribution to homebuyers and counseling agencies.
- **Portfolio of loan products for tribal members.** Staff should be knowledgeable about the range of mortgage loan products available to their tribal members.

- **Financial assistance or subsidies.** Tribal families may need help to develop a plan to accumulate the funds for the downpayment or closing costs.
- **Post-purchase and home maintenance counseling.** This type of counseling will help tribal families understand the importance of maintaining their homes—to protect the value of the home as well as the quality of life in the neighborhood.
- **Default and foreclosure counseling.** Foreclosure on the reservation will be subject to the ordinances and procedures for that reservation, making counseling of this type very important. The counseling may include activities such as determining whether the homebuyer might bring the account current with a payment plan acceptable to the lender; creating repayment plans with the homebuyer's other creditors; counseling if the loan is brought current or the lender proceeds with foreclosure; and exploring alternatives to foreclosure.

#### HOW CAN TRIBAL COMMUNITIES TRAIN PERSONNEL TO RUN THIS TYPE OF PROGRAM?

Some organizations offer train-the-trainer sessions for homebuyer counselors in Indian Country.

The **American Homeowner Education & Counseling Institute (AHECI)** is a national, nonprofit organization that was established in 1997 by Fannie Mae, mortgage industry partners, and leaders in the housing industry (for-profit and nonprofit), to standardize the homeowner education and counseling industry. For more information, contact AHECI at 1156 15th Street, NW, Suite 1220, Washington, DC 20005, Phone: 1-888-AHECI-99, Fax: 1-888-AHECI-77, Web site: <http://www.aheci.org>.

**Credit Counseling Centers, Inc.**, is a national nonprofit agency that provides free counseling and low-cost debt management programs to people experiencing financial difficulties. Its staff in locations near Indian Country has helped tribal communities develop credit counseling programs. For more information, contact Credit Counseling Center, Inc., 38505 Country Club Drive, Suite 210, Farmington Hills, MI 48331-3429, Phone: 1-800-547-5005, Web site: [http:// www.DebtHelpNow.org](http://www.DebtHelpNow.org).

The **Falmouth Institute, Inc.**, is a for-profit training and publishing firm that specializes in Indian Country issues. It offers a homebuyer counseling course for trainers. For more information, contact The Falmouth Institute, Inc., 3702 Pender

Drive, Suite 300, Fairfax, VA 22030, Phone: 1-800-992-4489, Web site: <http://www.falmouthinst.com>.

The **National American Indian Housing Council (NAIHC)** offers a 4-day course as part of its Leadership Institute. For more information, contact NAIHC, 900 Second Street, NE, Suite 305, Washington, DC 20002-3557, Phone: 1-800-284-9165, Web site: <http://www.naihc.indian.com>.

The **Navajo Partnership for Housing, Inc. (NPH)** is a nonprofit corporation chartered under Navajo law to promote homeownership opportunities for Navajo families. It also offers training for homebuyer education counselors at other Indian tribes. For more information, contact NPH, P.O. Box 1384, St. Michaels, AZ 86511, Phone: 520-810-3112.

The **Neighborhood Reinvestment Corporation (NRC)** offers homebuyer counseling training for staff as part of its Training Institute. For more information, contact NRC, 1325 G Street, NW, Suite 800, Washington, DC 20005-3100, Phone: 1-800-438-5547, Web site: <http://www.nw.org>.

Private lenders may partner with tribal organizations' staff to provide homebuyer education to their members. For more information, contact your local lender to discuss what may be available.

#### **WHO CAN TRIBES CONTACT FOR TECHNICAL ASSISTANCE TO START A HOMEBUYER EDUCATION PROGRAM?**

Technical assistance to establish this type of program is becoming increasingly more available. Tribes may contact the following agencies:

The **Housing Assistance Counsel (HAC)**— a nonprofit corporation that offers training and technical assistance to organizations that serve rural America. For more information, contact HAC, 1025 Vermont Avenue, NW, Suite 606, Washington, DC 20005, Phone: 202-842-8600, Web site: <http://www.ruralhome.org>.

**HUD-funded housing counseling agencies.** To find a non-Native counseling agency near the reservation, contact the Housing Counseling Clearinghouse, P.O. Box 10423, McLean, VA 22102-8423, Phone: 1-800-569-4287 , Web site: <http://www.hudhcc.org>.

**National American Indian Housing Council (NAIHC).** At the request of tribal housing agencies, NAIHC will provide on-site technical assistance to Indian housing professionals at no cost. NAIHC's technical assistance specialists work on-site, via telephone and fax or e-mail. For more information, contact NAIHC, 900 Second Street, NE, Suite 305, Washington, DC 20002-3557, Phone: 1-800-284-9165, Web site: <http://www.naihc.indian.com>.

**State housing finance agencies.** To find the agency in your State, contact the National Council of State Housing Agencies, 444 N. Capitol Street, NW, Suite 438, Washington, DC 20001, Phone: 202-624-7710, Web site: <http://www.ncsha.org>.

#### HOW CAN TRIBAL COMMUNITIES FINANCE THE CREATION OF A HOMEBUYER EDUCATION PROGRAM?

One of the most challenging aspects of developing a homeownership program is determining how to finance it. Some possible sources of funding include the following:

- Indian Housing Block Grant (IHBG) funds under the Native American Housing Assistance and Self-Determination Act (NAHASDA)
- Lender contributions
- Foundation grants
- HUD Rural Housing and Economic Development Grant
- USDA— Rural Housing Services Section 523 Self-Help Technical Assistance Grant.

Additional information about funding sources is included in Appendix B in *Shared Visions: Guide to Creating a Nonprofit Homeownership Entity*.

## CHAPTER 10. FINANCIAL SKILLS CURRICULUM

### OVERVIEW

Many potential homeowners in Indian Country need personal finance counseling. As in most of rural America, the lack of daily contact with credit providers contributes to an incomplete understanding of the borrowing processes. Financial skills education is often the first step to preparing borrowers and making homeownership achievable in Indian communities. Although the need for this type of education is not unique to Indian Country, it may be more prevalent there due to remote locations and lack of marketing efforts from mainstream financial providers.

### BUILDING NATIVE COMMUNITIES: FINANCIAL SKILLS FOR FAMILIES

#### **Barrier**

Financial skills education programs are available in Indian communities on a limited basis. Few courses targeted to Native American consumers currently exist.

#### **Solution**

The groundwork for success is consumer education. First Nations Oweesta Corporation has partnered with the Fannie Mae Foundation to develop a culturally appropriate consumer financial skills curriculum— *Building Native Communities: Financial Skills for Families*.

This unique curriculum provides adult financial skills education through a Native values framework that embraces community, traditional resource management, the interconnection between generations, folklore wisdom, and historical experience. The 20 hours of interactive training includes the following sessions: Building a Healthy Economy, Developing a Spending Plan, Working with Checking and Savings Accounts, and Understanding Credit and Your Credit Report.

The objective of the program is to enable tribal members to build healthy communities and realize their tribe's own values by learning financial skills that will help each person make informed financial decisions for themselves, their family, and their tribe.

This effort is supported by a review committee with representatives from the Fannie Mae Foundation, the Federal Reserve Bank of Minneapolis, Fond du Lac Tribal College in Minnesota, HUD's Office of Native American Programs, the Lakota Fund, the New Mexico Community Development Loan Fund, and the North American Native Bankers Association.

The curriculum is being piloted in both the Fond du Lac and Navajo communities through summer 2000. The Navajo pilots will be taught in both English and Navajo.

*Building Native Communities: Financial Skills for Families* will be available free of charge in winter 2000. Currently, distribution systems are being explored and potential partners are welcome to contact Natasha Shulman at 206-325-6823.

**Other Resources**

The Federal Reserve Bank of Minneapolis published an article titled "Personal Finance—The Bedrock of a Community's Financial Health," in *Community Dividends* in 1999. The article describes an initiative at the Fond du Lac Tribal and Community College in Cloquet, Minnesota. To obtain a copy of this article, visit <http://minneapolisfed.org/pubs/cd/9902/perfin.html> or call 612-204-5000.

## **SECTION D: STREAMLINING THE MORTGAGE LENDING PROCESS**

The mortgage lending process in Indian Country is similar to the process off Indian reservations, with a few exceptions. The One-Stop National task force found that it is often those exceptions that cause lengthy delays and frustration for both lenders and homebuyers. Section D addresses efforts to improve the process by standardizing, streamlining, and clarifying in areas such as legal documents, BIA review, environmental review, land status, and loan products.

Section D discusses each of these initiatives:

Chapter 11. Mortgage Process and Standard Documents for Loan Programs

Chapter 12. BIA Review Process

Chapter 13. Environmental Issues

Chapter 14. Land Issues

Chapter 15. HUD Loan Products



## CHAPTER 11. THE MORTGAGE PROCESS

### OVERVIEW

The goal of the Federal Loan Program team was to streamline the mortgage loan process for Federal loan programs. The team comprised staff from the USDA, HUD, and the VA, all of whom offer a variety of loan programs, and the U.S. Department of the Interior's BIA. BIA is the trustee for tribal and individual or allotted trust lands, which requires their participation in the loan process.

The team was responsible for reviewing Federal loan programs, identifying barriers to lending in Indian Country, and developing solutions (see Appendix G). The team identified a number of inconsistencies among programs administered by the agencies that have the potential to frustrate tribal participation in homeownership initiatives. To some extent, these program requirements are mandated by statute. However, agency implementation of lending programs often lacks interagency or tribal consultation.

### MODEL LEASE AND MORTGAGE CODE

#### **Barrier**

Federal agencies require tribal governments to adopt different lease documents and mortgage codes (foreclosure and eviction codes and priority-of-lien procedures) for participation in each Federal loan program. This led to confusion for tribal governments and individual tribal borrowers.

#### **Solution**

The team developed a model interagency lease and mortgage code that are acceptable to HUD, USDA, VA, and the BIA. Although the model documents were determined to be acceptable, tribes are not required to use them. A copy of each of these model documents is located in Appendix H. The documents will be available on the Internet at <http://www.codetalk.fed.us>.

The model documents are acceptable to Ginnie Mae. Fannie Mae and Freddie Mac may develop addenda to the model lease and may require modifications in the model mortgage code for their respective conventional loan products.

## TRIBAL PARTICIPATION IN THE FEDERAL LOAN PROGRAMS

### **Barrier**

The different approval and implementation processes for the Federal programs required tribal governments to adopt different tribal resolutions.

### **Solution**

The team developed two memoranda to streamline the tribal approval process:

1. A Memorandum of Understanding (MOU) between a tribe and the Federal agency (USDA, HUD, or the VA), that the tribe has adopted the necessary procedures and documents to participate in the agency's loan programs and that the tribe and its members are eligible to participate in the agency's programs.
2. An MOU among USDA, HUD, and the VA that any tribe seeking to participate in any or all of the loan programs offered by the Federal agency may submit the model documentation detailed in the MOU to any one of the Federal agencies named in the MOU. If the reviewing agency finds the documentation acceptable to other agencies, it will accept that approval for their respective loan programs.

A copy of each MOU is located in Appendix I. Additionally, the MOUs and a list of tribes eligible to participate in the interagency loan programs will be available on HUD's Web site at <http://www.codetalk.fed.us>.<sup>6</sup>

Tribes that choose to develop and use different mortgage lending codes and leases will need to contact each agency separately for approval. The Federal agencies will continue the interagency training series to educate tribal communities on the Federal loan programs and the new interagency process. See Chapter 16 for more information on this training series. The interagency list of tribes will be available on the Internet at <http://www.codetalk.fed.us>.

## THE MORTGAGE PROCESS

### **Barrier**

The mortgage lending process in Indian Country is often confusing and overwhelming to first-time homebuyers and lenders.

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<sup>6</sup> The ability of VA to participate in this interagency process will depend on a legislative amendment to its loan program's implementing statute.

**Solution**

The team developed a uniform flow chart displaying the mortgage process steps for the Federal loan products in Indian Country. The flow chart includes the process of working with the BIA. A copy of the flow chart is located in Appendix J.

**STATUTORY CHANGES**

**Barrier**

The team identified statutory requirements, limitations, omissions, and definitions that inhibit use of the Federal loan programs. For example, HUD and USDA have different definitions for the terms “adjusted income,” “income,” “low-income family,” and “median income.”

**Solution**

The team has proposed legislative amendments (see Appendix O) to resolve a variety of statutory barriers.

**CONVENTIONAL MORTGAGE LOANS**

Indian Country has not benefited from the conventional mortgage products available off the reservation (84% of the mortgages processed outside of Indian Country were conventional loans).

Missed benefits include:

- Number of loan products available
- Freedom from Federal or State appropriations
- Customized loan products for individual tribes.

**Barrier**

Lenders may require tribes to grant a limited waiver of sovereign immunity to participate in conventional loan programs. The waiver ensures that, in the event of a foreclosure, the lender would have legal recourse if the tribe did not provide a legal forum for the lender and the borrower to resolve the foreclosure.

**Solution**

The team recommends that information about the benefits of conventional lending be available at One-Stop Centers.

Appendices G and K expand on private-sector initiatives.



## CHAPTER 12. BIA REVIEW PROCESS

### OVERVIEW

Because of the trust relationship between the United States and tribes, the Department of Interior—through the BIA—reviews and approves certain tribal actions that concern Indian land.

However, the BIA's systems were not originally designed to assist an expanding private mortgage market. The BIA has limited resources to enhance its systems and review processes because of funding and staffing issues. Given the low volume of loans and the many other demands facing the BIA, it has not focused sufficient resources and staff to improve its review of mortgage-related documents. As a result, many borrowers and lenders have encountered delays with BIA review processes.

The Department of the Interior has taken steps to address these issues:

Last year, the BIA implemented a policy that requires an expedited review and approval process not to exceed 30 days for mortgage-related documents. The policy also recommends that all regional offices adopt a pilot review process developed in the Aberdeen Regional Office for streamlined processing.

The Department of the Interior is instituting the Trust Asset and Accounting Management System (TAAMS) to implement a data cleanup and automation initiative that will allow regional offices to conduct their own title work and will generally provide better access to title records. The Department is scheduled to complete its TAAMS reform in all regional offices by June 2000. The reform is scheduled to be implemented at the agency level by January 2001. The TAAMS reform will also result in an easier-to-read Title Status Report (TSR).

Lenders, borrowers, and tribal governments continue to voice concerns about the lack of guidance for BIA staff who are responsible for reviewing mortgage-related documents. It is unclear when and how comprehensive a review is required, and regional and agency offices differ in their requirements and timeliness.

The BIA is involved in the mortgage lending process in the following ways:

- Reviews all leases of tribal trust land by a tribe (the lessor) to a tribal member (the lessee)
- Reviews encumbrances to those leases of tribal trust land (i.e., *leasehold mortgages*)
- Reviews *trust mortgages* on individual trust land or allotments
- Conducts title searches for Indian land in the appropriate BIA Land Records and Title offices and issues the TSR showing ownership, land status, and encumbrances. Title to land on Indian reservations falls into one of three categories: tribal trust, individual trust (allotted), or fee simple land. Each type involves a different review by the BIA.

#### TRIBAL TRUST LAND

To obtain mortgage financing on tribal trust land, a tribal member must first obtain a lease from the tribe. The BIA realty officer in the agency and/or regional office must review the lease and the leasehold mortgage document.

#### INDIVIDUAL TRUST (ALLOTTED) LAND

Tribal members with an interest in individual trust or allotted land can use the land itself as collateral. Federal law allows the land to be mortgaged with the consent of the Secretary of the Interior. If the mortgage is foreclosed, however, the land may leave trust status, depending on its disposition after foreclosure.

The BIA has a responsibility to approve the loan applicants that use allotted land as collateral for a mortgage. This responsibility to approve *trust mortgages* on allotted land should be distinguished from the Department of the Interior's trust responsibility to review *leasehold mortgages*, described above. The review of trust mortgages by credit officers is more similar to loan underwriting because the Department of the Interior has a fiduciary duty to ensure that the trust status of allotted land is not unreasonably put at risk.

#### FEE SIMPLE LAND

Fee simple land owned by an individual within the boundaries of an Indian reservation can be mortgaged and does not require review by the BIA. However, the transaction is governed by tribal law, similar to trust land. If the fee simple land is owned by the tribe, BIA approval may be required.

## TITLE TO INDIAN LAND

The Bureau of Indian Affairs maintains all title records of Indian land. Therefore, when borrowers or lenders want to record their interests in the land or obtain certification of clear title, they must record documents or request TSRs at the appropriate BIA Land Records and Title Office. Offices are located in Anchorage, AK; Sacramento, CA; Billings, MT; Albuquerque, NM; Muskogee/Anadarko, OK; Portland, OR; Aberdeen, SD; and Arlington, VA.

## STREAMLINING AT THE BIA

### **Barrier**

The BIA's review in each of the above processes varies by region and may sometimes require more time than acceptable to the mortgage industry and tribal homebuyers.

### **Solution**

The BIA has published a new proposed regulation governing its leasing regulations at 25 CFR Part 162 to streamline the review process for residential leases and encumbrances to those leases. The BIA is implementing, among other things, an automated system—TAAMS—that will help to improve the agency's review process of mortgage-related documents.

In addition, the BIA has developed and/or implemented the following to further improve the review process:

- ***E-mail address*** to facilitate inquiries of delays in mortgage-related requests.
- ***Standardized review criteria for leasehold mortgages*** to provide for a uniform review by reality officers. In addition, the Department of the Interior recently proposed a regulation governing leasing of tribal trust land. Members of the One-Stop National task force will be participating in the public comment process to articulate how this regulation impacts mortgage lending.
- ***Developed review criteria for trust mortgages*** to ensure that the trust status of the land is not at risk.
- ***Adopted title search policies*** to expedite requests for TSRs for mortgages. As TAAMS is implemented, the BIA will also consider expanding access to the title plant records so that title searches could be conducted by title insurance companies.



## CHAPTER 13. ENVIRONMENTAL ISSUES

### OVERVIEW

The Environmental Team addressed issues related to the procedures and actions necessary to achieve compliance with environmental requirements for federally assisted housing development in Indian Country. This chapter was prepared with input from the staff of the Coeur d'Alene Tribal Planning and Development Corporation and the following Federal agencies: HUD, the Indian Health Service (IHS), the BIA, the VA, the Department of the Treasury, and USDA Rural Development (USDA-RD).

As used here, the environmental review process is an umbrella term that includes the processes and procedures that must be completed by a Federal agency (or in the case of certain HUD programs, the tribal government that has assumed these responsibilities) to achieve compliance with the National Environmental Policy Act (NEPA) and related Federal laws and authorities, including the National Historic Preservation Act.

The environmental review process has been very problematic in Indian Country. The rules and regulations are numerous and complex, and different oversight agencies have established various, often different, regulations and policies to meet the requirements of NEPA and the related laws and authorities. As a result, environmental reviews can require extensive supporting documentation from a variety of sources.

The Environmental Team's goal was to initiate actions to help tribes and individual Native American families address their housing needs in a more expeditious manner, while achieving full compliance with the requirements of NEPA and related environmental laws and authorities. While the provision of housing is critical, so are the natural resources that form the cultural and economic basis for the sustainable and holistic character of the tribal community.

Some tribal leaders may struggle with balancing the desire for community development for the current generation with the goal of sustaining environmental values that support the tribal lifestyle for future generations.

This report focuses on single-family housing, which often occurs on individual lots scattered throughout a reservation. However, many tribes are considering

cluster housing and relatively larger subdivision developments. This chapter addresses such developments.

Federal actions that support the development of tribal housing must be in compliance with the NEPA and other environmental laws and authorities, such as the National Historic Preservation Act, the Endangered Species Act, executive orders on Floodplain Management and on Protection of Wetlands, and permitting requirements (Corps of Engineers - wetlands, USEPA - wastewater plant discharges, etc.). Federal agencies programs and actions that need to consider these requirements include, but may not be limited to, HUD, USDA-RDA, BIA roads, IHS sanitation, realty actions (BIA trust acquisitions, residential leases, rights of way), and individual mortgage guarantees (HUD Section 184 loan guarantees).

#### COMPREHENSIVE PLANNING, INCLUDING PLANNING FOR HOUSING DEVELOPMENT

##### **Barrier**

Compliance with environmental requirements is often an impediment to housing development in Indian Country due to a lack of comprehensive planning.

##### **Solution**

Federal agencies should assist tribes in building the capacity to develop effective, long-term, comprehensive plans. HUD's Office of Native American Programs will cohost with other agencies a comprehensive planning conference in November 2000.

One key problem in achieving timely compliance with Federal environmental requirements is the lack of planning for future tribal housing developments.

Many tribal governments and Federal agencies recognize that conceptual planning needs to begin up to 5 years before the desired construction start date. The BIA Transportation Improvement and HUD Indian Housing Block Grant programs require tribes to prepare 5-year plans. Experience with 5-year planning has demonstrated that it provides more time to comply with environmental requirements and perhaps, more importantly, to modify construction plans to incorporate environmental protection features before plans become too firm to change.

Given the scarcity of financial resources, planning for housing should be integrated with planning for natural and cultural resources, economic development, land acquisition, transportation, and general community needs.

The Environmental Team strongly supports the need for comprehensive tribal planning, consistent with the recommendations of the Land Use Planning/Infrastructure Team discussed in Chapter 7 of this report.

#### ENVIRONMENTAL COMPLIANCE WITH MULTIPLE AGENCIES

##### **Barrier**

Although the Council on Environmental Quality (CEQ) regulations currently allow multiple agencies to combine their efforts on an environmental review, select a lead agency, and reduce duplicative efforts, this coordination often does not occur; a tribe is forced to prepare multiple documents for the same project.

A common barrier encountered by tribes and Federal agencies is incompatibility of compliance procedures and report formats among multiple Federal agencies involved in a tribal housing development. NEPA compliance requires that an adequate analysis of the environmental effects be completed and made available to the affected tribe and the public, and that the Federal agency considers this analysis in its decisionmaking process. The related laws and authorities also include similar requirements. Each Federal agency is responsible for its own compliance with environmental requirements for its proposed actions.

##### **Solution**

Federal agencies working in Indian Country should develop a cooperative process for establishing a lead agency for compliance with NEPA and related laws and authorities. They should consider forming a team composed of various agency staff with expertise in given program areas. This team (including instructors from HUD, Rural Development and IHS) should also be generalists, and it should have the flexibility to adapt to focus on compliance issues for housing projects. The Interagency Roundtable discussed in Chapter 7 of this report has included this initiative in its mission.

In fact, CEQ NEPA regulations (40 CFR Parts 1500-1508) encourage cooperative procedures and documents for NEPA compliance (Section 1501.6).

#### INTERAGENCY TRAINING ON ENVIRONMENTAL COMPLIANCE

##### **Barrier**

Many tribal governments and developers experience delays in housing developments due to problems with environmental compliance.

**Solution**

Interagency teams should expand regional training on environmental compliance to cover housing development.

A multiagency team already exists to provide training on BIA NEPA procedures, archaeological compliance, and Phase I pre-acquisition contaminant surveys. The need for such training is expected to be nationwide and ongoing.

**RESOURCES AND TECHNICAL ASSISTANCE**

**Barrier**

Tribal governments and developers need access to resources and technical assistance to improve their capacity to comply with environmental requirements.

**Solution**

The One-Stop National task force will compile information about available resources and technical assistance on environmental compliance on the new “One-Stop” page on the Codetalk Web site.

Several guidebooks on conducting environmental reviews are available. HUD’s Office of Native American Programs published and distributed to all tribes *Performing Environmental Reviews: A Guidebook (May 2000)*. To obtain a copy, contact Bob Barth at 415-436-8122 or robert\_g\_barth@hud.gov. HUD’s Office of Community Planning and Development provides technical guidance and forms for environmental compliance on the Internet at <http://www.hud.gov/cpd/cpdenvir.html>.

The USDA Rural Development Office publishes a *Natural Resources Management Guide* on a State-by-State basis. The guides contain valuable contact lists, maps, tables, and information needed for compliance with a wide range of environmental requirements. To obtain a copy, contact Sue Wieferrich at 202-720-9647 or sue.wieferrich@usda.gov.

Eventually, these resources will be made available through the Internet.

## CATEGORICAL EXCLUSION FROM NEPA COMPLIANCE FOR SINGLE-FAMILY HOUSING CONSTRUCTION

### **Barrier**

The BIA's NEPA compliance regulations do not provide for a categorical exclusion from environmental review requirements for the construction of one to four units of housing. It requires a disproportionate amount of work to deal with these types of projects and the process impedes interagency coordination.

### **Solution**

The BIA should consider adopting a categorical exclusion for one to four units of housing by amending its regulation, similar to other Federal agencies.

The BIA's Central Office is developing a NEPA categorical exclusion for construction of one to four homes to propose to the CEQ. This proposal is consistent with existing categorical exclusions under HUD and USDA-Rural Development regulations.



## CHAPTER 14. LAND ISSUES

### OVERVIEW

Issues stemming from the trust status of Indian land have been significant barriers to mortgage lending in Indian Country. Representatives from ONAP, the U.S. Department of Justice's Office of Tribal Justice (OTJ), the BIA, Washington Mutual Bank, and First Heritage Bank reviewed these issues.

### TRUST LAND ACQUISITION FOR RESIDENTIAL PURPOSES

#### **Barrier**

A land-related barrier to homeownership in Indian Country is the process by which the Federal Government takes land into trust for the benefit of Indian tribes. If a tribal member purchases land for residential purposes, the land cannot be taken into trust if it is encumbered by a mortgage.

#### **Solution**

The Land Issues Team recommends that the Department of Justice take either of the following steps:

- Amend its title acquisition standards to provide special consideration for requested waivers for encumbered lands taken into trust by the Bureau of Indian Affairs for Indian tribes and tribal members *for residential purposes*.
- Create a new set of standards that would apply only to the BIA's acquisitions of land in trust for the benefit of Indian tribes or tribal members.

### PROTECTION OF TRUST STATUS FOR INDIAN LANDS

#### **Barrier**

Another barrier to private mortgage lending on Indian reservations is the risk of erosion to the Indian land base when individually owned trust and restricted allotments are removed from trust upon loan default and foreclosure.

Law 25 U.S.C. 483a(a) authorizes individual Indian owners of land that is held by the United States in trust for them or is subject to a restriction against alienation imposed by the United States to execute a mortgage or deed of trust to such land, subject to approval by the Secretary of the Interior. These Indian allotments may be eligible collateral for loans guaranteed by HUD in its Section 184 Loan Guarantee Program, as well as other Federal loan programs.

Section 483a provides that, for the purpose of any foreclosure or sale proceeding, the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, and any conveyance of the land pursuant to the proceeding shall divest the United States of title to the land.

Law 25 U.S.C. 483a(b) contains important protection for the continuation of the trust or restricted status of Indian land in the event of conveyance upon default through foreclosure or sale proceedings, by providing that “In the event such land is acquired by an Indian or an Indian tribe, such land shall not be removed from trust or restricted status except upon application to the Secretary under existing law.” Questions have arisen regarding the implementation of this provision. Does the allotment retain its trust status via a “trust to trust conversion” when acquired by an Indian or tribe? Does the allotment temporarily lose its trust status and automatically regain it upon acquisition by an Indian or tribe? What affect would a non-Indian intervening owner, such as a lender or Federal agency, have on the trust status? In that situation, would the Secretary of the Interior have to be affirmatively petitioned to accept the land back into trust status? These and other related questions have a chilling effect on the usefulness of this statutory authority for individual Indian land mortgages.

### **Solution**

The Department of the Interior’s BIA is the Federal agency charged with the responsibility of implementing 25 U.S.C. § 483a. The BIA should examine the statutory provisions and issue an administrative notice or directive that clarifies the process for the continued protection of trust status for Indian lands affected by this law.

### **PARTITION PROCESS FOR ALLOTTEES**

#### **Barrier**

A final land-related barrier to Indian Country homeownership is the problem with undivided fractionated interests in allotted lands. An allottee is required to obtain necessary clearance from multiple owners to use the land for a mortgage loan.

In the late 19th century, Congress initiated an Indian land program that authorized the allotment of communal Indian property to individual tribal members. This allotment program resulted in the extreme fractionalization of Indian lands as allottees passed their undivided interests on to multiple heirs

through descent or devise. A number of factors augmented the problem: Because Indians often died without wills, many interests passed to multiple heirs; Congress' allotment acts subjected trust lands to alienation restrictions that impeded holders of small interests from transferring those interests. The fractionalization problem proliferated with each succeeding generation as multiple heirs took undivided interests in allotments.

When a single owner wishes to partition her portion of the allotment for purposes of homeownership, she must obtain approval from the Department of the Interior. Department regulations require heirs of a deceased allottee to make a written application for partition of their trust or restricted land.

If the Secretary finds the trust lands susceptible of partition, he may issue new patents or deeds to the heirs for their portion of the allotment (25 C.F.R. § 152.33). Because individual trust land can be owned by many heirs, it is difficult for allottees to obtain the necessary clearance from multiple owners to use the land for a mortgage loan. Also, some tribal members voiced concerns that the Bureau's area offices applied this regulation inconsistently throughout Indian Country.

### **Solution**

The Land Issues Team encouraged the Department of the Interior to provide uniform, special considerations for partition requests *for residential purposes*. See *Sampson v. Andrus*, 483 F. Supp. 240 (D.S.D. 1980). BIA should develop a consistent streamlined process for allottees to partition land for residential uses.



## CHAPTER 15. HUD LOAN PRODUCTS

### OVERVIEW

Within HUD there are two separate organizations— ONAP and the Office of Housing’s Federal Housing Administration (FHA)— that sponsor guaranteed or insured loan programs for Native Americans. The ONAP has authority for the Section 184 loan guarantee program and FHA provides an insurance program called Section 248. For details about how each of these programs work, see Appendix G. The HUD Loan Products Review Team conducted an evaluation of HUD’s Section 184 and Section 248 programs.

The team members included representatives from BankOne, First American Mortgage Company, Fort Mojave Indian Housing Authority, the National American Indian Housing Council, the National Bank of Alaska, Tulalip Tribal Housing Authority, First Security Bank of New Mexico, Salish Kooteni Confederated Tribes, Washington Mutual Savings Bank, Wells Fargo Home Mortgage, and HUD’s Office of Housing and Office of Native American Programs.

### ENHANCEMENTS TO HUD PROGRAMS

#### **Barrier**

Tribes and lenders have indicated that HUD’s existing loan products available to Indian Country may benefit from increased flexibility, fewer restrictions, and other enhancements.

#### **Solution**

The HUD Loan Products Review Team developed recommendations to improve HUD’s Section 184 and 248 loan programs. HUD will organize tribal consultation meetings to discuss these recommendations further with tribal leaders.

Although the One-Stop National task force’s original recommendation was to merge HUD’s Section 184 and 248 loan programs, there was concern that the process necessary to establish a new program would take time and create confusion that would harm or reduce current levels of lending. A preferred approach was to focus on improving the available programs, removing institutional roadblocks, and developing better communication networks focusing on Native American lending.

There was consensus on a basic principle to which program changes must adhere. Any changes to current lending programs must expand the availability of mortgage capital to Indian Country.

Following is a summary of the discussion and recommendations of the team tasked with identifying ways to improve HUD's Indian lending programs. Discussions are still ongoing about other types of program improvements, which could be implemented with regulation or handbook modifications.

- **Expand to allow for refinancing.** The ONAP should expand the authority for refinancing under the Section 184 program to allow homeowners opportunities to lower their monthly payments by permitting borrowers to use the Section 184 loan program to refinance existing high interest rate mortgage debt in order to improve their financial situation. At a minimum, the program should mirror the FHA Streamline Refinance, which would allow an existing Section 184 borrower to refinance to lower the interest rate with no cash back. Program revisions should include reusing the original Section 184 loan guarantee obligation with the refinance and not obligate new Section 184 allocation. This proposal will require legislative changes.
- **Expand refinancing under the Section 184 rehabilitation program.** The housing rehabilitation option under Section 184 allows only 25 percent of the new loan to be used to pay off the existing mortgage or debt. For example, an \$80,000 loan would allow only \$20,000 to refinance the existing debt and \$60,000 for the rehabilitation. This is not a workable ratio, and the limitation should be removed or revised to be more similar to the terms of the FHA 203(k) program. Section 184 financing should encourage upgrading of existing housing stock. This proposal can be implemented administratively.
- **Improve process for construction.** Consider developing flexible processes for Section 184 to allow longer construction periods for an "insurance upon completion" type loan. A need exists for redefining the "construction" window to allow for mobile homes (or site-built housing) built with a personal financing or a conventional loan, and then needs refinancing into a lower interest or longer term. Section 184 needs a 2- or 3-year window to "take out" or refinance this type of construction loan. A statutory language to permit refinance of loans would be needed.
- **Remove unnecessary requirements.** Remove the requirement that a Native American borrower using the 184 program on fee simple land must provide to the lender a certification that they lack access to private financial markets. These restrictions create a negative connotation of the borrower and should be removed. A change to the 184 regulations is needed to amend the certification.

- **Clarify lease termination.** Currently, a lease of tribal trust land may not be terminated without HUD's consent while a Section 184 loan is in effect. This requirement protects HUD and enables the lender and HUD to perfect a lien against the pledged leasehold interest. However, some tribes argue that this would hinder tribes' ability to enforce their laws.

The intent of the requirement is not to infringe upon tribal sovereignty, nor circumvent or inhibit a tribe's ability to exercise jurisprudence. HUD should clarify this requirement to recognize and respect tribal sovereignty and the tribe's judicial process. For example, if criminal proceedings have an adverse impact on a mortgaged leasehold property, HUD would support the findings of the tribal court and consent to the termination of the lease. A change to the 184 regulations would be needed.

- **Expand availability of 248 on all Indian land.** Expand Section 248 to include restricted individual trust land or allotments as well as tribal leaseholds. Currently, Section 248 is limited to leaseholds only. Expanding the program to include individual trust land would allow HUD to offer a trust-designed program to either type of trust status, which would make the program much easier to market and understand. Also, expanding Section 248 to individual trust could provide a measure of protection for keeping the land under Indian control if a foreclosure occurs. Currently, Section 248 requires the sale of any foreclosed leasehold property to be approved by the tribe. A similar restriction would be reasonable for individual allotments or restricted land. This proposal will require legislation.
- **Create Parallel Program Guidance.** Section 248 and 184 loans should share similar program guidelines such as loan limit levels.

#### IMPROVED COMMUNICATION ABOUT HUD PROGRAMS

##### **Barrier**

There is no mechanism for tribes, lenders, HUD, and others to communicate about how to improve HUD's homeownership programs.

##### **Solution**

HUD should explore ways to improve communications among all of the players involved with homeownership issues in Indian Country.

Suggestions for improving communication about HUD loan products include:

- **Organize forum.** The recommendation is for HUD to organize annual or semi-annual meetings that focus on mortgaging lending and financial programs with tribes, lenders, and other public or private partners.

- ***Host regional meetings with the BIA.*** The task force wanted this committee to address the frustration identified around the country on how the BIA deals with the review and approval of credit and the delivery of preliminary and certified Title Status Reports (TSRs). The committee members appreciate the fact that the BIA is participating with other task force committees. However, they indicated that processing delays are discouraging mortgage lenders from participating in lending to Indian Country. Part of the problem is lack of understanding about the BIA's process and how a lender can get help with it. Other frustration results from different BIA agencies requiring different documentation or following different processes. The recommendation is that HUD sponsor regional meetings with the BIA, tribes, and lenders to focus on processing issues, training, or other information-sharing activities.
- ***Improve HUD support for Section 248.*** The task force members also expressed frustration with the FHA Section 248 program. When lenders or tribes have questions about the program, it is difficult to find anyone who understands tribal lending needs. The recommendation was that each of the FHA Home Ownership Centers (HOCs) should improve its coverage of HUD's loan products for Native Americans. These activities could include the following:
  - Conducting joint outreach and training with ONAP on HUD's Section 184 and Section 248 loan products.
  - Establishing a Native American contact in each HOC to be responsible for promoting Section 248 and other programs available on reservations (e.g., Section 203(b) mortgage insurance on allotted lands and Title I loans).
  - Updating promotional materials for Section 248 and training HOC staff on how the program works.
  - Producing promotional items for use at Native American events.

This initiative would increase the FHA's presence in Indian Country and would help to increase the volume of Sections 184 and 248 and Title I loans. In addition, the FHA and ONAP partnership could help to maximize HUD's resources to benefit tribal communities.

- ***Improve library of publications targeted to Native Americans.*** HUD should publish new literature targeting Native American homebuyers on Indian reservations to help meet the demand for accurate and timely information on FHA and ONAP homeownership programs, budgeting, and credit issues.

These new publications could be included on an expanded Native American section of HUD's Web sites. The ONAP, working with the FHA Homeownership Centers and their field offices, would distribute this information at homebuying

fairs, during National Homeownership Week, and at Native American housing conferences. This literature would be available free to nonprofits, TDHEs, housing authorities, BIA realty offices, and tribal colleges and universities.

HUD should consider these recommendations to provide more flexibility with its products and improve communication among lenders, tribes, and HUD. Noncontroversial recommendations should be implemented immediately, and further tribal consultation should be conducted to resolve other issues of concern to tribes and lenders.



## **SECTION E: FACILITATING PRIVATE SECTOR INVOLVEMENT IN INDIAN COUNTRY**

A large segment of the mortgage lending industry and tribal communities may not be familiar with lending programs and practices designed for Indian lands. As a result, the One-Stop Mortgage Center task force participants explored ways to expand the knowledge base of both perspectives. They looked for ways to improve outreach and education, summarize mortgage industry and Indian Country resources, which might not be obvious to either perspective and which might not encourage mortgage-related industries to enter the Indian Country market, including appraisers and title insurance companies.

Section E presents information in the following areas:

Chapter 16. Outreach to Lenders and Tribes

Chapter 17. Federal Government, National Nonprofit, and Other Resources

Chapter 18. Title Insurance and Appraisals on Indian Land



## CHAPTER 16. OUTREACH TO LENDERS AND TRIBES

### OVERVIEW

Many initiatives are under way nationwide to improve mortgage lending in Indian Country. However, there is little coordination between these initiatives that may involve the Federal Government, the private sector, or tribal organizations. By enhancing and coordinating efforts for training, outreach, and information sharing, separate initiatives can be maximized for the benefit of both the mortgage industry and Indian Country. Eventually, a national intermediary for homeownership in Indian Country may serve as a coordinator and repository of information. In the meantime, the Federal agencies have developed an interagency training series, HUD ONAP will launch a new One-Stop Mortgage Center Web site; and One-Stop task force members have summarized success stories about mortgage-related activities in Indian Country.

### COORDINATED TRAINING FOR FEDERAL LOAN PROGRAMS

#### **Barrier**

HUD, the USDA, the VA, and the BIA each have guaranteed or insured loan programs for mortgage lending in Indian Country, but there has been little cooperation among them.

#### **Solution**

The Federal agencies developed an interagency training program, which is completing its second year with positive feedback from lenders and tribal communities.

Last year training sessions were held in Phoenix, Arizona; Raleigh-Durham, North Carolina; and Oklahoma City, Oklahoma. This year, the sessions were held in Reno, Nevada; Jackson Hole, Wyoming; Traverse City, Michigan; and Anchorage, Alaska.

The purpose of this interagency training series is to maximize tribal resources by conducting one session at which tribes can learn about all programs and players. As a result of this effort, the Federal agencies now have an informal speakers' bureau to coordinate outreach to all Native Americans about mortgage loan programs. In addition, the agencies will produce a video introducing the various Federal loan programs for use in local tribal communities.

## ONE-STOP MORTGAGE CENTER PAGE ON CODETALK WEB SITE

### **Barrier**

It is difficult and confusing for those lenders, tribes, and private providers entering the mortgage market in Indian Country to obtain information about Federal and private-sector resources available.

### **Solution**

The Office of Native American Programs will oversee the development of a One-Stop Mortgage Center page on the interagency Web site for Native American programs at <http://www.codetalk.fed.us>. This page will provide a roadmap to resources on the Internet related to mortgage lending.

The One-Stop Web site will be a centralized cite for information about tribes eligible to participate in Federal and conventional programs. It will also contain information about lenders doing business in Indian Country.

## HIGHLIGHTING SUCCESS STORIES

### **Barrier**

Some segments of the mortgage lending industry may not be familiar with the positive developments in the Indian Country market.

### **Solution**

The One-Stop Mortgage Center Initiative will continue to highlight success stories through the media and on the Internet.

While the need for mortgage loans in Indian Country is a long way from being fully addressed, the mortgage lending industry has made some progress. More lenders are participating in government insurance and guarantee programs, and an increasing number are working with tribes to leverage NAHASDA and other tribal funds. Tribes are forming Native-owned banks, and mergers of other banks are leading to additional resources being pledged to the Native American population.

The secondary market has increased its role, and the Federal home loan banks are awarding an increasing number of affordable housing program grants on trust land. Mortgage insurance companies are making inroads in these areas, and tribes are using low income housing tax credits to provide rent-to-own opportunities to their members. To date, 125 tribes have legal protections in

place at least applicable to the HUD Section 184 program and more are ready to work with lenders.

Appendix K summarizes *Private Sector Products and Programs*.



## CHAPTER 17. FEDERAL GOVERNMENT, NATIONAL NONPROFIT, AND OTHER RESOURCES

### OVERVIEW

Federal financial regulators have initiatives to educate lending institutions about lending in Indian Country. Federal departments and State housing finance agencies have also provided funding and technical assistance to promote affordable housing. In addition, tribes have sought assistance from national nonprofits, associations, and for-profit companies. The appendixes summarize some of these resources.

### FEDERAL FINANCIAL REGULATORS INITIATIVES

#### **Barrier**

In some areas, financial institutions make few mortgage loans in Indian Country, either because of lack of knowledge about the opportunities to lend in Indian Country or because of impediments in the lending process.

#### **Solution**

The Federal financial regulators have launched both interagency and individual initiatives to help educate the institutions that they regulate about doing business in Indian Country.

The Federal Deposit Insurance Corporation, the Federal Housing Finance Board, the Federal Reserve System, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision are Federal financial regulators with oversight over a wide range of financial institutions. Each has played a significant role in conducting training and outreach activities for lenders and tribes in mortgage lending and community development.

A description of the roles and activities of the Federal financial regulators is presented in Appendix L.

#### **Barrier**

Tribes and the mortgage lending industry need information about resources available to help them fulfill their goals of improving homeownership in Indian Country. It may be difficult for each perspective to find information in areas that are unfamiliar to them.

**Solution**

Tribal leaders and housing authority officials are familiar with organizations such as the National American Indian Housing Council and the National Congress of American Indians, and these groups are knowledgeable about the services they provide. Similarly, tribal leaders and housing authorities may not be familiar with the American Bankers Association, State banking associations, or State housing finance agencies.

Appendix M contains a list of National Nonprofit Resources.

## CHAPTER 18. TITLE INSURANCE AND APPRAISALS ON INDIAN LAND

### *Part I—Title Insurance*

#### OVERVIEW

Although title insurance is not required for Federal direct, insured, or guaranteed loans, private mortgage lenders and secondary market investors require title insurance when providing conventional mortgages. Such insurance protects against two classes of risks—losses arising from technical defects in the title and losses arising when the title cannot be enforced fairly and expeditiously in the case of default. Further, even if the provision of title insurance presents no significant technical or enforceability problems, some issuers simply will not enter a market if the costs preclude profitability. Because of these problems, title insurance is not readily available in Indian Country. This is a significant impediment to the availability of private mortgages and to homeownership.

The Title Insurance Team included representatives from AMERIND Risk Management, the BIA, the Department of the Treasury, and Stewart Title Guaranty Company.

#### IMPROVE THE AVAILABILITY OF TITLE INSURANCE

##### **Barrier**

Barriers to expanding the availability of title insurance in Indian Country are associated with processing requests for Title Status Reports (TSRs) by the BIA, legal frameworks for enforcing titles, and the costs of doing business in many small reservation communities.

##### **Solution**

The Title Insurance Team explored improvements to the TSR process, enhancements to tribal courts, and ways to reduce transaction costs. The One-Stop National task force will continue to work with the BIA title plants and title issuers.

#### PROCESSING TITLE STATUS REPORTS

A TSR is the only certificate of title for tribal trust land. The technical accuracy of these reports has never been at issue, and defects are rare. Any losses due to such defects would be protected by the full faith and credit of the Federal government.

However, problems arise from long delays by the BIA in fulfilling requests for TSRs.

The reasons for processing delays are straightforward. The operation of the BIA land titles and records offices was not designed to accommodate the need of private mortgage lenders. Further, these offices have been understaffed and underfunded for many years. Recently, the BIA made major commitments to rectify these problems. To provide some immediate relief, the agency has promised to process requests for TSRs for homesite leases in 30 days and to begin to streamline the procedures. Successful implementation of the new Trust Asset and Accounting Management System (TAAMS), a computer-based record system, would greatly expedite processing.

In the near term, lender apprehension about relying on the BIA title system in the event of a technical error in a title can be addressed by low-cost title insurance which shifts the burden of processing claims with the BIA to the insurer. AMERIND Risk Management Corporation, a tribally owned insurance company, plans to identify, evaluate, and implement a strategy to provide such a product in 2000.

In some cases title insurance companies have encountered difficulty in conducting title searches at the BIA title plants. The BIA is exploring ways to expand access to its records to facilitate these searches.

#### THE ENFORCEABILITY OF TITLES

In Indian Country the enforceability of foreclosure codes represents the most significant impediment to the provision of title insurance. Some tribal commercial codes may not provide adequate protection from the perspective of insurers and lenders.

Perhaps far more significant is the fact that many tribes understandably are reluctant to put their land base at risk or to evict a family from their traditional-use land due to a default on a mortgage loan. Consequently, tribes may use mechanisms that limit recourse in the case of default.

Strategies to address enforceability either involve efforts to improve tribal codes and judicial procedures or for tribes concerned with protecting their land base to assume the risks of enforceability. In terms of the former option, tribal governments could adopt a commercial code that fully protects lenders and consumers.

ONAP has developed a Tribal Legal Code project to help tribes develop codes for zoning, land use and planning, building, commercial, corporations, environmental review, and probate codes. The Northwest Intertribal Court System has tribal codes of law available for its dozen-member tribes. The American Indian Law Center, Inc., in Albuquerque, New Mexico, can provide various model tribal codes.

#### THE COST OF DOING BUSINESS

There are more than 550 tribes, most of which have adopted their own legal codes and instituted their own judicial procedures. Model codes are available for tribes, but they are often modified to reflect cultural or sovereignty issues that are important to the tribe. With the exception of a handful of large tribes that could generate a sizeable volume of business, the cost of understanding unique variations may discourage the servicing of borrowers.

In principle, there are several ways to reduce costs associated with providing title insurance. Small tribes could rely on State codes and courts, although there may be reluctance from tribes to do so. The adoption of standard codes would reduce costs.

This does not have to be done on a national basis. Regional clusters of several smaller tribes have adopted a common court and court system. The National Indian Law Library at the Native American Rights Fund has more than 300 tribal codes that will soon be available online. Likewise, the National Indian Justice Center has tribal codes available. The Department of Justice's Bureau of Justice Assistance plans to provide a 2-year grant to put local tribal codes online.

## ***Part II—Appraisals on Indian Land***

### **OVERVIEW**

In FY 1999, an Appraisal Team was formed. Appraisal Team members included Bering Straits Regional Housing Authority; the USDA, Rural Development; HUD, the BIA, the VA; Fort Mojave IHA; Washington Mutual Savings Bank; Wells Fargo Home Mortgage; and Wright and Associates. The Appraisal Team contributed to revisions of HUD's *Real Estate Appraisal Guidelines*, 4150.2, dated July 1999.

Next, the group discussed appraisal issues for all types of loans and the level of detail needed to introduce lending and appraisal issues to lenders and appraisers.

Other issues involved the development of restricted and trust status and the need for general education material for lenders and appraisers about the legal and cultural significance of tribal lands.

### **APPRAISAL OF SINGLE-FAMILY HOMES ON NATIVE AMERICAN LANDS**

#### **Barrier**

It is difficult and expensive to obtain an accurate appraisal on housing located on an Indian reservation, due to remoteness and the lack of accurate comparable sales data.

#### **Solution**

The Appraisals Team chose to focus generally on the processes that are consistent for mortgage lenders and appraisers throughout Indian Country. A six-page guidance, titled *Appraisal of Single-Family Homes on Native American Lands* (see Appendix N) resulted from the team's findings.

Each tribe has a history and structure that will influence the use of mortgage lending within its community. The team suggests that tribal representatives prepare a supplement that includes a short history of the tribe, the land classifications on that reservation, and a list of contacts who could provide information during the appraisal process.

Another document that may be helpful to appraisers is called *Cost-Based Appraisals on Native American Trust Lands*, published by the Housing Assistance

Council (HAC). This study reviews the problems in determining market value on trust lands, particularly regarding overvaluation using a strict cost approach. To obtain a copy of this document, contact HAC at 202-842-8600 or visit <http://www.ruralhome.org/pubs/>.

#### **THE NAVAJO HOUSING AUTHORITY APPRAISAL PROJECT**

The Navajo Nation launched a comprehensive initiative contracting with the American Appraisal Associates, Inc., (AAA) to appraise approximately 6,500 housing units.

The purpose was threefold:

1. To estimate the market value of the units for possible sale
2. To meet the requirements of various lending institutions for financing purposes
3. To satisfy financial reporting requirements.

The challenges were many, including determining land status and the lack of recorded sales activity, building software, and remoteness. It was determined that the cost approach was the most reliable method of assessing valuation.

For more information about this appraisal initiative, contact Alice MacQueen, vice president and principal, at 972-994-9100, ext. 234 or [amacqueen@american-appraisal.com](mailto:amacqueen@american-appraisal.com). For information about American Appraisal Associates other services, contact Kevin Betz, director, Native American Markets for American Appraisal Associates, at 303-282-6661 or [kbetz@american-appraisal.com](mailto:kbetz@american-appraisal.com).



## SECTION F: CONCLUSION

### INSTITUTIONALIZING IMPROVEMENTS

This report to the President summarizes the efforts of the One-Stop Mortgage Center Initiative in Indian Country. Through partnerships with Federal and tribal agencies, nonprofits, and the private sector, ONAP and the Department of the Treasury have identified barriers to mortgage lending in Indian communities and have implemented national and local solutions to overcome those barriers.

This work has focused on four areas: building local and national capacity, promoting homebuyer education and financial literacy, streamlining Federal and tribal processes and programs, and increasing the involvement of private sector partners from the mortgage lending industry.

To achieve continued growth in the mortgage market in Indian Country, the One-Stop partners need to remain vigilant in implementing institutional changes to improve the delivery of products and services to tribal communities, accompanied by capacity-building technical assistance and resource development.

Tribal governments should consider creating new one-stop mortgage centers across Indian Country. These local intermediaries, with national support, can lay the foundation for Native families to attain homeownership. Evidence at the local One-Stop pilot sites at Navajo and Pine Ridge suggests that targeted homeownership efforts really do increase loan volume.

The incorporation of financial-literacy skills into the curriculum provided by nonprofits, lenders, and tribal colleges and the development of homebuyer educational programs will assist first-generation Native American homebuyers to become successful homeowners.

Congress should amend inconsistent statutes and provide adequate funding to support much needed infrastructure development in Indian Country. Congress should also support the Administration's budget request for the Department of the Interior so that the BIA can improve its ability to fulfill its trust responsibility to review mortgage-related documents to allow its beneficiaries to participate in the private mortgage market. Federal agencies should coordinate their efforts and streamline the delivery of their loan programs.

Finally, lenders and mortgage industry participants should explore new market opportunities in Indian Country and learn how to use improved products and programs to help meet the demand for homeownership from more than 38,000 Native families.

Ultimately, tribal communities will benefit from these improved homeownership opportunities. Higher homeownership rates will result in sustainable community and economic development to support healthy and safe places to live while preserving the culture, self-determination, and independence of tribes.